

## City Council Regular Meeting Transcript – 05/01/2014

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[04:01:31]

>> Mayor leffingwell: Good morning, I'm austin mayor lee leffingwell. We'll begin today with the invocation from dr. Harvey en, at the congregation learning, are agudas achim. Please rise.

>> My thoughts for the council come from the writings of the jewish sages of the first century. Their wisdom and inspiration speaks to us today as it did then. Rabbi simon, the son are go gabrielle. On three things does the world stand, on justice, on truth and on peace. Maybe the council members be guided by justice in their decision-making, considering the best interests of their constituents in the larger good of our city, in pursuing justice may we particularly be cognizant of having our city be available to all its inhabitants by making a place to live, a reachable goal, and by having justice served equally for rich and poor. And may you be further guided by the pursuit of truth in your dealings, with one another and with the community you serve, opportunism and over simplification of the issues we face. We are partners in god's creation, blessed with the ability to discern between the path of righteousness and the path of least resistance, the path of justice and truth, and the paths of cynicism and indifference. May you and everyone in our larger community bring these two concepts of justice and truth together as we create a wholeness and a completeness in our world that establishes peace, not for a moment but at all times and in all places. May it be god's will to assist us in these tasks. Amen.

[04:03:51]

>> Mayor leffingwell: Quorum is present so I'll call this meeting of the austin city council to order on thursday, may 1, 2014 at 10:04 am. We're meeting in the council chambers, austin city hall, 301 west 2nd street, austin, texas. I'll begin with the changes and corrections to today's agenda. Item no.9 is withdrawn, item no.17 is postponed to june 12, 2014. Item 20, add the phrase "april 28, 2014 unanimously approved by the historic landmark commission on a 7-0 vote." Item 43, add as a second co-sponsor mayor pro tem sheryl cole. Item 45, add the phrase "after 4:00 p.M.," Add the phrase at city hall, 301 west 2nd street austin, texas. Notice at time certain a request to set this item for 6:30 time certain will be made. Time certain items for today at 10:30, our seaholm intake project briefing at 2:00,

a briefing on the universal citywide translation service policy. At 12:00 noon our citizens communications, at 2:00, zoning matters, at 4:00 we'll take up our public hearings, at 5:30 live music and proclamations, the musician for tod cilantro boom box. The consent agenda today is items 1 through 49 with several items pulled off and I believe the clerk noted that mayor pro tem cole will recuse on item no.1. I will read item 35 into the record. Those are appointments to our boards and commissions and waivers. That item will stay on consent for now. To the austin water resource planning task force, marisa perales is council member martinez' nominee to the municipal civil service commission, pamela lancaster and kimberly kovak chair are. To the planning commission zaragoza is councilwoman morrison's nominee. There are no waivers scheduled for today. The consent agenda again is items 1 through 14. With the following items pulled off of consent. Item no.11, 41 and 42 pulled by council member spelman, items 6 and 13 are pulled for speakers. That is our consent agenda for today, and we have several folks signed up to speak on consent agenda items. First is james price, signed up on several items. Is james price here? All right. We'll go to gus pena. Gus pena. Stewart hurst.

[04:07:27]

>> Mayor and members of the council I'm stewart harry hirsch and like most in austin, I understand there were two items that I want to speak about that have  
-- remain on the consent agenda, and item 45, I'm asking you to not schedule public hearings on court penalties until you've had a chance to conduct the public hearings and take action on possible code amendments related to the code compliance resolution on building and standards commission expansion and expedited permits that you approved as item 100 on your october 3, 2013 agenda. So far that hasn't been scheduled for a hearing before you, and I ask before you consider the court as a strategy that you take that up first. And on item 47 I'm asking when you conduct the public hearing on the proposed code amendments related to visitable grants, allowing them to encroach both in front, side yard and rear setbacks, that that language be broad enough for you to consider allowing them for not only existing single-family homes and duplexes but new ones as well so that somebody doesn't have to come in after the fact and do that, and that you also consider what used to be a code provision, that any ramp that's less than 30 inches above grade not be subject to building permits because they don't require guardrails. It used to be the standard here, made it easier for people to put in ramps because they didn't have to go through the process at all. Just make sure it was to code. Those are the two things and thank you for your consideration.

>> Mayor leffingwell: Thank you. Next speaker is david king but the clerk will also note that council member spelman will be recused on item 12 also.

>> Thank you, mayor, mayor pro tem, and council members. Mayor, was item 41 pulled?

[04:09:30]

>> Mayor leffingwell: Item 41 is pulled.

>> Thank you. I'm speaking on item 36 and item 44. Items 36 and 44. No.36, alternative funding for special events, fee waiver process for large events, sponsored by kathie tovo and co-sponsored by bill spelman and mike martinez, and thank you for sponsoring this resolution. I would like to suggest and ask

you to consider the following points related to this resolution, that you please include an amc representative in the stakeholder

-- on the stakeholder group and that the stakeholder process and group should be subject to the open meetings requirements, and that fee waivers should not be allowed for for-profit events, and for-profit events

-- require for-profit events to pay all fees and costs for the use of public property or services including police, fire and ems transportation. Asking for profit events charging an extra fee, maybe 50 cents per ticket and give that money to affordable housing, and another 50 cents to fund judge training programs to help give back to our community. Item 44, point towers. Point towers, I can see that they would be beneficial and good in certain locations but I would ask you to please consider carefully whether we want to locate them around lady bird lake and how close to lady bird lake we want these towers to be located. And what the value of the visual corridor, not just on the ground, but up in the air as well. When you're walking around lady bird lake and you're in the middle of an urban environment and you look around and right no you see a

-- no you see a tree canopy. Barely see any buildings. That's great, you feel like you're in the urban nature. The point towers will stick way above the urban canopy so when you're down

-- canopy, so when you're down there you can see the buildings. I would ask you to please carefully consider the location of those buildings around lady bird lake. Thank you very much.

[04:11:32]

>> Mayor leffingwell: Those are all the speakers we have on the consent agenda. I'll entertain a motion for approval. Council member spelman approved and coal seconds. Those in favor say aye.

>> Aye.

>> Mayor leffingwell: Opposed say no? Passes on a vote of 7-0. So we'll go to item 6, which pulled for speakers. Go directly to those speakers. First speaker is gus pena. Gus pena? Alice james? Alice james? Neither speaker is here I'll entertain a motion on item 6. Smeb.

>> Passes on a vote of 7-0. Go now to

-- next to item 11, pulled by council member spelman. We have two speakers, both of which are apparently not here. I'll call them again. Gus pena. Gus pena. Alice james. Alice james. Council member spelman.

>> Spelman: Thank you, mayor. I believe betsy spencer is here. I have a couple questions. Ms. Spencer, in your response to mayor pro tem cole's question about the number of loans we have outstanding, you produced a list and there are \$10 million worth of loans that are currently outstanding. Is that right?

>> Yes, sir.

>> Spelman: All right. And these are all

-- yeah, there's a wide variety of groups that have received loans from us, in addition to southwest key, acc has gotten some loans, habitat for humanity has gotten loans, several private citizens have gotten rehabilitation loans for their houses and things like that. So there's a wide variety of folks who have received money from it, and it adds up to about \$10 million. Do I understand correctly?

[04:13:49]

>> Yes, sir.

>> Spelman: Are any of the loans on this list currently forgivable?

>> The homeowner rehab loans, the bulk

-- we call it hrop, those are all long-term

-- they are deferred forgivable loans. There's a balloon payment at the end of 30 years. Those we typically will restructure and make them forgivable. And so I'm looking at the list right now. All the single-family loan program, the rental housing developer assistance, the vast majority of those will be in the form of deferred forgivable. I apologize, the list I have doesn't have the terms on it, but the bulk of -- when we utilize cdbg for rental housing developer assistance, that's also in the form of a deferred forgivable. The loan before you today we're modifying is an ncnp loan and those are the ones for commercial programs. As a note, the southwest keys loan is the only loan in the ncnp portfolio that has been

-- that has been

-- is with a nonprofit. The rest are commercial for profit organizations typically. So this particular loan, the list that we gave you is just our cdbg and our section 108. Just as a note, we also have a lot of small loans with our home fund, down payment assistance also with hrlp, some of which have payment terms, some do not. But I think what's most important is the ncnp program, which is what the southwest keys loan was provided under. So most of those, the ncnp have a repayment term, and to note, southwest keys has been an excellent payee on this particular loan, but as a nonprofit, this particular -- were asked to restructure this loan is an effort to be able to redirect the funds that they're currently using to go back into their existing programs. I don't know if that helps or not, but it's hard to compare hrlp to the single-family loan program to mcnp. They're very different types of programs.

[04:16:03]

>> Spelman: I understand. What's the purpose of the ncnp program?

>> So we no longer actually utilize the ncnp program, but it's a program to help vitalization to blighted areas, typically to encourage job creation and economic development. Currently the economic development department is operating a similar type program with section 108 funds. They've got a significant amount of 108 funds so they're doing an excellent job in administering that type of program. So we're no longer administering the ncnp program but when we did it was to encourage job creation and economic development.

>> Spelman: Most of the ncnp programs are section 108 loans

--

>> cdbg and section 108.

>> And some of them are cdbg as well. Is there an important distinction between the cdbg source and the section 108 source in terms of what

--

>> no, actually the 108 follows almost all of the same guidelines as cdbg.

>> Spelman: Okay.

>> Because 108 is actually collateralized by our cdbg entitlement, so they mirror

-- their requirements are pretty similar.

>> Spelman: Has anybody else asked for a change in terms of

-- a loan you have to pay back to one that you don't?

>> We'll on some of the other ncnp

-- owned some of them when businesses are struggling. This is interesting because it's not a struggling businesses but we've had businesses that were struggling and we have restructured those loans to provide relief when they've had challenges making payments. So we have restructured some smaller loans before, amortizing it longer, deferring some payments, to help them get through some economic times. A couple years ago when the economy was pretty tough we had a couple businesses that requested smaller

-- because they were smaller amounts we were able to do that in-house and we modified those to allow that.

>> Spelman: Just looking at the list there are some names I recognize and I understand this is primarily a business loan program, because of what it is you're trying to accomplish. It's going to be business that are primarily in a business of revitalizing blighted neighborhoods. It seems to me if we're talking about -- the amount of the loan on this list is \$12,000. Is that the amount of forgiveness that southwest key is asking for?

[04:18:23]

>> The original loan was for 624,000. They have paid off 109,000. The balance is 512,000 and that's the forgiveness they're asking for.

>> Spelman: It seems to me if an organization, even one doing very good work as southwest keys is doing, is asking for what amounts to a grant of \$500,000, that it would be appropriate

-- for two reasons, it would be appropriate to ask a little bit more of them than just to forgive the loan. It would be helpful for me, at least, to know more about what they're going to do with the \$512,000, which is now effectively a grant rather than a loan. How it's going to be used to improve their operations, how it's going to be used to benefit the citizens of austin. What kind of information have they provided you stho as to what they're going to do with that \$500,000.

>> I'll tell you what I know and they're here to answer questions. They are 30 acres at mlk and 183 and they're in the middle of a capital campaign to expand their business. This is an area that is particular interest to us as an organization because of our in addition 2eu6 at colony park and the needs we have in that particular area. So I see this as an opportunity to be able to divert these resources. As you know we are receiving fewer cdbg dollars on a regular basis so this is an opportunity for us to reinvest these funds back into an organization that is expanding its mission in an area that we are very -- very interested in investing in.

>> Spelman: If this were just

-- there were no loan history southwest to southwest key and they were to come to us and say, we'd like a half a million dollars to be able to invest in our business and to do some things that are going to be helpful, particularly with colony park, particularly that part of town, what would we ask of them?

>> It's the job creation. They've met the original obligation of the \$624,000 they were given in 2005.

There was a job creation component and they successfully completed that. So that's one of the reasons

we're recommending this because they've met all the obligations of the federal funds. But typically if it were a brand-new day we were starting all over, we would ask for a job creation component or -- we can ask for several things. We can have to revitalize an area. We can ask for job creation or we could ask for public facility improvement.

[04:20:40]

>> Spelman: Okay. I understand they sent an email or a memo or there's something written here and I think you quoted from it in one of your answers to the

--

>> we have a letter from them, yes.

>> Spelman: Okay, I haven't actually seen the whole letter, I've just seen the piece of it that you quoted from it. Does this rise to the standard that you would usually use in terms of specificity of job creation, revitalization or public improvement? Is it

-- do you have as much information from southwest key as you usually would from an organization that is receiving a grant of \$500,000?

>> I did not ask that level of information, no.

>> Spelman: Okay. If they're here I would love to ask them a question.

>> Council member spelman, how are you?

>> Spelman: Good to see you.

>> I'm lee, director of strategic initiative for southwest key.

>> Good to see you, mr. Ramirez.

>> Thank you.

>> It seems to me we're really talking about two programs here. One is a loan program, which sounds like you have fulfilled the requirements for the loan program really well. You've hired 18 people. That's what we asked you to do. But in restructuring the loan, if we were restructuring the loan to make it a 30-year loan instead of 20-year or lower the interest rate that would be one thing. It seems to me that's sort of an admin steering thing

-- it's often for ncnf loans. In this case, asking for total forgiveness, in effect you're asking for a separate item, which is a grant of \$500,000, and it seems to me for a grant of \$500,000 it would be appropriate for us to have a fair level of information as to exactly what southwest key is going to do with that \$500,000. Perhaps I'm using my own experience as an inappropriate guide, but I remember when I had to get a \$500,000 grant or contract from the federal government, I had to provide pages and pages' worth of stuff and then we were always

-- we were aware that the inspector general could audit what we were doing, we'd have to submit quarterly reports to verify how we were spending the money and so on. It was a big

-- it was a big deal.

[04:22:56]

>> Right.

>> Spelman: I suspect that we do not usually require the big deal

-- the same deal of our grantees as the federal government required of me, but it does seem only fair that more specificity would be required of southwest key in support of a grant of a half a million bucks. Would you be able to provide that level of

-- maybe not the federal level of specificity but the usual I specificity we require of grantees?

>> Of course. We have the data for what we have done in the community since the

-- our headquarters was completed in 2008. It was the intention of the original \$624,000 that was given to us. We just in 2013 alone we helped over 6,000 family with our east austin children's promise program. We provided ged certification to over 43 individuals and continue to help dozens more. We have 850 kids at our charter school, and what we are looking to do with the east austin promise initiative, this 30 acres on the corner of mlk and 183, is to expand the school to house 1500 children, pre-k through 12. We want to build retail facilities. We want to create even more jobs. You mentioned 18. We've actually created dozens more through our social enterprises, which will be housed on this complex and we'll also be welcoming other developers and investors to come into the community. So we ourselves are trying to go raise about \$20 million for our own programs and infrastructure improvements to the 30 acres, but the program itself, when it's completed in another couple of years, will be a 70 to \$80 million investment into east austin, which will create a lot more jobs. So we're -- we're in the process of determining what the -- what the metrics for job creation, families and children impacted and other impacts will be to the residents of the east side, but we believe that this 30-acre investment is going to be a very significant boon to education and job creation on the east side.

[04:25:17]

>> Spelman: Everything I've heard about southwest key and everything I've seen directly about southwest key from having been there a couple of times is that you guys are doing wonderful work.

>> Thank you.

>> Spelman: And I appreciate the fact that you're trying to do more wonderful work by

-- with your extensive capital fund campaign and with the additional public improvements you're going to be making and the additional job creation you're going to be doing. I would, however, think it's appropriate for us to require some documentation of that, particularly how the half-million-dollar grant will contribute to being able to do all those things you're doing, and if you would be willing to provide that to ms. Spencer in support of this item, I would like to postpone action on this item until we've actually got that documentation to take a look at.

>> Okay.

>> Spelman: How long would it take you to put it together?

>> I would say in the order of a few weeks. I can't speak on behalf of our

-- our finance department and other programs, because we have a lot of programs at southwest key, but we should be able to put things together pretty quickly.

>> I understand. Very rough question because you don't know what ms. Spencer is going to ask of you yet and I'm not sure ms. Spencer is quite sure what she's going to ask of you yet, but it seems to me we have a standard protocol for grants. We have

--

>> I was just going to say, I'd like to offer, since it's a cdbg program income, and so it has to meet all the eligibility of cdbg. I'll offer that we'll just take a look to see what type of

-- it may not be job creation. There may be other metrics that we would expect out of this, and so if you'll give us the opportunity to go back and just take a look at more thoroughly what your expectation is, how we can restructure this so that we can meet the objective and still have the same outcome. I'm sure we can come up with that in a couple weeks.

>> Spelman: From your point, a couple weeks, you think you could come up with a set of standards that mr. Ramirez and his people would meet.

>> Absolutely.

>> And a few weeks after that you could meet them. When would us to be a reasonable time to postpone action on this until?

[04:27:17]

>> We can bring it back probably in two to four weeks. I don't think it will take us, really, all that long. You're already going to be doing the work so we just have to figure out which way we want to count.

>> Exactly, and we're very motivated to get this through so we can really invest further into the community. So the quicker that we get our stuff together, the quicker that we can take action.

>> Spelman: How ab june 12.

>> Sounds reasonable, yes, sir.

>> I move to postpone action on this item until june 12.

>> Mayor leffingwell: Council member spelman moves for postponement until june 12, seconded by mayor pro tem cole. Just a quick question. I want to cover this base. This is a grant, cdbg grant, but how -- is it

-- would it be classified as an economic incentive?

>> It doesn't have to be

--

>> mayor leffingwell: Or we're talking about job creation

--

>> it can be. It was the first

-- the first time it was administered the requirement was job creation.

>> Mayor leffingwell: I would like to have that addressed when we come back because we do have a prohibition on economic incentive grants for retail.

>> Okay.

>> Mayor leffingwell: And see how that fits in.

>> Very good.

>> Cole: Mayor, I have a comment.

>> Mayor leffingwell: Mayor pro tem.

>> Cole: Betsy, I want to thank you for providing the information on all the other

-- I mean, the other types of eligible forgivable loans that we have, and I appreciate the fact that this is an ncmp loan and it's the only one that currently exists. Is that correct?

>> Yes.



>> Cole: And I asked for this other information because I was trying to get at the line of questions that council member spelman has raised, which is really what is our consistency in policy of awarding forgivable loans. So I'm glad you have agreed to provide some information to help substantiate why we're doing this, and I'm hoping in the future as we are approached about forgivable loans, that we look at that criteria.

>> Ma'am.

>> Mayor leffingwell: Council member martinez.

>> Martinez: Yeah, I appreciate you being down here and willing to put together this information, and I certainly want council to be comfortable with the information, but I do have to point out that, you know, this is a minority-run nonprofit serving specifically minorities, and if staff is making the recommendation to award this grant, I just point out the fact that we're probably going to hear from some community folks about what I perceive as, you know, kind of putting them under a microscope that we probably wouldn't have done to any other organization if staff had come forward with that proposal. And that's the sense that I get from southwest key, from us as council, is that, you know, we -- we tried to partner with them and they requested a grant originally. What we offered them was a partial grant and then the other part a loan, and they were appreciative of that, but what they wanted was an investment in their efforts as well. And so I want to put that out there as a caution because I don't want the folks at southwest key and the folks that they're serving to get that impression. I think this council is very supportive of their work. We're just asking for a little more information so that we can move forward with this grant. Ing.

[04:30:36]

>> Mayor?

>> Mayor leffingwell: Council member spelman.

>> Spelman: I'm very supportive of what southwest key has done in the past and what I presume they will continue to do in the future. I would ask this level of documentation for anybody who asks for a forgivable loan. This is not aimed at southwest key particularly. This is aimed at the form of taking a loan, which is one transaction, and turning it into a grant, which is a very different transaction with very different requirements. And one of the reasons, which I haven't mentioned yet, it's a time for me to mention it, is we have \$10 million worth of loans outstanding. If we make one of these loans forgivable, I'm a little concerned that some of the other people on that list will say, well, I want a forgivable loan too, and we should be sure that we're holding everybody's feet to the fire in exactly the same way to require an appropriate level of documentation.

>> Mayor leffingwell: Nos in those in favor of the motion to postpone until june 12 say aye.

>> Aye.

>> Mayor leffingwell: Opposed say no. Passes on a vote of 7-0.

>> Thank you.

>> Mayor leffingwell: Go to item 13, which is pulled for speakers. Same speakers. I'll call them once again, gus pena. Gus pena. James price. James price. Those are all the speakers that we have. I'll entertain a motion on item 13. Council member spelman moves approval, second by mayor pro tem cole. Discussion? All in favor say aye.

>> Aye.

>> Mayor Jefferingwell: Aye. Opposed say no. Passes on a vote of 7-0. 10:30, we'll go to our first briefing. Which is on the seaholm intake.

>> Good morning. Lynn Easterbrook projects department. Good morning, council, mayor. I'm going to be giving an update to the CM update project. We'll go over an introduction, timeline history, the urban land institute recommendations and how we incorporated them in the next steps. I want to thank all the city departments and community stakeholders, like the Austin Parks Foundation, the Trail Foundation and the Downtown Austin Alliance and the many, many residents that helped in the preparation and assistance to get us where we are today. This project will develop the seaholm intake facility as a community public destination. The facility and the site will be adaptably redeveloped to create and address the needs of the public. The project will respond to the surrounding changing environment while engaging the trail, the park users and the lakefront. So a little bit about the timeline and the history in process. The facility was transferred to the parks and recreation department from Austin Energy in the fall of 2011, and since then we completed a facility study back in the spring of 2012. We had a number of stakeholders meetings that were started in the winter of 2012 and continued throughout that. We launched a project web site in March of 2013. We also had Speak-Up Austin, who then did a much more comprehensive community stakeholder input. We had three open houses so that anyone in the public were open

-- can see the facility. We had over 600 people attend that. We then went into a design idea competition to really understand what the community wanted out of this facility and the parkland surrounding it. That lasted from May to August of 2013. Many city departments, including Parks and Purchasing, then began the hard work of creating the request for qualifications in September of 2013. In November of 2013 Urban Land Institute was brought in through the council resolution to help us look at the RFQs and decide if we needed to modify it or expand it in any form or fashion, and we're going to go into that right now. They had a threefold process. They decided that the first was to create a true public/private partnership with the city in which the city provides the rich asset of the land and the facility. The public/private matrix includes the balance required to achieve the best mixed use necessary to generate the revenue and development and sustain the property. The Urban Institute recommended the city build on the community consensus evident in the design competition to facilitate the right mix of the public/private partnership. The second was that a facility

-- an RFQ process needed to have a nonprofit participation. The best course of action to help accommodate the public use with the parkland was to create an alliance with nonprofits. The ULI encouraged the selection criteria, reward development teams for including strategic nonprofit entities. Third was that we needed to streamline the process and reduce any uncertainties. The ULI recommended the city take steps to overcome uncertainties related to Chapter 26 and parkland state laws. The process should be used to identify several development teams, and the city would initiate a development agreement that would include a fair and revocable license agreement of a term of 20 years. The option for the three P was always something the city was thinking of. We are now making that a requirement. The city will community time as well as it did with the design competition to give community feedback on the top RFQ proposals. We will put the presentations in city hall and we will also put it on the project web site and people can vote on Speak Up Austin. With the second, the RFQs will require as mandatory having a partner that is a nonprofit. And the third, we will use the RFQs to

-- we will use the rfqs and streamline the process. Instead of having two separate sections, we will include the license agreement sample and the revocable 20-year term in there as a sample to all the development teams.

[04:37:22]

The next steps: The rfqs will be advertised in may, very shortly. The selection of the top proposals in the time will be in june. The display of the top proposals in the city hall and project web site will be in july, and the top proposal teams will present to council in august. The council approves the development team that was recommended, and then in october we hope to come back with the final master agreement development that you would then approve. And the construction and design would commence in winter of 2015. There was one more. There was one more at the end, comments and questions.

>> Mayor Ieffingwell: Council member riley.

>> Riley: First I want to thank staff for the presentation and for all the work they've put into this. I also want to thank our partners at the urban land institute who have been working with us to figure out the best way to proceed with this very important project that has been a matter of council and community interest for a very long time. I'm very glad to see that we're at this point now where we're ready to go forward with a request for proposals. I just wanted to get some sense of where the discussions stood with respect to some issues that we've talked about related to the future use of this building, in particular one concern has been about the cost of the proposals that we saw, the kind of proposals that came out in the previous process where we solicited ideas about the future use of the building and when the uli team was here, I visited with some of the consultants and we talked about the fact that many of those proposals would entail a very substantial investment, and obviously -- so I can see why we would be talking about a public/private partnership given that the city at this point is not prepared to offer up the kind of resources that would be necessary to achieve the kind of visions that we saw in some of those proposals. And so I just wondered, obviously one issue with -- with looking to the private sector to bear a very large part of the cost is the fact that this is park property and we would not be looking to alienate the property or to turn it over to a permanent or very long-term private use. And so the question is, how would we reconcile that? How would we get a private sector partner to step up and make the kind of investment that we would need given that this is parkland typically be talking about a short-term concession or license. Could you give us a sense of what the vision is or the expectation is when we put this proposal out, are we expecting a private sector partner to step up and incur very substantial expenses to help with the redevelopment of this? And how do we deal with the fact that is parkland and we're generally talking about a very short term typically with the concession agreement.

[04:40:43]

>> Yes, we devoted that closely with the urban institute panel when they were here and we talked about all the different options and they really felt strongly that 20 years was enough. We had a strong team of other conservancy members from around the country who are on development teams like this,

and they really felt like a 20-year license agreement would be enough time to recoup a lot of that. And partnering with a nonprofit also enables any kind of philanthropist type information, so a developer might bring, you know, part of the slice of the pie and a nonprofit would bring another slice of the pie through that nonprofit funding and then the nonprofit would go on to do o&m in the building.

>> Riley: So your sense is there was a fair degree of optimism that, in fact, we would be successful in securing partners who would be willing to step up and make a substantial investment, even given something like a 20-year time frame?

>> Yes. The city is providing a very large asset in the land and the facility itself, you know, downtown land is very expensive and there's nothing like this on the lake now, and you cannot build anything right on the waterfront. This is truly a unique opportunity and people are waiting for it to come out.

>> There are some conceivable uses of this site that would entail lower costs. There are lower cost ways you could provide a reasonable use of the structure, and I assume that that rfp would allow a whole spectrum of proposals.

>> It's a wide ranging rfp. We aren't being too prescriptive but there is a very clear list of things that we're going to be requiring of people. And so we wanted that openness to allow the developers to come back and tell us what they can do, and then we can score them appropriately so that we do the best thing for the whole city and all the residents.

>> Riley: Great. And the 20-year time frame, was that a uli recommendation?

[04:42:43]

>> Yes.

>> Riley: Okay. Great. Well, thanks again for all your work and thanks again to everybody, both in the parks department and other city departments as well as our private sector partners who have helped us with this.

>> Mayor Jefferingwell: I just want to say, I'm really glad to see this project moving forward. It's something we've been thinking about for a long time. And reminding all of us that at the time when we discussed redevelopment of the green site and the seaholm site, we deliberately took this intake structure out of those two packages so that we could come back and address it and make sure it was a good public/private project. So we'll look forward to seeing what kind of proposals we get in a short time, I guess. Council member Tovo.

>> Tovo: Thanks, I agree. I think it's very exciting to see this project moving forward. It's a fabulous building and I'm sure we'll get a lot of creative proposals. Can you tell me where we can see the rfq online? Has that been posted?

>> We'll be advertising it very shortly, within the next week or so, and it will be open and available to everyone on the purchasing web site link, and we can get that email to all of your aides.

>> Tovo: And you may have mentioned in in your presentation, I may have missed it, but was there a committee or did the parks department and

-- parks board, rather, help in developing that rfq?

>> By the way that the sort of recommendations go, we were told not to allow non-city staff in actually writing it, but the parks board members were very integral in all of the design competition, and selecting the sort of vision and the goal of what we wanted there. And we took a lot of that information and put it

in the rfp. And so the vision and the direction that the parks board wants is in here. They also have been getting updates on a periodic basis. We recently got an update two weeks ago about where the process is.

[04:44:45]

>> Tovo: When you said you were told not to allow non-staff members, was that a recommendation from uli or

--

>> no, city policy doesn't usually allow non-city staff in creating the scope document or reviewing and scoring. That sort of

--

>> I see. I participated in a panel like that, but I guess maybe it was an earlier

-- no, no, it was

-- city staff, but it may have been at an earlier phase where it wasn't in an rfq but we were brainstorming what ought to be in the rfq or

--

>> right, and so the parks board was included in all of that front end stuff in the competition but the actual writing of the document, no.

>> Tovo: I see. So that was consistent with our other practices of that, but as you said, what comes out -- looks like an rfq.

>> It's an rfqs, it's a broader document.

>> Tovo: Great. And that is consistent with the visions and goals and ideals that were expressed by the parks board in their earlier phase?

>> Yes.

>> Tovo: Great. I appreciate it. Thanks so much.

>> Mayor leffingwell: Thank you very much.

>> Thank you.

>> Mayor leffingwell: Go to our next briefing, I believe it's on multilingual program. Citywide translation service.

>> Thank you, council members. We've been postponed a couple times on this so I'm glad to get in front of you and be able to talk about it. I also want to point out that council member riley and I did not consult on our types of tie selections today. Back last year we were asked by the council to bring forward some recommendationings in terms of interpretation. And as you might remember last year we added somebody on our staff specifically to work with

-- work with minority foreign languages and other population that is have limited access to government. So these are the recommendations that we had for you all to take a look at and provide some feedback to us on. So just on background, this is the original resolution to develop a plan for universal citywide translation, bring back options for council consideration. In that resolution it mentioned specifically ata certification as an option. That's one of the things that we'll be talking about. We were asked to take the lead on that, and we're here to review those options today. So we started by looking at existing practices from other cities. We looked at major texas cities. We also looked at some that we knew were

leaders in this area, including minneapolis and seattle. Of those actually only seattle and minneapolis have formal policies when it comes to translation and interpretation. We also talked with pio net, THAT'S OUR NETWORK OF PIOs In the departments, human resources, purchasing, 311 and the demographer, to develop our recommendations. So these are the key components that we wanted to talk about. One is the certification options. Another is to look at an option of prequalified vendors, having an on-line translation bank, and then also the emergency notification piece, which of course has some particular interest with some of the issues that we've had more recently. We also had a couple of longer term policy goals. Those are things that we feel need a little bit more time before we bring them back to talk about. One of those is taking a look at how we can better align the bilingual stipend program with some of our goals when it comes to translation and interpretation. We also wanted to work on defining key triggers in terms of what would actually force the organization to translate as a matter of protocol. So on the certification side, we looked at the american translators association. It is the largest certification program in the united states, and it provides a good baseline competency for the language. Some of the concerns we had, number one, they don't include some of the primary asian languages that are spoken here in austin, korean, vietnamese and hindi. Doesn't ensure cultural competency, meaning their testing does not apply necessarily to the form of the language that's spoken here in central texas. It's notable that the two translation contractors that currently do the most work for the city, neither of them have a ta certification

-- ata certification but they have proven to have good local cultural competency. So we wanted to look at local testing and prequalification. We had the opportunity to partner with the communities of interest through the hqol implementation group, the asian quality of life group, to develop some locally relevant testing. Austin energy, notably, selected their translation vendor by using testing that was developed by an independent third party, that being ber lits, which does the testing for bilingual type end and we feel like that might be a good model to pursue. It allows us to extend to the asian languages that are prevalent here that aren't included in the ata program. So moving on to the prequalified vendors. One of the things that we want to put in the policy is that we will actually maintain a list of approved translation and interpretation contracts and will work with purchasing to implement a testing procedure and prequalify those vendors for work. We felt like this was important because we didn't want to essentially pretest and select a single vendor to do all of the translation. We felt like there are a number of qualified individuals and companies here in austin, and we wanted to provide some equivalent opportunity for those folks to be able to compete for the work. The translation bank is another piece that we want to move forward. We want to start to build an internet resource that actually compiles all of the translated documents and forms that we currently have. And commonly used terms and terminology. As we well know with department names, with acronyms, with program names and things like that, we'd like to start to provide some uniformity to the way that those are translated so that they make sense to the populations that we're trying to reach, and we want to that in a single place that the folks that are doing that work can go to so that it becomes consistent over time. We want to make that available to the department so that they can start to upload and add to that resource over time. Emergency notifications is the last piece. One of the items that we're going to be putting in here is reverse 911 notification should include an option to receive the message in spanish, that that's not a decision that's made on the fly but it's a decision that's made as a matter of protocol when we do reverse 911 notifications. The previous system was a little bit cumbersome to be able to do that. The

new system that campo just purchased seems to offer a little bit more flexibility in doing that, where we can actually prerecord some of the messages that we feel like we're going to need. There can be a dial 1 to be able to receive that message in another language. So we're going to try to preload a lot of that information because, as you know, in an emergency response there's a lot of moving parts, and we don't want

-- we don't want to create an opportunity to miss this because it is so important. We're also going to require that critical documents and messages that are distributed during response will be provided in both english and spanish. Now, that's not to exclude asian languages, if it's a population that's proportionally more affected by something that's going on, but we felt like spanish is the first one that we want to really address as a matter of policy. So moving forward, based on your feedback we want to finalize that administrative bulletin, put it into practice, continue to compile the existing contracts that we have for translation/interpretation. One of the things that we found as we were doing our research is that independently departments have pursued different paths on this, and we want to be able to consolidate all of that information into one place. Our office wants to be able to take a lead and become a point of contact for all the departments when they have questions about how to pursue translation, how to pursue interpretation and that's part of that process, and also working with the purchasing department on options for a prequalification process. We had actually looked at

-- we had talked about a rotation list similar to what we do with engineering contracts, but by law we can't do that. We can prequalify. So that's something that we'll probably do on an annualized basis. And then the last piece, we want to look at the longer term policy goals about bilingual stipends that current city employees receive and what mandatory triggers we might want to put in place. When we talk about mandatory triggers, we'll probably start with document types. There are some that we know we need to frontload, that we need to work on in the short-term. And those long-term goals we want to be able to bring forward before the end of the year. And that's all. I'm open for any questions.

[04:54:01]

>> Mayor leffingwell: Council member martinez.

>> Martinez: Thanks, mayor. I just wanted to thank you all for briefing the council on this. This was an item adopted by council and we ran into some issues over the recent past with translation services up to and including an individual being arrested that had

-- that newly arrived to america, just simply didn't understand what the officer's commands, and that kind of brought the awareness that we should probably be doing a little bit more as it relates to translation services. So I really do appreciate the hard work that you've put into this, and the

-- the thoughtful insights about not only having the ability to create translated documents and having folks available to provide translation services, but to also have the cultural competency component that you mentioned in the services as well. So I think this is tremendous progress for us and I just wanted to thank you all for that.

>> Appreciate it.

>> Mayor leffingwell: Council member tovo.

>> Tovo: I have a couple quick questions.

>> Sure.

>> And I have some of this information on the first and then the second time that you were scheduled to be here, and unfortunately I don't have it down here with me today. But we did have a recent recommendation from the immigrant affairs commission, and it was about providing emergency notifications in multiple languages, and I believe they did recommend providing -- providing those notifications in languages other than english and spanish. I wonder if you could speak to that. I saw that that was in your presentation, but can you remind me what that particular recommendation was, if you recall?

>> Well, there's another leg to the stool, which is the language line, 311 maintains contact with the language line service, and essentially that is a realtime translation service that when we receive calls in a language that we don't have the ability to address, we can call them in and they essentially act as a realtime interpreter. And what we'd like to be able to do, in addition to the spanish piece, is to provide an option, whether it's a dial 1, dial 2, dial 3, or to dial a specific number back, to be able to receive the message in their language of choice. The challenge for us is there's probably six languages that we would consider significant in central texas, but there's probably 30 languages that are spoken. To be able to provide an option to receive every message in every one of those languages is a challenge, and what we want to do is be able to leverage the 311 language line to be able to do that as an alternative.

[04:56:38]

>> Tovo: I see. Yeah, I agree that it would be a challenge to provide notification in every language spoken in austin. I've forgotten what the statistics are, but somebody from aisd was telling me recently that in one of their elementary schools they have students who I believe speak more than 30 languages represented in that

-- just that one student population. So we are

-- we have extraordinary diversity here in austin in languages. And I have

-- as I said, I don't have the recommendation in front of me, but I believe they identified, you know, not all

-- not multiple

-- multiple languages, but it was more than just the two. And when I did ask at a capcog

-- as a recent capcog meeting of the 911 board, I was told that there are options on the on-line notification. If you go on-line and register to be notified, that you actually have the option there to select what language you want to receive those notifications in, and I wondered if you could provide a little more information about that. I actually don't see it myself, but I may not be on the main portal for that notification line.

>> I'm not

-- I'm not really familiar with that piece. The only piece that I'm familiar with is the actual language line service. I don't

-- I'd have to find out more. I don't know if they would be sending those out and receiving them back in translated form. I can say with a fair amount of confidence that capcog themselves don't have the ability to translate all of those languages in realtime as we need to get the messages out.

>> Tovo: As I understood the response to my question, it was something that the city may have the ability to do to provide



-- if we're not currently doing that on our on-line notification page where people can register to provide notifications, they can register to receive that in another language. But I wonder if maybe we could continue to address this issue, because

--

>> yeah.

>> Tovo: Because it's really important. And if people can elect in advance to receive an emergency message in a language of their

-- within a

-- I mean, I understand you can't do it in every language, obviously, but within maybe a couple more options, then that might be something we want to consider. And I'd also just mention that the community action network has had this other subject of

-- as a subject of discussion at some of their meetings, because it is a question certainly that the county has raised as well as some of our community partners who are dealing with individuals in fields ranging from health clinics to, you know, other kinds of

-- providing other kinds of services. And so can you speak to the extent to which the city is collaborating on some of those efforts in terms of translation services?

[04:59:23]

>> As we look to the policy options, we actually talked with travis county, we also talked with aisd, and they were very interested to see what it is that we came up with, because they're also, as I'm sure you found, struggling with some of those same issues. So as we're able to kind of get this first phase in place, we'll be tracking back with them to see how we can align those policies across all of the agencies. I mean, clearly

-- particularly when you're talking about critical services, when you're talking about emergency notification and things like that, the jurisdictional b r is

-- boundaries don't matter to someone like that.

>> Tovo: So that's a goal to approach this subject with other partners as well, and hopefully as you have subscriptions, there may be cost savings a few entities enter this together. Would that be an option?

>> There may be. That's probably a little bit more of a complicated answer, because the capcog system is already purchased, so there's

-- the realized savings is on the front end for the capcog system. When you're talking about translation contracts

--

>> tovo: That was really

-- I'm sorry, I should have clarified. I really was talking about translation contracts, whether it's the kind of thing where an interagency purchasing agreement or whatever we call them when they appear on our budget, but when multiple entities go into a contract with a particular provider together.

>> Yeah, there's certainly

-- there's certainly an opportunity there. That's one of the reasons that we want to look at the current work that's being contracted out, so that we can take looks at how we can consolidate that work. For the most part the way that the work is getting done now is on a case-by-case basis, so none of them

-- none of them meet the threshold to go out to bid, to go out to rfp. They see that they have a need. They'll go to one of the contractors that they know and they'll get that work done.

>> Tovo: I see.

>> So the first step for us is let's prequalify the contractors we know that can do the work, and when I talked about the longer term goals, then to take a look at what the total work is so that we can get a clearer picture of how we might be able to consolidate that and then create some savings.

[05:01:35]

>> Great. Well, that's

-- I'm pleased to hear that you're working with travis county and with the school district, with aisd, and just know that there are some other partners who are part of the community action network who also expressed an interest in that and I believe their executive director could probably put you in touch with those entities.

>> We'll reach out.

>> Tovo: Thanks very much for all this great work.

>> Thanks.

>> Mayor leffingwell: Thank you very much.

>> Thank you. Finish finish ed our briefings, so we'll go back to item 41, pulled by council member spelman, we do have several speakers. I would also note that we have had a request for postponement by one of the major stakeholders, that being ccare. A request for postponement until june. Primarily because stakeholder input has not been taken at this point, and what little we had

-- we have a difference in the recommendation from our city staff and the language

-- posting language of this particular item. So we'd like to consider postponement before we go to our speakers. We could hear from one person from each side to argue whether

-- on the issue of the postponement only. If there's no ox.

>> Spelman: Do you have a date for the postponement?

>> Mayor leffingwell: The requested date is june, there are two meetings in june, the 12th and the 26th.

>> Spelman: Which of those two would be consistent with the schedule set by

-- either of them?

>> Mayor leffingwell: Are austin energy people here?

>> Spelman: Here she comes.

>> Good morning, I'm sheryl muhly, chief operating officer at austin energy. I think that the electric utility commission meeting would be conducted in may, so we could go back to that commission and provide our response to them. And in june, I don't

-- we could probably do either date in june, once we've completed the euc feedback.

[05:03:44]

>> Spelman: So the 12th would be the first of the two meetings in june, the 12th would be

--

>> yes.

>> Spelman: You could meet. Okay. Thank you. I'm amenable to the general plan of hearing from the speakers on the postponement issue, mayor.

>> Mayor leffingwell: Is there one speaker to speak in f postponement? Postponement request? I don't see anyone.

>> [Inaudible]

>> mayor leffingwell: I sort of figured that. So we'll go ahead and take you and see if anybody shows up to speak for it.

>> My biggest

-- I'm paul robbins. My largest concern is that delays may delay the implementation. October 1 is not very far away in budget terms.

>> Mayor leffingwell: Thank you, mr. Robbins.

>> Cole: Mayor, I have a quick question for staff.

>> Mayor leffingwell: You want to hear from

-- okay. Go ahead.

>> Cole: I just would like to know when our next ae subcommittee is prepared to meet?

>> The council committee on austin energy?

>> Cole: Mm-hmm.

>> I believe the next one is not completely scheduled. I think the proposed dates are may 27 and may 29, which would also be after an euc meeting.

>> Cole: After

-- okay.

>> Mayor leffingwell: Do we have a speaker in favor of the postponement?

>> Mayor and council, my name is trey salinas and I apologize for rushing in here, obviously rolled the dice and thought this would be afternoon. And I lost. [Laughter] mayor, on behalf of the coalition for clean and reliable energy and also the chamber of commerce as well, I believe you received our letter. We are not opposed to austin energy with the cost recovery. All we're asking for is a little bit more time so we can finish the stakeholder process and have a better understanding of what the impacts will be. That's our only request.

[05:05:49]

>> Mayor leffingwell: Do you have any preference, june 12 or 26?

>> I think that's at the discretion of the council. It sounds like, as sheryl just said

--

>> mayor leffingwell: Is that going to be plenty of time?

>> Yes. Thank you very much.

>> Mayor leffingwell: Council member tovo?

>> Tovo: Mr. Salinas, were you able to participate in any of the stakeholder negatives?

>> I have not

-- meetings.

>> I have not personally. We got notification of this item on friday, and so we've begun scrambling and we knew the stakeholder process was going to be completing in may, which is why we sent the letter

saying could you just give us till june, if you will, so that we can finish that process and make sure we have a full understanding of the impacts. But some of our members have participated, though.

>> Tovo: Have participated in the past ones, because I think you were

-- I believe that you called my office this week and said that you were

-- you found out about the stakeholder meetings that were discussed at our work session just the day before.

>> That may have been a miscommunication. I was talking specifically about the stakeholder meeting that was hestled

-- that was held yesterday.

>> I see. But did you participate in earlier stakeholder meetings?

>> I have not personally, but our understanding is that what austin energy has been proposing is a five-year phased in, and that's what we've been work working on. That's why the item calling for immediate one year, 100% payment up front is what kind of threw us and why we're requesting just a little bit more time much but again, I want to be real clear. We are not opposed to austin energy having to go through this process of cost recovery.

>> Tovo: Okay. Thank you. I have a question for the staff as well. Did you have a question for mr. Salinas?

>> Spelman: I have one for the staff, so you go ahead.

>> Tovo: Thank you, ms. Muhly. I know that austin energy has a plan. It differs a bit from what we have here in the resolution, but can you help me understand how many stakeholder meetings have happened to this point and who's been involved, when they were publicized?

>> Yeah, I don't know the specifics of how they were publicized, to be honest. A lot of the stakeholder, in fact, has been by the groups

-- the larger groups who would be impacted directly, so it hasn't been

-- we've targeted the urban lands institute, the real estate council of austin, the home builders of austin. So those who would be directly impacted by this change are the stakeholders who we've engaged.

[05:08:10]

>> Tovo: And can you provide some more information about how many stakeholder meetings have

-- has austin energy

-- how many

-- how many stakeholder meetings has austin energy held at this point? Does that mean my time is up?

[Laughter] maybe somebody can donate some time.

>> Mayor leffingwell: You can disregard that.

>> Thank you, I'll answer that question, then. [Laughter]

>> tovo: How many meetings have there been and when?

>> There has only been one open stakeholder meeting and it was not actually all that well-attended. But those were planned and, you know, key accounts and my staff worked together to get invitations out to those we felt would be most impacted, which is pretty typical of the stakeholder engagement process, is who will be directly impacted by that. Certainly all austin energy customers are stakeholders if you want to look at the greater scheme, but in their planning, some of the stakeholders we actually visited their

locations and attended their monthly meetings so that we could have that dialogue with them

--

>> tovo: But at the work session this week I thought you said there were going to be two this weeks.

>> I thought we were doing two this week. One of those got canceled because of a room conflict the same night as the

-- the work session, and we did conduct one yesterday, but it was not well-attended.

>> And were those stakeholder meetings set up in advance of this resolution posting or were those

-- I guess what I'm trying to figure out, because we did hear from people who weren't aware of those stakeholder meetings that were taking place this week, I guess I'm wondering if those stakeholder meetings were organized this week in response to the resolution that posted last week or if those had been scheduled several weeks ago because of the phased plan that austin energy wrote.

>> They had been scheduled several weeks ago, and the other meetings and association goes we attended have happened in the past. They did not happen before this latest council resolution was released. I think that just changes the stakeholders' interests a little bit to now have a different proposal than what they heard about last fall.

>> Okay. And how many more stakeholder meetings did you anticipate having?

[05:10:11]

>> We anticipated having the two. One got canceled and so now we'll have another one later in may. The staff assigned to that is out starting today for two weeks, so we'll anticipate now that we would hold another session before the next euc meeting so that we can see if there is greater interest for discussion of the proposals that could come forward.

>> Tovo: Okay. Thanks. And so you said that the euc

-- the next euc meeting

--

>> would be the third monday, is typical, so I don't believe that's a holiday so should stand as is.

>> Tovo: But you would it would happen before our proposed austin energy subcommittee meeting?

>> Yes, it would, if we stick to one of those two late may dates.

>> Tovo: Okay. And so it's conceivable that we could hear this at our austin energy committee meeting? Okay, I appreciate the information. Thank you.

>> Mayor?

>> Mayor leffingwell: Council member spelman.

>> Spelman: Sheryl, mr. Robbins raised a good question. If we postpone action on this until june 12 and take action on june 12, which I believe we will, will that give you enough time to actually implement the changes so they'll be able to begin on october 1?

>> I think it gives us time to include any expected

-- you know, what the revenue would be that would be generated in our budget forecast. Again, it's not a huge portion of our budget so I think it's a minor adjustment. And I think similar to what the water department has done we'd have to come up with the implementation process, so that could also be something we'd bring forward to maybe just model what they've already done rather than reinventing anything.

>> Spelman: This wouldn't require changes in billing, it would just be a single transaction. So seems to me it would not be particularly complicated to come up with that device. But we'd have to do it. But you have plenty of time to do it, then?

>> We would. We would be talking about, if I understand, implementing this in the '15 budget, which is october, so it gives us time to look at that.

>> Spelman: Good.

>> Mayor leffingwell: And I would just add, I think it's really important that we go through this process because obviously there are projects in the works, people who have made plans in accordance with previously existing proposals, and this is kind of a new ball game that's come up with the posting of this particular item. So I'll entertain a motion. Council member speaking man moves to postpone until june 12, and I will second.

[05:12:32]

>> Tovo: Mayor?

>> Mayor leffingwell: Council member tovo.

>> Tovo: Mayor, in reflecting on this, we do have considerable time before october 1, which is when we've asked the staff to return, and we do have time to discuss the issue further at our austin energy meeting. So I would

-- I would urge that we consider the resolution here today that will set staff on the path of coming up with that plan. They do, as they've explained in some of their documentation

-- they do have some work to do to get the system in place, and it's not terribly different from what

-- from their path at this point, which is to I a new system of cost recovery. So I would say certainly we want to hear from the stakeholders and you can continue to do so, but I don't see that stopping us from approving and considering this resolution here today. Also, it sounded like

-- I just got some discussion via email about what the euc discussion was when they contemplated a resolution that was very similar, and I believe they were told, at least, and this is kind of like the game of telephone, but that

-- at least one of the

-- they thought that the euc was told that the austin energy would plan stakeholder meetings once they hear from council that this is how we want to move forward.

>> I think our understanding is when we talk to the council and austin energy previously we had gotten feedback from you that you wanted to engage stakeholders, so we cued that up with the budget timeline to have discussings the stakeholders in the springtime. Euc had a recommendation that was similar to the item before you today, that we felt like we needed to go back to the stakeholders and make sure they understood the changes we directed by council.

>> Tovo: Thank you. I can't support the postponement, moving to deal with an important change for austin, which is to recover the cost of providing this service, and if we have an opportunity to get into the discussion here today, I do think that we should vote, for example, at the map of where overhead and underground lines are because it's clear if you look at the map of where those exist, that a great number of the underground lines are in areas outside the central city, which means in effect that those -- those in the central city are really helping subsidize those lines as we move out. So I think there are

some really important considerations here and I do think we need to be on the path of recovering those costs fully.

[05:15:05]

>> Mayor leffingwell: Those in favor of the motion to postpone until june 12 saye.

>> Mayor leffingwell: Aye. Opposed say no. Passes on a vote of 5-2

-- passes on a vote of 4 4-3,with martinez, tovo and morrison voting no. Takes us to item 42. Pulled by council member spelman. We have two people signed up to speak. First is stewart hirsch.

>> Mayor and members of the council, my name is stewart harry hirsch. I still rent and that's significant for this site because I'm not part of the majority of residents in my neighborhood now, if I'm not now, I sure will be when the 3,000 some odd units get finished in the corridor. The head of the national parateachers association says this year that when we're not at the table we're often on the menu. And when I saw this posted on the draft agenda and this week's agenda about finally having a conversation about possible mitigation of what's happening in the south lamar corridor, I was both enthusiastic and concerned, because oftentimes these items get posted without renters and small business people and not for profit organizations being invited in the same way and through the same paths of communication that single-family detached homeowners are, and I'm sure that's not the intent of those who sponsored this resolution, so I just wanted to show up today and ask that we be allowed to be at the table, at the level that we clearly are involved in our neighborhood. I live in zilker, pay dues, distribute the newsletter, show up to meetings and irritate people. And so I'm hoping that a lot of us will be allowed to be part of this process. Thank you very much.

>> Mayor leffingwell: Thank you. Question for you, stewart. Council member morrison.

[05:17:06]

>> Morrison: Not so much a question but just a comment, that certainly that would be my understanding, and we do have a statement in here that the staff is to work with the south lamar neighborhood in general. So thank you for clarifying that that does include renters, and it does include business owners.

>> Thank you very much.

>> Cole: Thank you, stewart.

>> Mayor leffingwell: Next speaker is david king. Be.

>> Thank you, mayor, mayor pro tem, and council members. And thank you council member morrison, for sponsoring this, and cole

-- mayor pro tem cole, and tovo, for co-sponsoring this. I appreciate this. So this is a really important issue, and I am friends with several families who live in the south lamar neighborhood area, and I went through the infill workshop a couple weeks ago and I followed up with those two friends of mine and they are having some concerns about how these infill options are going to impact their particular neighborhoods. And so they have questions, they're sending me emails and asking me for help with how to understand this, the impact, and what their options are and how this process works. So I think this is very important to have the city manager look

-- develop a mitigation plan for these infill options, and the issues that were pointed out in the resolution with infrastructure and flooding and traffic issues, those same issues, as you know, apply to other neighborhoods. And so I would hope that the focus that you're putting on those issues for the south lamar neighborhood areas would also be

-- apply to other neighborhoods, like zilker and barton hills that are not in the south lamar neighborhood specifically but still have some of the same issues that affect them. So as we go forward with code next and the changes that are possible through that process, these same issues are important to those neighborhoods. So I hope that you will apply the same strategy to those other neighborhoods as we move forward with the code next process and thank you very much for this resolution.

[05:19:14]

>> Cole: Mayor, I have a comment.

>> Mayor leffingwell: Council council member morrison.

>> Morrison: Thank you. I guess I'd like to say, brilliant suggestion because we already have that in here. And that is

-- we want to not only come up with a mitigation plan with the problems that we see in south lamar actually right now, but also use it as a study area so that we can develop tools and ideas for code next that will really apply to all the neighborhoods that are experiencing similar problems.

>> Mayor leffingwell: Mayor pro tem.

>> Cole: And, mr. King, I just wanted to add that the south lamar neighborhood actually approached my office specifically and pointed out some urgency with these problems, but we certainly are not trying to play any favoritism.

>> No

-- and I'm glad that you're doing this.

>> Cole: Okay.

>> Mayor leffingwell: Those are all the speakers. Council member spelman.

>> Spelman: Thank you, mayor. I agree with both the speakers. I agree with what council member morrison just said, and I agree with the intent of this resolution completely. I think it's a good idea for us to have a study area. South lamar is probably the best single place in town to have a study area on this exact issue, and I think this is a good idea. I'm a little concerned about some of the rhetoric associated with particularly the whereases, and I have my bow tie on today. This inclu profess soreial super pores -- professor powers as an economist. The first two whereases, we've had a lot of work on our infrastructure, a lot of pushing the limits of our infrastructure, and there have been a lot of redevelopment in the south lamar corridor, the third whereas, whereas, as result the south lamar neighborhood area is currently experiencing challenges of frgd, missing sidewalks, are, theaz consistent with my view, but then it says increased cost of housing. There's no doubt cost of housing in the south lamar corridor has gone up, but basic supply and demand, which again goes with the bow tie, is when demand is increasing and supply is fixed, the price is going to go up. When demand is increasing and the supply is increasing, well, the price may go up, depending how fast demand is increasing and how fast supply is increasing. The price may go down, you don't really know. But so long as the supply is increasing it's not not by itself a cause of increasing price. The increase in price is probably because



demand is going up. And I think that's probably exactly what's going on in south lamar as it is all over town. Prices of housing are going up all over town I think because lots and lots of people are coming to town and bidding up the price of housing, which is still scarce because we're not able, or we have not been able to the past to build enough housing to be able to accommodate that demand. So I would propose a couple very small changes to the whereases, no changes whatsoever for the substance of the resolution, which I fully support, but it would be easier for me to say yes if those whereases were written slightly differently.

[05:22:27]

>> Did you wear your bow tie special today?

>> Mayor leffingwell: You mean if they were true

-- if they were true you'd like them better.

>> Spelman: I wouldn't put it quite that way, mayor. [Laughter] so the first suggestion I would make is the one which I've listed here last, which is we eliminate the words "as a result," because whether flooding of streets and degradation of creek beds is a result of increased density that may or may not be true. I think it's probably is, but increased cost of housing because of increased density. Density is probably a mitigation on the increased cost of housing. But either way we don't need the as a result to convey the idea that lamar is experiencing a lot of problems and we ought to look at that. I would add also due to central location and location near major transportation corridors, because that's one of the primary reasons why there has been increased densification of the south lamar corridor is the central location. It's on south lamar. It's close to downtown. That's why people want to build apartment buildings there. I also would suggest these first three whereases, recognizing population growth has created significant pressure on housing supply, dense central development is the most environmentally and fiscally responsible way to address this growth. Just may call for a value judgment and some people may disagree with it, but this is a value judgment which was embedded in our master plan. It's been embedded in envision central texas's plan. The reason why the vast majority of people in austin chose alternative d and not alternatives a, b and c is because they recognize that the environmentally and fiscally responsible way to address growth, all else equal, is by building in and not building further and further out. There are many positive impacts of density provided associated infrastructure needs can be met and the cost of the infrastructure is also more affordable when development patterns are dense and central. Generally speaking, I think these are all true facts. The big problem in south lamar, as I understand it, is that we have not been taking care of our infrastructure as we need to to support the density that we're having. And density all by itself can be good and bad with quality of life. It cannot be bad for affordability of housing in the long run, certainly not on a citywide basis, but it can certainly be bad for the quality of life if we don't do what we need to to take care of our infrastructure. And this is the reason I believe this is an important resolution which I fully support is we need to pay attention to our infrastructure, particularly given how many more people are coming to town, how much density we're getting, how that density is being incorporated into the rest of our city. We need to watch that. So, mayor, I'd like to make these as amendments to a motion, and I will wait the motion before I make more formal amendments.

[05:25:12]

>> Mayor leffingwell: Your motion is to make the amendments or wait until a motion is made?

>> Spelman: I would prefer actually for somebody else to make the motion, because that's not my resolution. And I don't want to take credit for making a motion on somebody else's resolution.

>> Mayor leffingwell: Gotcha.

>> Spelman: But at the point when that resolution is made I would offer these as friendly amendments.

>> Mayor leffingwell: Is there a motion on item 42? Council member tovo?

>> Tovo: I have a question for council member spelman that might be worth addressing first.

>> Mayor leffingwell: Are you discussing his to be proposed amendments? I mean, he has requested that a motion be on the table so he can

-- that would be a good time

--

>> tovo: That's fine. I figured since we were

-- now would be a good time but I'll

--

>> mayor leffingwell: Motion by council member tovo

--

>> tovo: I'm not making the motion. I said I was going to allow the sponsor to make the motion.

>> Mayor leffingwell: Council member morrison.

>> Morrison: I would like to make a motion that we approve it as is.

>> Mayor leffingwell: Motion by council member morrison to approve.

>> Cole: Second.

>> Mayor leffingwell: Second by the mayor pro tem. Council member spelman.

>> Spelman: Mayor, I'd like to offer these as amendments to this motion.

>> Mayor leffingwell: Council member spelman offers three amendments that he passed out, as friendly?

>> Spelman: Potentially friendly. I intended it as friendly.

>> Mayor leffingwell: Are they accepted by the maker?

>> Morrison: No, mayor, I have several questions about them.

>> Riley: I'll be glad to second.

>> Mayor leffingwell: So it's a motion to amend by council member spelman, seconded by council member riley.

>> Morrison: Question.

>> Mayor leffingwell: And council member tovo and then council member morrison.

>> I have a quick question and then if you'd like to ask your questions first. So I don't have a bow tie on, nor have I been a professor for a while, but I do want to point out one thing about whereas the cost of that infrastructure is also more affordable when development patterns are dense and central. One curious point of information that we didn't have an opportunity to discuss today, but austin austin in their memo back to the euc

-- the euc asked the question does it cost more to connect to a larger house rather than a smaller house, and austin energy returned a memo dated october 14, 2013 that actually suggests, and I'm quoting

heerp, for development oh here, for development in high density areas there are more confined work spaces. Dense installation environments tend to incur more labor costs and have a higher likelihood of higher material cost due to the need for specialized equipment. And it's a very interesting point, but I think it suggests that at least in certain cases the cost of that infrastructure is not more affordable in places where there's high density, at least based on that response to that question about austin energy infrastructure. So that's my

-- that's my point, unless you have information that offers a different perspective. It is

-- as I said, it's a very curious point I've never heard made before, so I had hoped to have an opportunity to talk about it in the context of austin energy, but I bring it up now because it certainly is infrastructure.

[05:28:24]

>> Spelman: The usual --

>> mayor leffingwell: Council member spelman, do you want to respond?

>> Spelman: Very briefly. I had not seen that memo. I'm a little surprised by it, although I can understand how it might very well be true. The usual argument on hook-up costs is it depends on how much wire and how far you got to go, and a big lot will require more wire and a longer

-- a longer pole than a small lot will. But I can understand the point about small spaces. That may be a counter example. The usual argument in the biggest cost of infrastructure is the storm water, wastewater and the water systems, and you pay by the linear foot on all of those things. So a big spread-out urban development will generally speaking require more costs per lue for water and storm water than a smaller

-- a more dense setting will. And that's the usual reason why

-- this is the reason why we said it the way we did, is because primarily the cost about water and storm water.

>> Mayor leffingwell: Council member morrison.

>> Morrison: Thank you. First of all I want to mention something that may have been missed and maybe I need to clarify within the resolution. As you'll noticed in the second whereas, we're talking about the neighborhood residential area. We're not talking about the transportation corridor. In fact, that's where the problems are that we have

-- I had an opportunity to go on the tour, I think maybe mayor pro tem did also, and on the tour I went on, we actually

-- I guess I could have included some of this as backup but didn't

-- we actually had, you know, located

-- we did a tour through the residential area, located specific flooding places, specific transportation problems, corridors, no sidewalks and things like that, so this is meant to really focus on the internal part of the neighborhood. That was fully the intent, and I do have a mention in here of the neighborhood residential area, at least in the second whereas, and I'd be glad to continue that to make sure that that is understood to be the intent throughout. And so the issue I have with the first whereas is that it's irrelevant because we're talking about

-- you're mentioning transportation corridors, and we're not

-- this doesn't address transportation corridors. We're talking about the issues inside the neighborhood.

So you

-- so, you know, while it might be true it's something from imagine austin, that is

-- I'd just like to make a point that it's irrelevant, I think, to this resolution.

[05:31:04]

>> Mayor Leffingwell: So -- council member spelman.

>> Spelman: You're suggesting that the development of apartment buildings on south lamar is irrelevant to drainage and flooding and degradation of creek beds in the south lamar neighborhood?

>> Morrison: We're looking at the flooding that's been caused by the infill inside the neighborhood.

>> Spelman: Okay. I think infill inside the neighborhood is perfectly consistent with the density issue. I may be referencing transportation corridors as being a reason why there is more density in the south lamar neighborhood and the south lamar area. I'll use the word "area" since it doesn't have a technical meaning, which apparently I'm at variance with. [One moment, please, for change in captioners.] test

>> Mayor Leffingwell: Are you going to be on the table or have a discussion with you?

>> Morrison: I would like to be on the table. But I can't. I have two sponsors. It need to be a public discussion.

>> Mayor Leffingwell: I understand. We need to observe the proper protocol to have the discussion. Councilmember spelman?

>> Spelman: Councilmember morrison, are there specific

-- well first, let me address the councilmember tovo's point, which I have not heard but sounds reasonable to me is to change the third proposed additional whereas

-- the current reading whereas the cause of the infrastructure is more affordable to read whereas the cost of the infrastructure is generally more affordable. Given that we're talking about a relatively small piece of that increase in infrastructure cost associated with tight spaces. And I haven't heard anything contradicting about what I've been saying about water lines and storm water lines, at least yet, would be generally accurate.

[05:33:49]

>> Mayor Leffingwell: Proposing a change to your proposed amendment?

>> Spelman: I am. And changing the whereas and put in generally. Whereas the cost of that structure is generally more affordable.

>> Mayor Leffingwell: Councilmember riley, the amendment is changed as described.

>> Spelman: I would happily make a similar amendment elsewhere to the three whereases to meet the concerns of councilmember morrison. But I'm not sure what changes to make and whether or not she can propose one?

>> Mayor Leffingwell: Councilmember morrison?

>> Morrison: Maybe what I'll do is

-- well, first of all, if I could speak to each of these individually and maybe clarify and understand a little better. Maybe I could table it and come up with the co-sponsors and come up with the ideas of how to address the issues.

>> Spelman: If you could be specific in your concerns.

>> Morrison: I want to walk through the concerns. I think we understand the disconnect in the first whereas, maybe try to work on that. With regard to the third whereas that we were just talking about about the cost of infrastructure is generally more affordable, so two points I want to make about that where I have some concerns. First, the cost of infrastructure to mitigate what's going on in the south lamar residential area right now, I don't know if you've been down there recently, but there's significant flooding problems, significant

-- I know that as mentioned in the resolution, watershed is working on looking at what do we do to actually save this neighborhood and deal with all of the storms

-- the flooding issues. We don't have any idea what the cost of mitigating that is. We also

-- so and also we're talking about potentially having to

-- having to replace water and waste water lines? And it's not clear to me that in this situation the infrastructure to go in and mitigate in a is generally cheaper than building out in the suburbs. I just don't know what the answer of that is. So so maybe general language so maybe I could get some very general -- very general. So I want to drop if we're going consider the cost of infrastructure, we need to say but there could be a high cost to the medications or something like that.

[05:36:45]

>> Mayor Leffingwell: Are you suggesting we table this item?

>> Morrison: Not yet. I want to discuss it first and go off with my co-sponsors and think about it.

>> Spelman: This was intended as a general statement. This is found to be true that if people go some place, they go to a currently built up area, by in large, our infrastructure costs are lower, usually considerably lower putting more people in the built up area than putting people further and further out in currently not built areas.

>> Mayor Leffingwell: Councilmember morrison.

>> Morrison: I would agree with that until you reach the capacity of the infrastructure in the -- in the area you're filling. Once you exceed that, you're having to replace and mitigate. And I don't know how that compares, you know, so for that excess. I don't know how that compares to new development.

>> Mayor Leffingwell: It's an easy call that using up the infrastructure that you got, getting to the capacity infrastructure that you got is almost tax free. You have to revise the infrastructure to accommodate more than it was originally built to, it's going to cost us more money. And we can discuss how much more has to be built in order to accommodate the issue on the south lamar neighborhood that's going to be more expensive on the development. This is intended as a not very specific statement about this particular neighborhood but as a general statement. And as a general statement, it's true. Up to the current capacity, it's almost free. It's usually found in most cities, most places, it is cheaper to expand the infrastructure you've got than it is to build new infrastructure where there isn't infrastructure at all. Storm water in the south of the neighborhood may be more expensive than accommodating flood issues in the ex-urban area in a completely different way. I don't know how to answer that question. Here is the resolution who I fully support is for is to find that out. One last thing I would suggest

-- well, let me finish the whole thought. And that is that one of the things that this could do and one of the things I think this resolution is particularly helpful for is to feed back in to what forms of additional density we can happily support and which kinds we would like not to support. Because some will put greater demands on our infrastructure than others and we ought to be aware of that in our code-writing process. That's what the resolution is for. I'm with you on that?

[05:39:36]

>> Morrison: Mayor?

>> Mayor Leffingwell: Councilmember morrison?

>> Morrison: Just to pick up on the last. Absolutely. It's helped us to integrate good stuff in to code next and also do a better job of evaluating what's going on when we're looking at changes to a neighborhood to ensure that we understand what the impacts are going to be. And so are we going to achieve? Or do question need to ask more and do some mitigation

-- do some proactive mitigation instead of getting in the situation that we've gotten into in the south lamar neighborhood. I think we're on the same page.

>> Spelman: I agree completely so far.

>> Morrison: On the cost issue, as a general rule, that may be true. But because we have potentially an unknown and a specific situation we're talking to here, maybe what we could do would be to say, include the general statement that you have, but then

-- but then expand it to say, but in this situation, we're not sure because the capacity has been in some ways has been exceeded of the infrastructure and so there will be cost to mitigation and upgrades to the infrastructure.

>> Spelman: I support that. If you want to add words to that effect I would happily vote for them.

>> Morrison: Mayor, if I may

--

>> Mayor Leffingwell: Go ahead.

>> Morrison: I would like to do is table this for now and work with my co-sponsors on maybe an amendment to

-- I mean a suggestion of what we could do to accommodate all of this?

>> Mayor Leffingwell: Without o.k. This motion and the pending amendment has modified or on the table. And also without objection, we're in recess until 12:00 noon.

[06:01:02]

>> Mayor Leffingwell: We're out of recess. We're going to go to the speakers who have

-- we have two groups of people who are speaking on a common subject. We're going to go out of order as opposed to what's listed on this sheet here. The first speaker is knoll ting. He's speaking on solar access rights.

>> Well, good afternoon, everyone. I'm noel ting. I would like to begin discussion on a creation of the solar access right in austin under the resource confederation conservation plan, we have a goal providing 5% or 200 megawatts of all of austin's needs from solar by 2020 of which a quarter would be

customer controlled. To that end, austin spend \$37 million in solar power incentives since 2004 and the doctors like myself have matched that in our push to clean renewable energy. The first received \$7,000. We had to make many improvements to the home, adding insulation, upgrading to a high efficiency heat pump, and removing the unused roof for shading. My out of pocket cost was nearly \$8,000. Even with rebates and tax credits, and my solar panels generating about 60% of all of my family's energy needs, it will take about eight years to recuperate my investment. But i, like the city, think solar is a worthwhile endeavor and it will pay off in the long run. Unfortunately, I feel our mutual investment is threatened by some uncontrolled development, some downtown developers like that of the austin convention center choose not to invest in solar because of the uncertainty because of the shading due to the rapidly developing downtown. And already installed rebated could in some like mine will be shaded by future neighboring construction. And in my research, there are currently no protections of any kind to place

-- to ensure that the solar systems will continue to generate electricity in the future. I'm asking the city council to consider the creation of an ordinance to ensure a minimum amount of solar. In addition to ensuring the protection of systems, it would also remove barriers to domters by guaranteeing that the investment would remain productive well past the break-even point. The population pressure, the need for in fill, protections must be limited. Not all systems can or should be protected. But luckily, we have a vetting process in place, namely the austin energy, power stable residential rebate program guidelines and qualifications. That's a long name. But simply put, sources are awarded the rebate that meet all of the qualifications are already vetted as having the quality underlying infrastructure and environmental conditions favorable to long term electricity production. So, according to the guidelines, qualifying systems must have a minimum of six hours of solar access per day year round. And solar panels must have a minimum of 20-year manufacturer warranty. Is that many I time?

[06:04:31]

>> Mayor Leffingwell: You're done. Thank you.

>> Tovo: I have a quick question.

>> Mayor Leffingwell: Councilmember tovo?

>> Tovo: I have a quick question. I apologize I missed the first bit. You may have covered the will point. I am familiar with this situation because somebody talked to me on earth day. Are you aware any other municipalities addressed this issue?

>> Yes, 34 states have some sort of solar access rights on the books. In one

-- I say in oregon, they

-- what they limit is the height of the shadow at the property line. But solar access varies from state-to-state and not all states have, you know, have the same level of attrition, I think, imposing easement on someone is unreasonable. But a lot of these

-- the access can be achieved through simple design, concessions.

>> Tovo: I would be interested in talking with you more about this issue if you would communicate with my office?

>> Thank you.

>> Tovo: Thank you very much. Allen rodgy. He's here and the topic is lake austin.

>> Good afternoon, I'm allen roddy. For the last eight years, I've been speaking to the city council about the various problems we have on lake austin. One of the major problems the shoreline erosion. My family is blessed to be on lake austin for 51 years. More shoreline erosion in the last 10 to 12 years than the previous 12 years combined. One way to understand the erosion problem is look at the cypress trees that are 30 to 40 feet from the shoreline. They did not grow out of the water. They were once on solid ground. Each year we lose hundreds of trees from the shoreline erosion. Change to the next one. You can see the root systems that are exposed just a year or so ago, those root systems were covered by dirt and soil. You can see the left side of the picture sliding down the sand embankment. The right side, the metal pole with the sign on it is ready to fall in the water. Now, I've never seen what's on the front side of that sign, but I imagine it's a warning sign saying stay away from the edge of the cliff. Now back in 2005 and 2006, when I first noticed those signs, they were 15 to 20 feet from the shoreline. That's how bad the erosion has been in the past eight years. They're part of the track. So it is the land that's washing away. No, you know I think it's a warning sign when the warning sign is about to fall in the lake. Colorado river is one of the most important assets, every city department makes decisions about lake austin and colorado river, but there's no one person or department that's coordinating those decisions and looking out for the river's best interest. The colorado river needs a guardian to help protect it. Please remember, there's no one person, no group of people, commercial project is more important than the colorado river. Lake austin should not be damaged or destroyed because some people want to have fun. Want b to invite the city manager to take a boat tour of lake austin to see firsthand what is happening to the most important asset. Take a boat ride with the lake patrol with the upcoming memorial day weekend. You'll have a better understanding of the chaos that happens in the summer on lake austin.

[06:08:27]

>> Mayor Leffingwell: Thank you. The next four speakers are on the same topic. And just to remind everyone, I'm going to let you speak consecutively but our rules say that you cannot donate time and you can't substitute speakers, substitute speakers who are signed out. Here I am, I understand the weekly homes project by our neighborhood by the city planning and development department nearly a year ago is no longer considered a feasible project by the harper parkland by the same department. When we attended the oak hill impact team meeting, that project brought forward a david weekley condo development. We intended a planning commission meeting, a development. The covenant with the owner, it was based on the same development. We worked with city staff, council staff, and you yourselves at council meetings to craft an acceptable additional overlay ordinance and seek approval for rezoning it was based on the same project. I need to explain to the neighbors why a project they worked hard on for nearly a year in the interest of having a quality residential bill behind the single family homes as opposed to dense commercial development can no longer be built because of city department that recommended the project to all parties involved now says no. Is that good policy? Is this type of collaboration with the city asked of neighborhoods and developers? Oak part did its part. The reversal so late in the process makes no sense to us. This site plan is no different to us except the size of paper and some detail. We need your help to make sure that the david weekley project moves forward as previously approved by council and supported by the neighborhood. Thank you.



[06:11:08]

>> Mayor Leffingwell: Thank you. Next speaker, same subject, ian dietrich?

>> Thank you, ladies and gentlemen of the council. I'm ian dietrich, the land manager for david weekley here in austin. I want to update you on what's happening with the site planning process. Since last august, my company and I specifically organized and worked with the neighborhood, the contact team, and various city departments in order to earn the recommendation of the city staff of the planning commission of city council to build 76 condominium units on one c simple lot known as harper park. We were always very honest and open about the intention the whole time as sandy just said. We have utilized good development practices, and after the zoning ordinance was signed into law, by mr. Mayor, december 23 of last year, we engineered the project with the restrictions of that ordinance. And we were turned down in february of this year by the same city department that recommended the project and facilitated the past that we had taken. It's very frustrating because it doesn't take an attorney to understand that this isn't right. That we have gone about the public process in the right way, we've added restrictions to the site, to appease every single stake holder, and at the end of the day, the city staff has changed its mind and is no longer supporting the development of a project that is supported by the city council. So, the questions I have are what has change changed since december of last year in the minds of the city staff who supported the project for seven months. Secondly, does it change in part on the part of staff? Is it in keeping with what the city council wants? City council, if you remember, voted for the project, 5-2. And then thirdly, if the city staff does not support healthy development and good practices with respect to gaining the public trust by adding restrictions to a property, as -- as you would think that they would, you know, what -- what will developers do in the future? Will they -- I can tell you my company will not want to invest the same time and money in developing what seems to be a good project in the city of austin. So I'm appealing to you. I'm asking for your advocacy and for your support. And urging staff to reconsider its decision. And to accept the project. Thank you.

[06:14:06]

>> Spelman: Mayor?

>> Mayor Leffingwell: Councilmember spelman has a question for you.

>> Spelman: Dietrich?

>> Yeah.

>> Spelman: You submitted the site plan consistent with the zoning and other restrictions. And your site plan was not accepted?

>> That's right.

>> Spelman: Why? They have to say why it was not accepted.

>> Yes, they did. They said the units looked to be like single family unit. A single family use would -- would turn it into a new project and thus we would have to comply with all current rules. Now, I would make the point that this is not a single family project because there are 76 families living on one single family lot, which the very definition of a condominium.

>> Spelman: Are they detached or they have a wall in common?

>> We added a restriction in order to appease an adjacent neighborhood who you heard speak and another neighborhood that you didn't hear speak saying that we would not build attached units. So because of the restriction that we added in the zoning ordinance, they are detached.

>> Spelman: They are detached but sold under a condo regime, is that right?

>> That is correct.

>> Spelman: You familiar with this case?

>> If you want to hear from the two attorneys, that will come up that follow. But briefly, this was the case that was litigated. It rose through the third court of apiece and actually went to the Texas supreme court and was remanded back with the third court of appeals ruling. It didn't have to do with this particular property in question. But did with the property next door. And disagreement, I guess you could say, in my opinion, from the city standpoint and then property standpoint was moving uses around on a large preliminary plan that was submitted back in about 1985. The uses on there, the application stated it was continue minute William, commercial, and I believe multifamily. When the ruling came down, it was one that the city did lose. And courts were very clear that said you had to follow the regulations of that era of 1985. The particulars for me in that case were frankly that you were moving furniture around, basically. And it was clear that it said condominium. As I said before you I think last October and November in public hearing, a claim had not been submitted. It was thought that -- and actually myself I thought that it was probably going to be grandfathered because it was an issue on the application said condominium. When the actual application came in for the 245 vesting claim in February, we looked at the application and then we actually went back to the ordinances that apply. And unlike maybe the ordinances of today, the ordinances were clear in this sense that you had basically two types of uses, maybe three, single family structures. Two-family structures, like a duplex, and then everything else was commercial. If I followed the regulations which the courts have told me are in place, it was not on the use, it was the structure type. I delved into that detail because it said condominium. I understood what legal council presented to you on their side, it was a condominium. I moved on that fact. If you read the rules under the bar on the creek ordinance. I told that to the attorneys that are going to be presenting to you, it says that a structure -- and it doesn't speak to the use. So I'm forced to follow the regulations of '85, follow the designation that it spoke to a use. And there were no one or two family of that type under the Barton Creek ordinance that was permitted. Everything else was commercial if you called it condo, commercial, or multifamily. It takes the form of an office or a hotel or a retail. Unfortunate it came out this late, something that may address this issue. But right now, I'm -- I'm compelled to follow what the court said.

[06:19:12]

>> Mayor Leffingwell: Is this case coming back to council?

>> No, it would not come back to council. If the ordinance is recommended by staff exists, there may be another avenue for them to come back to council and ask, yes. But not today.

>> Mayor Leffingwell: All right.

>> Spelman: Very briefly, Mr. Gurnsey, it sounds like a lot of complexity to this case. Very quickly, does

david weekley homes have a

-- is there a way that david weekley homes could build the development that we've agreed

-- we've all agreed they ought to be able to build?

>> Well, they come back for reconsideration next week. I know they submitted a letter. Not sure if they're going to bring anything else. There may be a way I could reconsider what they bring back and take that into consideration. I'm not aware of an ordinance that exists right now that would necessarily, if my termination based on what I've seen and read, I don't see anything that would allow that to come forward and change other than coming back and asking to perhaps amend the covenant and -- or submitting a different project.

>> Spelman: If you can give us some thought in the next week, I'd appreciate it.

>> Mayor Leffingwell: I think you misunderstood me. I asked if this case is coming back to us, you said no?

>> No, it's not coming back to you. It's coming back to me for reconsideration.

>> Mayor Leffingwell: It's not coming up to council at all.

>> It's entirely up to them in the future if the vesting ordinance is recommended by staff is approved, then there's an opportunity for them to come back. But, no, the covenant and the zoning case, as far as I know, they're not resubmitting anything back to you.

>> Mayor Leffingwell: Councilmember tovo?

>> Tovo: I want to clarify one thing. You know, when the council makes dele cigses, it does so based on land use. We do not approve site plans. And so I believe that's one reason why the language in one of the zoning or in the restrictive covenant talks about up to a certain number of units. Because it's not council's authority to determine how many a builder can construct on a site. Would you say that that's true? I mean, it's really the staff's job to look and see what the regular -- regulations will allow for a particular project.

[06:21:35]

>> Generally, that's correct. And the case that comes before you, you're setting the minimum standards for development on a property, but there may be other constraints that exists on the property, either natural features, trip limitations based on traffic that may not allow them to achieve that density.

>> Tovo: I'll say as somebody who supported this project, and the vote was, by the way, 6-1, I understood that there would be potentially other constraints on this tract that needed to be considered. So, you know, just an answer to the

-- to the first speaker. I voted for a zoning change. I don't consider it my role to decide on the maximum amount of units. But we set a maximum. That's something that happens on the site plan process after the staff considers the regulations that are going to be applicable. Thank you for raising this to our attention.

>> Mayor Leffingwell: The next speaker is peter sezaro.

>> Thank you, mayor, councilmembers. I represented weekley homes in the zoning case. This project was specifically designed to comply with state law. And that's why it's a condominium project in compliance with the harper park decision which involved a hotel on a different tract of the subdivision. A condominium declaration will be filed. In going through the zoning case like mr. Gurnsey mentioned

and getting the recommendations, we had the conversations with staff about if grandfathering would be an issue. It's our understanding that it would not be. That's why we had staff recommendation, that's why we also

-- in getting the different recommendations such as the oak hill contact team, planning commission, and then also the site plan that was submitted and complies with your zoning ordinance, we learned of the new staff interpretation when we submitted the site plan. And it seems that the only condominium residential use that would be permitted would be a condo use that had attached walls. This is contrary to both the zoning ordinance that we passed, that y'all passed because we added a restriction that would prohibit attached walls. You can have a land condominium with improvements inside of them. You don't have to have attached walls to have a condominium. And that's why this site plan application was consistent with the use on the original application that was submitted. We are appealing the staff decision to the 1704 committee. We're going to that 1704 committee next friday. We would appreciate any support, any urging on what y'all can do to get staff to reconsider the initial decision on this application. If the initial decision is carried through, I just want to emphasize that the project that has access to multimodal transportation preserves the heritage trees on this property and provides infield development won't happen. You'll either have a lawsuit involving the similar issue filed by the earl that the city lost a couple of years ago, or you'll have a suburban office building with asphalt parking lots which I don't think achieves anybody's goal. I don't think it achieves y'all's goal in city policy and it doesn't achieve weekley homes' goal. We wanted to update y'all on a kind of a difficulty that we encountered. I'll be happy to answer any questions and we'd support any support in the 1704 reconsideration process.

[06:25:41]

>> Mayor Leffingwell: Councilmember riley has a question.

>> Riley: I appreciate your comments and I would like to follow up with mr. Gurnsey again if I could. May, you could I ask a question of staff? So at the time we considered this case, there was a staff recommendation, there had been lengthy conversations with the applicant about what they had in mind. Discussions at the planning commission and the council. There's no confusion about what they were expecting to do. Why are we now finding that the

-- what we were expecting all along can't be achieved? What has changed since the time we made the decisions?

>> The application when it came in to zoning, there was not a request that was filed. It could file a request for the site plan at the same time it filed a zoning request. We could have done a review and probably filed the same determination. But as I said in the zoning case, there was not an official request for vesting on this property. So that decision with us not rendered into this year after the zoning case was filed.

>> Riley: What they could have done to avoid this was to

-- would have been to make a grandfathering request at the time they filed the case.

>> Yes, or filed for a review. They could have made that request earlier.

>> Riley: I would like to ask a follow-up question of mr. Sebaro. You heard mr. Gurnsey, why is it that the applicant chose not to seek grandfathering at the time atop of zoning.

>> The condominium residential was not permitted until we went through the zoning case. It was allowed based on the original application. But the zoning on the property did not allow the condominium residential use. It would have been impractical for weekley homes to submit a site plan and incur the design costs when we didn't even know if we were going to get the zoning until late on the last read.

[06:27:55]

>> Riley: The zoning was opposed and it was not clear

--

>> I'm sorry?

>> Riley: It was not clear if you would be able to obtain the zone ing?

>> That's right. We did get support of different groups, but we weren't sure if the zoning would actually happen and weekley homes couldn't submit a site plan that would automatically be denied when it conflicted with the zoning. It would have involved substantial expense on their part to experiment with something.

>> Riley: I remember the decision on the provision that attached

-- prohibiting the attached condos. There was no change in the

-- no change in your client's plans in the tract over the course of the case?

>> Well, the neighborhoods requested that that prohibition be added. That's why we added it. And staff concurred and recommended that it be approved with that restriction.

>> Riley: Okay, thanks.

>> Mayor Leffingwell: One mr. Speaker, same topic, mary lynn rogers-reble.

>> I'm mary lynn rogers-reble representing the oak park subdivision association. Again, I am before you asking why, after being approved last year, the david weekley oak park project has been stopped. There have been numerous neighborhood meetings and each of them has been positively in favor of this project since its inception. After a negative reception to a proposed apartment complex or possibly an office building or an office complex behind our homes. Now, after the rezoning is complete, we're told that the very same city staff who were very much in favor of the weekly condo project are now claiming it is not feasible. This defies common sense. And the comprehension of the residents I represent as the president of the oak hill

-- oak park neighborhood subdivision association. What do we need to say or do for your backing on this project? Thank you for your time and hopefully your support.

[06:30:49]

>> Mayor Leffingwell: Thank you, mary lynn.

>> Riley: Mayor?

>> Mayor Leffingwell: Councilmember riley?

>> Riley: I just have a

-- I have more of a comment. I want to thank you and your neighbors for all of the work you did on this case. The situation we're in now points up serious issues with the process we've got and I hope we can

work it out. I appreciate you being here today to bring it to our attention.

>> Mayor Leffingwell: Thank you. Councilmember martinez?

>> Martinez: I wanted to ask greg one more question. So, greg, as mr. Sezaros stated, they're going through the appeals process. Going to have a meeting next friday. Historically, what's the track record going to the 1704 committee?

>> There are times applicants will bring additional information that I had not considered in the previous meeting, we'll actually reverse that decision. You know, it's not a guarantee either way. There's no guarantee when you come to the process going through vesting until we actually go through and talk about those things. It's difficult

-- extremely difficult for me in this situation because where this case went in the amount of time that I spent my staff went on this, if the project wasn't built to the building code, it would be denied. In this case, it's a much higher bar because it went as far as

-- from my point of view, the texas supreme court. The court said you need to look at the watershed regulations, not zoning. The watershed that existed in 1985 to make this determination. So we went through that ordinance, from '85. And we looked at this case more than others because of that court decision. We didn't look that the detail in the zoning ordinance, I did not. I assumed condo was condo. If you drill down to it, it doesn't speak to a use, it speaks to a structure. Argument either way about what a continue minute william is really wasn't relevant as much as what was

-- what were the ordinances that were in effect in 1985?

[06:33:10]

>> So out of this appeals process, this becomes

-- is there any other avenue for them through the city after the appeals process?

>> As I mentioned, there's a possibility in the proposed vesting ordinance that we might bring something back to you that I have a project that's vested for some uses and you want to do something else.

However, that might

-- when it comes back, if that ordinance were to be approved, it would take an action by council and possibly an s.O.S. Amendment.

>> Riley: Thank you, mayor.

>> Mayor Leffingwell: The remaining speakers are the topic is code next. And so my understanding is that you have a seven plus minute video. But as I said earlier, each speaker is only allowed three minutes. So what we'll do is go through the speakers one-by-one. And if the video is not finished, we'll pause the video, introduce the next speaker and go another three minutes and pause again.

>> Thank you, mayor. Thank you, councilmembers for your service. I'm on the neighborhood committee. We're collectively here presenting the following video. This is intended to remind everyone that this city count similar has made it clear that the neighborhood plans must be at the basis, not just respected, but must be the basis of the imagine austin comprehensive plan.

♪♪ I won't back down ♪♪

>> austin, texas is changing. We need to make sure that the evolution it's experiencing is driven by the needs and goals of its members. We don't want to be treated as a commodity. On june 14, 2012, austinites and the city council work together to shape the imagine austin comprehensive plan to guide

our development for the coming generations, now, several years later, the austin city planning and development staff and paid consultants are going to implement the plan in violation of the intent of what the citizens and council envisioned. What follows is the powerful display of holding the city staff accountable. What predicted to happen years ago is occurring. Homeownership, single family neighborhoods, quality of life would be usurped and in the accommodating density. We envisioned the imagine austin comprehensive plan as what was passed by austin in 2012. We're responsible for the expectations for our elected representatives and holding them to their intent and their word. "We won't back down."

[06:36:14]

>> Concept map, advocates protecting established neighborhoods. It was extensively revised to respect the adopt a neighborhood plans. It focuses development in quarters.

>> Very little that offers protection for the very anchors of our community, single family homes, without, which, neighborhoods would be in a constant state of flux. People with no power continue to be displaced from areas where rent was once affordable, homeownership a possibility, and are forced to move somewhere else. That's called sprawl. Yet when we talk about adding centers, adding corridors, going across the city, shouldn't there be a reference and context and as a starting point, neighborhood plans, I want's not there. It needs to be there. This plan is not acceptable without that reference. There is nothing in here, mayor, to recognize your public statements nor the statements of most of the members of this council that says that imagine austin will not prompt a neighborhood plan.

>> I'm david king. I'm n.C. Vice president number two.

>> Thank you.

>> David, go ahead.

>> Clear understanding and I'm saying on the record again, neighborhood plans could only be changed in the normal amendment process and not by adoption of the imagine austin plan. Now, mr. Gurnsey would you care to comment on that?

>> Just plain and simple. The neighborhood plans that are in place now. The zoning and the plums are unchanged by the imagine austin plan. They can only be changed through the same process by which they're changed today?

>> Sthaeshlgt.

>> Mayor Leffingwell: Okay.

>> That's correct.

>> Mayor Leffingwell: Okay.

>> That's correct.

>> Mayor Leffingwell: Okay.

>> If you look at the description and definition of the activity corridor, there's no reference at all to turning to the neighborhood plan as the guide for a particular development and a particular density that might come in to that particular corridor. So the neighborhood plan gets no preferential treatment, no reference and starting point. So then you're stuck with saying, okay, well we have a developer. They have the fancy model. And we want this right here. And it says activity corridor. So this is activity. It's envisioned by imagine austin. The comprehensive plan. We get to have that nice big building. This might

be where the neighborhood plan.

[06:38:59]

>> Maybe we can add a sentence that all neighborhood plans would be respected and not be overruled by the plan. If everybody supports that and we want to be clear, then let's just put a sentence in there that says that. A long e-mail chain on this too. And finally in a meeting where we're drawing up maps and everything, ask mr. Gurnsey. I said if it's one versus the other? Which is it? He said the imagine austin plan would trump the neighborhood plan. Let's clarify it. Neighborhood plans will be respected.

>> When members of the amc executive committee visited the mayor the other day, he did ask us a provocative question which we've talked about earlier tonight, how would we feel if the neighborhood plans trumped the comprehensive plan. We would feel pretty good about that. But nowhere in the language of the text does it say that specifically. It needs to be said.

>> You've received a letter from us asking you to retain the language that was added to the comprehensive plan by the planning which I go to ensure that the existing neighborhood and area plans recognize the perspective when the right of the city code. I think you're hearing that consistently tonight. Being a member of the allendale neighborhood association, I'm for the neighborhood plans being given preference over

-- okay. Over the imagine austin plan.

>> Thank you.

>> There's another brief.

>> Okay, be I'm laura presley, we can continue, thank you.

>> Mayor Leffingwell: Okay, go ahead.

>> Open the flood gates and allow the tsunami that is today that's getting austin money on the backs of austinites and the cost of our community values. It needs to emphasize specifically and state that neighborhood plans trump. Many people have spoken about that is a priority. If it's already in there, let's enforce

-- reenforce it.

[06:41:10]

>> I hope you will preserve your promise that the imagine austin comprehensive plan will not trump neighborhood planning.

>> Mayor Leffingwell: Councilmember riley.

>> Riley: I move we close the public hearing and approve the plan.

>> Mayor Leffingwell: Close the vote hearing and approve the planning commission recommendation, second by mayor pro tem.

>> Morrison: I have some motions I wanted to make to amend to address some of the issues that have been raised. To strengthen the concept that it is consistent with the neighborhood plans because there was that amazing effort to compare the neighborhood plans with the concept map and make sure we got those aligned properly. I wanted to add a statement to that fact on page 90 in the middle of the paragraph that says the growth concept map was also compared to and adjusted for consistency with



the future land use maps and the adopted neighborhood plans.

>> Mayor Leffingwell: Councilmember Riley? Mayor pro tem, okay?

>> Morrison: All right, and then.

>> Okay, thank you.

>> Hello, Mayor, Council, I'm Laura Presley, president of the neighborhood association and prosecretary of Austin's neighborhood council. Thank you for letting us present this. The bottom line is the system of revising the land development code is not working. If it were, we would not be here today. The neighborhood plans are not being respected on the decks. Many of the neighborhood and contact teams are not happy. The code needs serious revision, commercial and residential developers are in complete agreement with this. Please allow us to offer some recommendations to improve the process and these are well within your purview. Number one

-- please direct a city manager to educate the staff and consultants on the role of the adoptive neighborhood plans play in defining the growth in the Imagine Austin Comprehensive Plan parcel by parcel where it's defined by the land use

-- the future land use maps. Number two, we request that you add two slots and include members of the Austin Neighborhood's Council that we could recommend to you on the citizen advisory group. This will address the root cause of the confusions that we're having today. Thank you.

[06:43:48]

>> Mayor Leffingwell: Thank you. Last speaker, Mary Engle.

>> Good afternoon. I'M MARY ENGLE, As YOU KNOW, I'M The president of the Austin Neighborhoods Council. As previously stated, the reason we're here is to remind you gently about the existing neighborhood plans and their connection to Code Next and to the Imagine Austin Comprehensive Plan. We're concerned about areas without neighborhood plans and urge your support for inclusiveness for those areas in a compatible and appropriate way. Today we are here because we need to say to all of you we at AMC are following the code process per Nashville and consistently, of course, and we're participating as much as possible and we yet find troubling aspects of this process. We respectfully request that you support our request for a better process. So that we have a transparent process and an iterative process so we can arrive at a quality product and have real assurances that the existing neighborhood plans are respected. For Code Next, in order to achieve a transparent process, we urge you to support televised meetings for the land development code advisory committee, so that all of Austin's citizens have the opportunity to observe the observations through deliberations, consulting staff. To have an iterative process, the company needs to get feedback for the admissions to staff and the consultants. We, then will know how the information will be used and if it's been interpreted correctly. Recently we asked for definitions of terms such as the consultant-contrived themes that appear in the summary of neighborhood plans. We asked to see how our input would be incorporated in that summary. That would be an iterative process. This has not occurred and we urge your support for our request for an iterative process. In order to get a quality product, we need to request more time for supplementation of data layers. For example, water, waste water, and electricity, when that data becomes available, that outdated data will not yield a quality product. Finally, we urge you to assure us that the existing neighborhood plans amassed with thousands of volunteer hours will be respected and

will triumph over the code revision process. Thank you for your attention.

[06:46:38]

>> Mayor Leffingwell: Thank you.

[ Applause ]

>> Mayor Leffingwell: The council will go to closed session to take up two items pursuant to section 551.07 of the government code. The council will consult with legal council regarding the following -- item 54, ghi investments versus the city of austin and others. And item 55 -- legal action from spicewood springs and others. Noting items 52 and 53 are withdrawn. No objection on going to executive sessions on these items. L now do so.

[09:34:12]

>> Mayor Leffingwell: We are out of recess. We will go ahead with our zoning consent items which I think is just about everything.

>> Thank you, mayor and council, greg guernsey, I will go through our 2:00 o'clock zoning and restrictive hearing items and first start with public hearings are closed and then the ones that are open. The first I would like to offer for consent is c814-2012-0055.02 - covered bridge planned unit development - approve second/third readings of an ordinance amending city code chapter 25-2 by rezoning property locally known as 6714 covered bridge dri there is one that corrects the legal description of the property and we can offer that for second or third reading for consent approval. Number 57 is 57. C14-2013-0083 - 2416 e.6th street - approve second/third readings of an ordinance amending city code chapter 25-2 by rezoning property locally known as 2416 east 6th street (lady bird lake watershed) from limited industrial service-conditional overlay-neighborhood pl and that's to postpone that one until may 15th. Working on language on that one. Going to 2:00 o'clock. Zoning plan amendments, public hearing and possible action, 58, case c14-20130081, for property located at 517, east 17 east oltorf case. Staff is pulling this from the agenda. It will be readvertised and brought back to you. The applicant is considering another option for rezoning on this property. And previously considered by the planning commission. Item 59, case c14-2013-0136, this is a property located at 3215 exposition boulevard this is to zone it to multifamily residence, low density or mf district 2 zoning. The plan was to grant townhouse condominium, overlay and fs6 combined district zoning and I am pleased to report we have an agreement between the neighborhood and the applicant and mr. Rustoven who probably spend 3 or four hours of his lifetime to come up with the parties which we are all grateful will explain.

[09:36:38]

>> Thank you mayor and council. The recommendations for the zoning case is with staff recommendations and with several changes so I will read those into the record. The agreement is for zf6co townhouse, sxcco, condition number one shows that the property shall be limited to a maximum of 27 units or 12.37 units dwelling per acre. 2, beginning 65 feet from the property line along exposition boulevard, the maximum height permitted shall be two stories of 32 feet. B, within that same 65 feet,

development shall comply with subchapter f article 2 section 2.7, side wall articulation of the city code along the western facade of the building, basically mcmansion and a deletion of the previous requirement, the corn doe minuteium residence be prohibited within a 65-foot zone. Number 3 construction of a fence is prohibited along the property line adjacent to exposition boulevard and four that a 45-foot shaded buffer shall be provided and maytained beginning eastern side of the sidewalk beginning exposition boulevard. This is basically a staff recommendation except for the 75-foot area for reduced height, reduced down to 65 feet. Front vegetated buffer increased from 25-35 feet. Condominium provision has been put out and 2020 increased to 27. And then I would like to thank mayor pro tem cole for bringing both sides together yesterday. That (indiscernible) for 7 years. Like greg said, we spent almost four hours working through it. I want to thank both sides from both parties for being civil and for coming to an agreement. Thank you.

>> Cole: Mayor.

>> Guernsey: This is for first reading, correct?

>> Mayor Leffingwell: I was going to ask you that. Mayor pro tem did you

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[09:38:40]

>> Cole: I just wanted to thank the staff nor being present during the mediation, discussions, and also to thank both sides for being respectful, courteous and not interrupting each other. Thank you.

>> Mayor Leffingwell: Sounds like a school teacher. Go ahead.

>> Cole: Stop it.

>> Thank you, your honor. Case c14-2013-0118, the property on 7200 cooper lane. Staff requesting postponement for this on the agenda item.

>> Mayor Leffingwell: For what? June what?

>> June 12. And the next isc 14-2014-003-1307 waller street. We are asking for a delay until may 22nd on your agenda. It is item 61. Item 62 and 63 are related cases. Zoning case for 62c14-2014-0008 for property located at 209 1/2 west 27th street. The applicant had asked for postponement of this item to your may 15 agenda. Again, on item 62, the applicant requested postponement for this item to may 15 agenda. Item number 63, case c14-2014-0009, for property located at 209 west 27th street, applicant is requesting a postponement of this item to your may 15th agenda. Item number 64c14-2014-0035, on the property on avenue g, staff requesting postponement to this item to may 22nd agenda, the planning commission will review their case at the meeting on may 13. Item number 65. This is case 14-2013-0147, at 707 west avenue. The staff requested postponement to this item to june 12 agenda. Item 25, a postponement to june 12. Item number 66, I think this is set for time certain at 6:30 or later this evening. Item 67, 68, 69, 70 are all related. These have to do with the south austin combined planning area and the affected rezoning and I will read them into the record. Number 67 is np-2013-0030 for the combined austin neighborhood plan, 6 is c14-2014-0017. This is is the west gate neighborhood plan rezoning. Number 69, c14-2014-0019, garrison park neighborhood plan area and rezonings and number 70, c14-2014-0018, south manchaca neighborhood plan, and with staff requesting postponement of all four items to the august 28 agenda. I will note this will be at a different location after we come back from the budget rest, I guess you can say. We will be at 700 lavaca, and what I am

-- I am not sure if we have a room number for the new

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[09:42:24]

>> Mayor Leffingwell: Commissioners court chambers.

>> Guernsey: Commissioner court chambers, so I wanted to note that for the record. So with that  
-- that's all I can offer for consent which is everything for consent or postponement.

>> Mayor Leffingwell: Okay. So this agenda is to approval item 56 on second and third readings.  
Postpone item 57 until may 15th, noting that item 58 is withdrawn. To close the public hearing approve  
on first reading item 59 with the conditions noted sfs-co with the co enumerated previously to postpone  
item 60 until june 12th, postpone items 61, 62, 63 until may 15th. To postpone items 64 until may 22nd,  
postpone item 65 until june 12th. To set item 66 for discussion at 6:30, to postpone item 67, 68, 69 and  
70 until august 28th.

>> Guernsey: And mayor, on item 61, did you say may 22nd on that?

>> Mayor Leffingwell: I said may 15th. 61, 62 and 63 are the 15th.

>> Guernsey: I think I may

-- staff is asking to postponement the item

-- postpone the item until may 22nd.

>> Mayor Leffingwell: I had the 22nd and I marked it out because I was sure you put 15th. So 61 until  
may 22nd.

>> Guernsey: My mistake.

>> Mayor Leffingwell: And that's the consent agenda. I entertain a motion. Council member morrison  
moves approval. Second by council member martinez. Council member riley.

[09:44:27]

>> Riley: I would like to make a very brief comment about items 62 and 63. I very much appreciate the  
applicants asking for postponement and that was on my request. I had raised the question about that  
case, just very, very briefly. That is the case

-- that 209 and a half west 27th street, a surface parking lot

-- currently a surface parking lot zoned historic. And the plan is to place a parking garage there, with  
some office space. The zoning is mf5h and the requested

-- the requested zoning is csm-co and the question was raised, a little more context, the site is  
immediately adjacent to the dormitory and across the street of another dormitory that's 7 stories high  
so I ask asked a question if there is a way to integrate some residential units on that site, while still  
meeting needs of the church and if it requires additional feet, beyond the 60 feet that is currently  
allowed. Obviously the 7 story building across the street has additional height and the applicant  
discussed a willingness to have that conversation. I appreciate that and look forward to having that  
conversation, and obviously getting housed

-- getting residential units in the university area is a critical need. The headline on the daily texan  
yesterday was u.T. Short 3900 beds and I am not suggesting that we can get all 3900 on this one site, but

it is

-- it is potentially an opportunity to get some of the units that we need right there, and so look forward to the conversation to see what we can do there.

>> Mayor Leffingwell: All those in favor, say aye. Aye. Opposed say no. Passes on a vote of 7-0. Now go back to item 42 and to recap, we have a motion on the table for approval and we have pending right now is a proposed amendment by council member spelman. Council member morrison.

[09:46:44]

>> Morrison: Thank you. I took a look with my cosponsors over the break at the amendments that had been proposed, and there were

-- I guess my concern was that they weren't exactly balanced and so what I have done is recrafted them to add what I think would be fair balance in the statements, and if council member spelman would like to offer them as an amendment, I would

-- I would be happy to accept them as friendly.

>> Spelman: Although we can argue what is fair and balanced until the cows come home, probably not on fox news, this is a lot closer than what we started and I am happy with it.

>> Mayor Leffingwell: Council member spelman has revised the friendly amendment which is now friendly and seconded by council member morrison. Mayor pro tem cole.

>> Spelman: I do have a question.

>> Mayor Leffingwell: Council member spelman.

>> Spelman: The three whereases,

-- we are often mistaken from one another. I don't have concerns. As a result, I will take that as a favor. Thank you for doing that. But you have a full stop after as a result, and due to central location and location near transportation corridors as a reason for the increases, I don't think you need anything at all. I just wondered if you considered that or whether that was just a type graphical error.

>> Mayor Leffingwell: Council member morrison.

>> Morrison: I am trying to understand the point. When reading whereas, I see the south lamar area is currently experiencing the following challenges. Did I give you something wrong?

>> Spelman: It was different from what I sent you in the first place but it is not necessary to add to "due to central location" and location near transportation corridors.

>> Morrison: I think I gave you the wrong thing.

>> Spelman: No, it's the same one.

[09:48:46]

>> Morrison: I was just not adding anything, just "as a result."

>> Spelman: Omitting as a result all by itself is fine. We are done.

>> Morrison: Okay. Thank you.

>> Mayor Leffingwell: So that is on the motion with the friendly amendments that have been accepted. All those in favor, say aye. Aye. Opposed say no. Passes on a vote of 7-0.

-- Passes on a vote of 7-0. And I believe we are at yet another stopping point. We are in recess without

objection until 4:00 o'clock. 6.

[10:01:37]

>> Mayor Leffingwell: We are out of recess and we will begin with item 71.

>> Guernsey: Thank you mayor and council, I am Kevin Shunk from flood plain protection and department A and the next one is 1120 Eleanor Street in the Fort Branch watershed, number 71. There we go. And the aerial view that you see here is Fort Branch which is on the east side of town, between Webberville and Springdale. That's Eleanor Street in the middle of the picture there, Fort Branch Creek running from north to south. The property is outlined in red. It is entirely within the 100 year flood plain and mostly in the 25 year flood plain of Fort Branch Creek. There is currently no development on this site and since the 1948 plat, we can't find records of any development ever being on this particular lot. One interesting note that I wanted

-- that is somewhat unique and we don't see this quite often as flood plain variances. Watershed protection department has been somewhat active in this particular area and more so in the stream bank stabilization area of our mission, and within this section of Fort Branch Creek, we have done several stream bank stabilization projects to fix erosion problems that are happening along the creek, in particular behind this lot, the entire stretch of Fort Branch, behind all of these lots. As part of that stream bank stabilization project, we did some property buyouts, and so the properties that you see highlighted here: 1, 2, 3, 4, 5, 6 of them are actually owned by the city of Austin. The three below the court there were purchased. They did have houses on them. They were purchased because of erosion issues but they also had flooding issues as well because they are deeper in the flood plain. The three lots up on Eleanor were actually purchased in order to get access from the street to the creek to do the erosion control project, and at this point in time, in speaking with our erosion groups, stream bank stabilization group, the channel in position and they are completed the project. They don't have any reason to go back in there. The project is complete. As far as flood control projects go, while there are homes that are in the flood plain that you can see from the previous picture, the ranking of the depth of these homes in the 100 year flood plain ranked them fairly low in our overall ranking and the watershed protection department in the next five years have no plans to come to this area to do any home buyouts. Obviously we will re-evaluate things on a periodic basis. Within the next five years, we have no identified projects for this area. This is a picture of the property actually just this week. The applicant actually did begin some of the foundation fill work prior to applying for the building permit. Once they apply for the building permit, they cease all work and are working through the process which involves the flood plain variance in order to progress so that's why you see some fill of material placed on the property. Either side of the property, you see there are existing structures on either side of the property. So the applicant is proposing to build a single family house, three bedroom, two bath, 1400 square foot home on this lot. We did work with the applicant as far as the placement of the structure. Originally it was a little more pushed back on to the lot, a little more into the flood plain and could have caused hydraulic impact. Then they pulled it a little closer to the street in order to minimize any of the hydraulic impacts of the flood plain. Because the fact that the proposed building does encroach in the 25 and 100 year flood plain, this has to comply with the flood plain rules. And as the 100 flood plain rule into Eleanor Street, there is no way to meet safe acreage which is one of the requirements that the flood plain

requires. The finished floor elevation of the house is actually 3 feet above the 100 year flood plain. Now, it is built on structural fill but they are taking out material in the backyard to compensate for the fill so there is no net fill in the flood plain. The finished floor elevation is 3 feet above the flood plain but since they can't get safe access to the street all at elevation that's one foot above they have to request a variance for that item. In addition this is common for flood plain variances for the drainage used in the requirement and the request is to request the drainage easement to the 100 year flood plain except for the actual footprint of the building itself. We talked a lot about safe access. My video is thankfully working this time. And so this is an example of why safe access is important. This is a picture from the halloween flood. This is a picture from a citizen standing on the front porch and looking to the street. That's the street in front of their house with flood waters running down it. The purpose of the safe access rule is to not create islands in the flood plain. We don't want to have a house that's elevated 3 feet above and there is no way to get in or out with the flood. The purpose of the rule is to keep first responders safe and to keep people inside the house safe in case they need to exit the house, is to be able to walk from the house to a point of the right-of-way all in an elevation that is one foot above the floodplain, to hopefully prevent situations to people who are stuck in their house and it is harder to get first responders to the location itself. That's a good video. So the summary of funds for this particular site, applicant's engineer has submitted technical information and shown there is no adverse flooding impact due to this development, which means it will not increase flood height. In addition they have shown that they are removing some fill material that

-- based upon the philosopher the foundation. No adverse flooding impact. However, there is no safe access from the house to the right-of-way. Like I mentioned, finished floor elevation of the house is 3 feet above the 100 year floodplain which is 2 feet above what is required. Minimum is 1 foot above the floodplain. And I put in the findings again, a hardship condition exists. When we look at hardship conditions and it is specifically discussed within the light of element code, that if there is a lot that is not -- has never been developed and the floodplain rules would then hinder development

-- any development on the site, then that's considered a hardship condition, when you are looking at floodplain rules, so the fact we have not found any records of any development on this site, that's why we feel, the staff feels hardship condition in this case applies. However, due to the depth of water, the speed of the water, and especially the distance that you would have to walk from this house to get out of the floodplain, that fact as far as staff is concerned, that flood risk is too great for us to be in a position where we can really recommend approval of this variance. So the staff's recommendation is denial. I talked about a lot of positive things about this application. Not causing adverse impact, 3 feet above the floodplain. However, the floodplain that exists with the existence to get out to walk on the floodplain because of waters coming down eleanor's street, in staff's opinion is worthy for us to recommend denial. We will be happy to talk about that more if you'd like. There is a draft ordinance in your packet and I want to point out the conditions that are part of that ordinance. These are fairly standard. Prior the permit, we require structural indication from the structural engineer indicating the house can with stand flood waters and with certificate of occupancy, prior to that, we require that the 100 year floodplain save the house itself and a certification which is a survey document that ensures the house was built at the elevations they stated that it would be built. I will be happy to answer any questions if you have any.

[10:10:18]

>> Mayor Leffingwell: Questions for staff? Council member morrison.

>> Morrison: Nice to see you when it's still light outside. Two questions. You mentioned the concern about the distance to walk to get out of the flood, if it did flood. What is that

-- I am sorry you mentioned it.

>> It's about 250 feet.

>> Morrison: Okay. Also, in the beginning you were talking about how there are no plans to do buyouts in this area, and that it

-- I guess the question is, how do you prioritize? Obviously money is limited, but is there a prioritization in terms of figuring out which ones to go after first?

>> Sure, there is a prioritization process and once we complete the floodplain study and the fort branch floodplain study was just completed and when we do that, every year they will go back and re-evaluate the priority areas and they will reassess based on the data that we have, based on 100 year floodplain elevation, how many houses they think will be flooded. If you have a house surrounded by flood waters but two feet above, it won't be a priority other than having a house or houses 200 feet below the floodplain. As data changes, as floodplain models change, that information can change every year, so based upon the information we have now, this area does not rank high on our priority list because there aren't enough houses that are actually inundated by the floodplain, and if they are, they aren't inundated very much.

>> Morrison: So if a house were built here, that could increase the priority because there would be another house there, increase the number?

>> You would think it would increase priority but if you place a house here now that is 3 feet above the 100 year floodplain, that won't increase for the whole neighborhood because this house wouldn't be flooded by the 100 year floodplain.

>> Morrison: When you are looking at priorities, you don't necessarily look at what the distance is to walk out of the floodplain?

[10:12:24]

>> The other factor involved but the first path is whether if structure is actually flooded. If you get a structure and a number of structures if you start building on that and you have a mass of structures that are all inundated, you can then look at the structure but what distances they have to get out. What are the alternatives as far as mitigating it, channels, detentions, ponds, buyouts, then we start looking at that.

>> Morrison: So the first level of evaluation is if there are houses that are inundated?

>> Correct.

>> Morrison: Okay. Thank you.

>> Mayor Leffingwell: Council member martinez.

>> Martinez: Thanks, Kevin. I want to ask. Is this request for a variance for an actual

-- is the applicant the actual family that's going to move in? Or is this a development to be later sold?

>> That's a good question. I am not exactly sure. The applicant is here and they could respond to that.

>> Thanks.



>> Mayor Leffingwell: We will hear from the applicant.

>> Yes, we will hear from you when you come up.

>> Mayor Leffingwell: Council member tovo.

>> Tovo: I have a couple of questions. I know you addressed the issue of hardship but I need to understand why you say a hardship exists, and that is because there never has been a structure built on it?

>> Right. The conditions in the land and development code talk about floodplain variances state if the floodplain regulations would render the lot undevelopable, then you could consider that to be a hardship condition. When talking about redevelopment and there is already a house there and they want to add on to it or demo it and put a new house, the lot the already developed so it's technically not undevelopable.

>> Tovo: Right. And how large is the tract?

>> The tract itself. I am not sure of the acreage.

>> Tovo: I will ask the applicant and look back at the staff report. And would you please address again the question of the erosion buyout purchases. What is the proximity again? I apologize, I know you covered this in your presentation. I want to be sure I am really clear on how tracts are to this particular tract.

[10:14:33]

>> When the stream back stagization group did their project, they  
-- stabilization group did their project, they identified the parts in the cul-de-sac area of eleanor, there were two structures, two buildings on two of the lots. They were deep. Eleanor drops off a bit and in the cul-de-sac it is deeper in the floodplain. So not only close to the creek, and only in danger of the bank eroding toward them but they had flood risk as well but most of the lots they purchased were vacant lots. They didn't have a large pot of money to do buyouts, but where they could find  
-- I believe when I talked to the project manager, he said where they could find a lot that was \$10,000 and the owner didn't have any interest in it, that was about our price point to go in and buy it, to minimize any future erosion ricks, minimize flood risk if there is a structure there or most cases on eleanor, or a spot they needed to get access to the creek in order to bring the machinery and the materials to do the streamback stabilization project.

>> Tovo: Was this considered for a buyout?

>> This one was not, no.

>> Tovo: Okay. Thanks.

>> Mayor Leffingwell: We will hear from the applicant. You have five minutes.

>> Good afternoon, mayor and council members. I am phil mancotta and the agent for el minor and this is the owner. First off, the lot is 5020 feet, a legal lot. And the second item to discuss, the city and mr. Shunk already indicated the city started a streamback initialization project they completed and we also have another stream bank stabilization project that was completed a few years ago at manor road, about the 2900 block, and that's also associated with fort branch. One of the things that I think I need to clarify is when we stated we move the house a little bit to the front to get us out of the flood plain, we actually removed the carport after visiting with kevin audrey, with the watershed department, and

removed the carport in order to get us closer to the roadway. The other thing we did, we hired an engineer named kirk prosner and he looked at how we could reduce adding any additional water into that watershed because of the floodplain concern, and so what we have done is in the back of the lot, the owner agreed to overexcavate approximately 18-inches to basically offset the impervious cover that is being created by this lot to not impact any adverse impact downstream. The last thing I need to say is it's unfortunate we have been going through this process for 6 months because the austin water utility has already gone out and set our meter and we are basically excavated for the utilities. I will let mr. Olveras speak about that because I haven't out there in a month.

[10:17:43]

>> Mayor Leffingwell: You will now have a chance to speak. Please sign up with the clerk. Yes, sir.  
>> I am donny oliveraz, custom home builder, and thank you for giving us the opportunity to talk today. Like phil had noted, we are trying to get our permit. It has been back and forth and back and forth and since then the utility didn't accept our money and has already provided our water and wastewater utilities to the lot. So we have come a long way to get to this point, and we are just hoping to get through to get our permits and proceed with building a structure here, a building to sell. I am a custom home builder. I currently have one under contract, probably about a block away on eleanor, 1211 eleanor. All I am doing is trying to help build up a subdivision and build a good product for the city of austin.

>> Mayor Leffingwell: Thank you. Would you go sign up with the clerk, please? That's all of the speakers that we have. So council member martinez.

>> Martinez: I want to ask kevin another question. So, kevin, why would we approve

-- I thought I saw construction loop as well on one of the photos. Why would we approve construction loops and water and wastewater if we

-- for the purpose of building a home if we knew they needed to get a floodplain variance?

>> Well, the application process for the building permit, you have that with planning and development review, but it is a separate application process for water utility for water tax, so I am not exactly sure on the timing of all of those things, but maybe the water utility gave the tap permit without having the building permit around maybe that's according to their program. I mean, you know, standard operating procedure, but they did have the tap permit in order to put the tap in, no building permit to build anything for the tap.

[10:19:56]

>> Martinez: Hmmm. It just seems counterintuitive that

-- and let me stand to confirm whether there is a construction loop but it looked like I saw a meter.

>> There is.

>> Martinez: It doesn't seem right

-- if I were a builder and I file for construction loop so that I can construct something. And if it's in a floodplain, why wouldn't staff catch it at that point and say, hang on, sir. You have to go through another process before you can construct anything? It just seems like we have kind of led him to believe

that he has the ability to build something here by granting him water and wastewater and granting him a construction loop.

>> So the water tap permit doesn't allow for any development in any construction. It's just as a tap permit. The fill that has been placed on the property for the foundation and bringing in the utilities, that's actually development. That's construction. They should only be doing that with a building permit. So technically, I mean you could go

-- have code compliance go red tag them and then tell them to go through the process, which is actually what they have gone through, and that's what they are going through. So the tap itself doesn't allow for any development, the tap permit, but that's the building permit process.

>> Martinez: So when we talk about the creek bank improvements that we have done, I know that

-- I am very familiar with this area. It's right around the corner from station 5. So I know it crossed the im

-- the improvements have crossed over to the east side of webberville road but have they gone down this far towards the bottom of eleanor?

>> There is three phases of erosion control project. The southern phase is right in the vicinity of this location.

>> Martinez: Improvements in there south of eleanor?

>> South of this lot, yes.

>> Martinez: So there is substantial improvements in terms of water flow should there be a heavy rain event, at least through this area?

>> For erosion purposes, yes, it was erosion process and not necessarily a erosion control project, but it is to maintain it is there so it would n't erode any more so it was more of stabilization project, hash denning project to keep it from eroding.

[10:22:07]

>> Martinez: Is it rock, back walls?

>> It depends, they will typically do rock on the low and then do rock soil on the top to get vegetation on the top.

>> Mayor Leffingwell: Kevin, I want to mention if there is an erosion control project, it has no effect on flooding or not flooding?

>> That's correct.

>> Mayor Leffingwell: I want to make that point. Any other questions? Entertain a motion. I will just say I am not going to be able to support the motion to approve this variance on a lot that is basically empty and the city has purchased four or five lots. I am not looking at the picture right now. In the immediate vicinity, and I know

-- I heard your logic about how this was considered a hardship but I have always

-- I voted for a few floodplain variances, not too many but a few and it is usually in the case where there is already construction, somebody living there and not substantial increasing the living space, or the number of bedrooms, the amount of space or potential of inhabitants there. I don't see it in this case. It is mostly in the 25-year floodplain and no safe access and unfortunately with regret, I won't be able to support it. Council member martinez.

>> Martinez: Kevin, another question just came to mind and I am looking at the maps here. What is the

plan that the city has for the lots that we have bought out along Eleanor.

>> Well currently don't have a plan to create a park or anything out of them. But if you look at the lower part where the cul-de-sac is, you get

-- if we did get all of those lots, it could be a nice place for a little pocket park. But currently we don't have plans. Watershed protection purchased the lots. We maintain them but currently have no plan for them.

[10:24:20]

>> Martinez: I wanted to ask you another question. When you purchased the lot, how long ago did you purchase this lot?

>> I believe it was right around September.

>> Martinez: When you purchased the lot, were you made aware it was in the 25 year floodplain?

>> No, sir. No, sir.

>> Martinez: It seems like during the closing of a piece of property, that would be something you would -- that would have to be disclosed to you. So it wasn't? You were unaware of that?

>> I was not aware. Seeing the houses on both sides led me to believe that we were out of that area. The cul-de-sac the gentleman is talking about is about five feet lower in grade. But, again, like you said earlier about the utilities. I want to stress about that part, they accepted money and actually cut into the street and ran the utilities. Construction was done from the city of Austin to provide the sewage and the water to the property and that's why it gave me the kind of the go ahead to go ahead and deliver fill. I wanted to comment on that.

>> Martinez: I appreciate that

-- it is very difficult, because the one hand it is clear you are in the 25 year floodplain and we take these decisions seriously and on the other hand, I

-- I can certainly see where you are frustrated because you made a substantial investment in a piece of property. I do think, though, you have some rights that you need to research about whether or not it was disclosed to you at the point of purchase that you were in the 25-year floodplain. Because that would seem to be very significant. You know, this also speaks to the affordability issue, where this build-out was probably going to be a reasonably priced home for someone because of the minimum costs you paid for the lot. So there are a lot of competing issues. What I would hope is that we would

-- that as a city, we would improve our process and not be granting construction loans and utilities when we know that this person is going to need a floodplain variance to even build anything. I just hope that we can improve our process at the city so that it doesn't put other builders in this situation.

Unfortunately, though, I have to agree with the mayor. I can't support the variance in this case because you are so far in the 25-year floodplain, but I do sympathize with you and I will work with you to try to get your fees reimbursed, if that's at all possible. It is just a very unfortunate situation. I apologize.

[10:27:02]

>> Okay. Thank you.

>> Mayor Leffingwell: Is there a motion on this item?

>> Cole: Move to deny.

>> Mayor Leffingwell: Council member morrison moves to deny.

>> Second.

>> Mayor Leffingwell: Second by mayor pro tem cole. Any discussion? All those in favor, say aye. Aye. Opposed say no? Passes on a vote of 7-0. So that brings us to item number 72. Do we have a staff presentation on item 72? Anybody? Anybody? Do we have a staff presentation on 72? City manager? Are you making the presentation, greg?

>> Guernsey: Yes, mayor. Almost 4:30, so ...

>> Mayor Leffingwell: Okay. I thought you were ready to go home, I guess.

>> Guernsey: Mayor and council, greg guernsey planning review and development review department. This was scheduled at 4:00 o'clock to be heard at 4:30 this is to amend the city code chapter 25-1 and 25-5 relating to vested development rights and continuing use rights under the texas local government code 25-4 and 30-2 relating to subdivision plats. The ordinance deals with review and evaluation process for vested rights claims and in general terms, a claim of landowner and applications for development of a project are subject to regulations other than those in effect of the date. The application is submitted. As you recall, we had previous amendments that have come forward that dealt with vested rights in 2013 to remove project duration. This has been removed by your planning commission twice. And I have met with various stakeholders from the reality association of austin and sos and other members of the environmental community. The ordinance you have before you is in your backup. We have a draft of the planning commission's version, that they approved the planning commission's recommendations took place on april 10 of this year. There is also, in your backup material, a version of the ordinance that was also approved by the planning commission in the previous version of last year. The staff recommendation is also included in his backup so you have at least three versions I think of the ordinance. The staff version is listed in attachment b in the staff report, and at the bottom, it lists as march 12 version.

[10:30:26]

[One moment, please, for change in captioners]

>> vesting of the project and that they do not have to pursue a variance to exhaust their administrative remedies. The staff had brought back a manage both agreement but it had a provision that there would be a minimum of 250 acres. The commission removed that. Still have the managed growth agreement but remove the mga requirement for the 250 acres. The commission addressed that the project should have a life of nine years no matter where that project is, and that the date for the projects for this nine-year period would begin with the date of the application submittal and not the approval of the application. It was recommended to you by the commission on a 7-1 vote, and I've highlighted it in the staff report, the changes to the staff version that would show the specific changes that are there. Staff supports the planning commission's changes that added the findings of fact. We think that would probably help clarify the issues related to approving the vesting, in addition to making the vested rights determinations available on-line, they're actually available on-line, but you actually would have to dig a little deeper to try to find them, and we don't have an objection to making it easy easier to see those so people can see why vesting were approved or denied for wherever they've been requested in the city.

Staff does not

-- staff doesn't object to the clarification the commission added regarding that a variance is not required to exhaust administrative remedies, nor does staff object to the nine-year project life that treats residential commercial property alike and recognizes that a project starts at the application date.

However, if the planning commission's recommendation is adopted by the city council, staff would ask that additional changes are made because we believe it would create potential conflicts with the project life and the permit life. This kind of brings back the whole project duration, again, where you would have a project failing

-- or a project ending that would be different than the project life and that we would actually ask that that language be retained, if you go to your exhibit b under section 25-1-551 d, a and, which basically would save, say, if you had a site plan that was approved prior to the nine years, that the project stays alive, at the same time as the site plan permit stays alive, so they don't

-- the project expires before the site plan life expires. Staff does not support removing the minimum land AREA FOR THE MGAs. We believe that there needs to be a minimum land area requirement of some kind and that

-- I think I'll pause there. I think that

-- that staff's comment

--

[10:34:40]

>> mayor leffingwell: We do have a number of speakers. Are there any questions before we go to our speakers? Okay. All the speakers are signed up either neutral or against. First speaker is bill bunch. And donating time to him is david king and brad rockwell. So you have up to nine minutes.

>> Okay, I'll do my best to not take all that. This is a somewhat complicated issue, though, and I will certainly take a good part of it. I'm bill bunch, I'm executive director with save our springs alliance, we've been dealing with grandfathering issues under various certifications of the statute since 1987, I guess. It's been a long road, and I know you all want to get this done, and I think we're getting close, but I don't think we're there yet. You should have the letter that I sent to you dated april 16 that hits the high points. I want to add one or two and address at least a few of these high points. Just

-- to back down the context here, rico basically won the war on this when a majority of you voted to repeal our project duration ordinance altogether a year or so ago, so things are getting filed

-- this last year basically had no expiration dates. That's extremely unfortunate, but nevertheless that's where we are. Then come october finally we get a version to planning commission that your staff drafted with outside legal counsel help, which we were prepared to live with. That was unanimously adopted by your planning commission. It was your staff and lawyer-recommended version, and it was a decent compromise. And then somehow it got derailed, and as commissioner comente at the planning commission observed, every single change that's happened since then has moved this way over into the real estate council world view that applications shouldn't expire, and they should be able to live forever. Even if you just file it on a napkin under the version that unfortunately our state statute allows for. So first and foremost, we would urge you to go back to the october version as a reasonable compromise, with essentially a three-year project life, but if you filed something the last day of that three years, like a

new site plan, you get to go forward on that. So even though it says three years, it's really more than that. If you're going to move off that, then we really urge you to stick with a few fundamentals, and that is fitting with the statute, and that's all the

-- all the periods should start with the application date. That's what the statute says. We ought to stick with that. Sticking with application date also encourages that we only have real applications, bona fide applications, and that it creates an incentive for people to move through the process. If you keep, also, a relatively short period. We don't want to be wasting staff time, your time, neighborhood, environmental time on stuff that's really just speculative, development futures trading paper that has to then get redone over and over, over the years under some claim of grandfathering. We want real applications and we want to address immediate development needs with our limited resources, and you do that with short windows. The statute suggests at one point a five-year term. It doesn't mandate that, but it references a five-year term, and we would say that would be a fall-back position. The project consent agreements, where there's some dispute about whether they're grandfathered or not, that should be an honest dispute. They shouldn't just be able to say the magic words, "we're grandfathered," and then all your current ordinances are thrown out the window and we have let's make a deal. So I hope you'll amend that section to make it clear that there really has to be a solid claim with real merit before you start going through a project consent process. In the Barton Springs watershed it should be clear that those require a super majority approval by the council to be consistent with the SOS ordinance. The fair notice application, the napkin, the statute says you got to allow that, but my understanding of the current process is

-- is the way it should stay. We ought to keep it. They can file it, get under the wire, but then they have 45 days, a relatively short window, to come and file a real application and stay in the process. It shouldn't be a year and then you're cut off completely, which is one of these drafts provides for that. I think that could be made to look unreasonable and be subject to legal and political challenge. We really want to have an approach here that maintains local control so that future councils can adjust to the changing world. And if you all haven't noticed, our world is changing faster ever. We don't know everything we want to know with new automated cars and ridesharing, with smartphones, with extreme drought and our need, perhaps, to say all new development needs to be net zero on water, needs to have on-site reuse, needs to address heat island effects and if we're allowing densification we still force shrinkage of footprint, so we have less impervious cover, yet at the same time we're getting more density where we want it. All of those things are, I think, critically important to figuring out how we grow and to have the flexibility to change and have those changes matter not 15 years from now or 25 years from now but right away. So this is an important issue for the health and future of our city, our community, and we really think that both the new staff draft and the others go way too far the other direction. One last point on

-- we support the staff on management growth agreements, having a minimum size. I don't know what the right number is, but it really should be restricted to large projects. Otherwise you're inviting the whole world into let's make a deal operation mode. On the more recent planning commission recommendation of nine years, I was there, I watched, I tried to understand what they intended, and they talked about, you know, you cut them off, they're cut off at nine years. Well, if something is actually under construction you can't do that. So to me, to get to the spirit of that recommendation, you actually say the project lives for five years. On that five-year day you could file an application for a site

plan. It goes through the process for a year, and then it lives for a year, and so basically five gets you nine in most

-- most common circumstances of commercial and multi-family development. Now, then you want to be very clear that you don't get to extend it. You're there. And then whatever you're actually building at the end of nine years, you keep building that. But after that fifth year, if something new comes in it should be a new project. We shouldn't be arguing over

-- it's only in that first five years

-- if they come in on the last day of the five years to file something, the only question should be, is it still the same project? After that five years we shouldn't have to ask that question. It should be automatically a new project, unless it's building out a site plan that's been filed before that five-year period. Thank you for your consideration, and I'm here if there's questions.

[10:43:59]

>> Cole: Mayor, I have a quick question for mr. Bunch.

>> Mayor leffingwell: Mayor pro tem.

>> Cole: I'm trying to make sure I understand your five years plus one plus one plus seven to me, but I thought I heard you say

--

>> five plus one plus three. Site plans are typically three years.

>> Cole: Oh. Okay. Okay. So you would have

-- I thought the recommendation from the planning commission of the flat nine years still included a daisy chain, is what they called it, of like a four, four, one and one, I believe it was

-- four, four, one. So you would change that to where you would have a flat five years up front?

>> Yeah, if you

-- if you have that five-year deadline, then it's basically a progress point where they really need to know what they're doing and have a site plan in, you know, at that five-year mark to go forward on a preliminary plan or a

-- well, most commonly a preliminary plan that was filed, you know, at the outset.

>> Cole: Thank you.

>> Mayor leffingwell: Next speaker is casey willis.

>> Good afternoon, mayor, council members. Thank you for your service and thank you for allowing me a few minutes to address you guys. And gals. I'm the 2014 chair of the real estate council of austin. As many of you know we're close to 1700 member organization that effectively tries to be a moderate voice for real estate development in central texas. We want what's best for the community and that's why we're here today. We've been very clear about our belief on vested rights. I will agree with mr. Bunch, we do feel like the law is on our side and we believe that

-- state law, that is, is on our side, and we think that state law does this expire projects. The attorney general in 2012 agreed with us on an opinion, which is really why we're here today, because you all repealed the project duration ordinance last year. In the process of this replacement ordinance, despite our feelings of coming from a opponent of strength, we have participated in the process, we have spent hundreds of hours with our volunteers working with the staff, and we



-- we're trying to do the best we can to represent our interests and come to a fair  
-- a fair compromise. We believe good public policy should be succinct, clear, and understand and when we ask you to apply these goals as you all consider this ordinance. I want to be succinct myself, and I want to read two simple questions we have of you as you move forward and consider this ordinance, and that is we ask that you apply a flat 13 years, project duration on all projects. Any permits still in effect at the end of that time frame would last until it expires. If it's refiled, the new permit would abide by the rules and regulations of the day in effect at that time. The clock would start ticking at the time of approval, not at application. This last point is important to us because we don't feel like we should be punished for how long it takes to get through the city process. Sometimes that takes six months, eight months, and even over a year, and I think it's worth noting that staff would agree with us on this point in the first

-- their first proposal had agreed that the clock should start ticking at approval and not at application. As you have dug into this you've realized that this is a complicated issue and we think a flat piece of time is what's very important. Speaking of time

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[10:48:40]

>> yes, sir.

>> Mayor Leffingwell: It's up.

>> My last comment is if we could take the prerequisites IN PLACE ON MGAs OUT, WE Feel like that would

-- they're not necessary and

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>> Mayor Leffingwell: Thank you, Casey, your time has expired.

>> I'd just like to finish by saying

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>> Mayor Leffingwell: Casey, your time has expired.

>> Thank you, Mayor.

>> Mayor Leffingwell: I'm sure the next speaker will be glad to pick up your points. Andy Pastor? Don't time is Paul Less Lenihan. Paul? You have six minutes, Andy.

>> Thank you, Mayor Leffingwell, members of Council, I'm happy to speak with you. I'm Andy Pastor with the real estate group and I want to express my thoughts about the ordinance. We're fortunate to live in one of the finest cities of the country. We have a responsibility to develop Austin into great places. The great places take time to plan, time to entitle, time to build and time to market. An average one-phase project takes a year to plan, a year to entitle, one-plus years to build, a year or two to . If this entire four to five-year process is executed in a healthy market. However, economic cycles are a fact of business and investment life. We've experienced three economic downturns since 1986. Each of these downturns virtually stopped development for a minimum of five years. A real-life example of project duration is a parcel of land that we purchased in 1999 to build three office buildings. After we completed the entitlements in 2000, the tech bust caused us to shelf our plans until the market recovered in 2005. We completed our construction documents for the building in 2006, were ready to construct at the end of

2007 and got caught up in the 2008 recession. The office market recovered last year to justify new development. After owning and working on this project for 15 years, we just commenced construction two weeks ago. We still have three to four years of construction, leasing and permanent financing, in the future for a total duration of 18 to 19 years. Economic downturns, which typically last five to seven years, interrupt our development timelines and processes, and therefore justify a minimum of 13 years flat of certainty from the date of the first permit approval. Vertically integrated mixed use development is the current and future of market

-- of austin. Increased vertical density is expensive, higher in risk and takes more time to execute. Many projects take far in excess of 20 years to execute. The community needs you to keep the managed growth agreement in your tool belt without restriction so that we can have more desirable density. MGAs ARE DISCRETIONARY IN Nature and must be approved if city council feels as though they are valid. It is in the public's interest that they be allowed to develop over a reasonable period of time. Imposing an arbitrary deadline creates an unpredictable and compressed development process, thus causing owners to make decisions that lead to cheaper and poor-quality, rushed development and failed projects potentially. Uncertainty is the biggest enemy. Great cities have great projects, neighborhoods and streets. Allow the community to have great places to live, work and shop by allowing projects the time they need to be done the right way. Thank you for your time and your consideration.

[10:52:47]

>> Mayor Jeffingwell: Thank you. Roy Whaley? No, excuse me, next speaker is Robert Kleeman. You're next after Mr. Kleeman.

>> Mayor, Council, my name is Robert Kleeman with Sneed, Vine and Perry. You should have a letter that I just handed out today. Let me disclose I've not been involved in this process up till today so I'm kind of coming with a fresh set of eyes. I'm raising two issues I don't think have been discussed previously, at least not to my knowledge. And one of those is because I'm working on a 245 determination with the city right now, and it deals with plat notes. And when I read this draft ordinance it came clear to me that this ordinance is drafted with commercial development, with site plans in mind, and it doesn't really speak with residential development at all. In fact, if you look

-- if you look at my letter you'll see citations to sections that say, an example of a consent agreement, all the approvals and things are tied to site plans. There's nothing in there about residential. My client that I'm working with is trying to get a house approved, and this ordinance basically ignores when you have an issue dealing with restrictive covenants and site plans. And that's

-- and if you see my letter there's a provision in the statute, 245.002 d, which doesn't tie the invested rights to a project. It's a different sort of right that an owner can rely on a plat note or a public restrictive covenant and use those. And so all this ordinance is drafted as if there's eight projects with a life that expires, but there's a part of the statute that isn't tied to a project per se, and the ordinance just seems to ignore that altogether. And for example, there's not a fair notice application process that you would use with

-- if you're coming in saying, hey, I've got a public restrictive covenant or I've got a plat note. If you look at the options that the director has in making a determination, it's not drafted in a way to deal with someone who says, hey, I just want the city to recognize this plat note. And so, again, I think there's the

whole 'nother part of the development process that's been ignored. The other point I'm making here is on the process. The ordinance proposes only one reconsideration on your petition with no right of appeal. In this particular case I'm working on, I'm in my fourth month, technically my fourth reconsideration. It's a complicated case, and I think a lot of these are, but to create a process to where you have one reconsideration and no appeal is

-- for those who are in a difficult position it's going to be a

-- it's not really an adequate due process for those folks who really want to try and get an administrative resolution to their issue. For my clients, you know, it's a 50% swing on the impervious cover on their property, and they paid a lot of money for that lot. So what I'm asking is that, in my letter I talked about don't limit the number of reconsiderations but there should be a right to appeal to the city manager, because I think there ought to be a fresh set of eyes to look at this. It's not vested enforcing the land development code. Thank you for your time. I'll be happy to answer any questions.

[10:56:25]

>> Mayor Jefferingwell: Next speaker is Roy Whaley.

>> I'm Roy Whaley, the vice chair of the Austin Sierra Club, and I was born and raised here in central Texas and consider Austin my home town, have been living in Austin for a long time. So I see Austin through the lens of history, not just my own but of my family, who have shared different things with me about the growth of the area. So when we talk about the history of Austin and the different projects and the ups and downs that we see in the market, I recognize that, but I also recognize the fact that we keep talking about how Austin doubles in size every 20 years, no matter what, and you can't stop it. So when I hear that the ask is for 13 years, I'm a little surprised that we don't just go ahead and say that they should endure for an eternity, plus ten years, and have the right for one year renewals after that. So state law

-- and I am not an attorney, but it seems pretty clear that state law allows for hard-and-fast caps on limitations, and the statute does reference, as we go back since we were told we don't comply with

-- it does reference a five-year term. And so a five-year term seems reasonable, and I agree that you don't come in at the last minute and restart the clock. Mr. Bunch talked about 45 days to get in your complete application. Austin Sierra Club says 30 days should be sufficient. If you're going to invest this kind of time and money into a project, you should have your stuff together a little better than a napkin and some notes. And so rather than to start the clock and let it

-- when you start the hourglass and the sand starts drifting through, you shouldn't get to keep pouring sand into the hourglass if you need more time. I think that to go back in time, which is only going back to last fall, speaking of history of Austin, the history on this is that last fall staff put together a good presentation to the planning commission on this, and planning commission voted to accept it unanimously. They unanimously accepted staff's presentation at that time, and all of the things that we're asking for were in there at that time. It's only after the folks from RICA got in and had multiple meetings with staff

-- we had one meeting.

[10:59:28]

>> Mayor leffingwell: Thank you. We would like to go with the planning commission recommendation from last fall. Thank you.

>> Mayor leffingwell: That's all the speakers that we have signed up. I'll entertain discussion or motion on item 72.

>> Spelman: Mayor?

>> Mayor leffingwell: Council member spelman?

>> Spelman: I think we are going to be amending whatever draft we put on the table, so to begin the process I think we probably will have a bunch of questions but it seems to me the easiest thing to do is to put a draft on the table and start messing with it. So I move approval until further notice, until amendments are made of the planning commission draft dated april 22.

>> Mayor leffingwell: Motion by council member spelman to approve the planning commission recommendation, seconded by council member morrison. Council member spelman.

>> Spelman: Okay, I have a couple questions. I suspect other people have questions before we start amendments. I have a question of staff with respect to current practice, if I could. Greg, you're probably the best person to answer. The planning commission draft and other drafts, I don't have them all under my belt, call for a one-year period after fair notice application has been filed, to file what some have referred to as a real application, a final plat, preliminary plan, something like that. How much time do we typically give after fair notice application is filed before some other application needs to be filed to back it up?

>> And you're speaking of today, I assume?

>> Spelman: Right now, what is our current practice?

>> What happens is someone can file what we call a fair notice application, it would take the form typically of a site plan, or subdivision application. It goes through what's called a completeness check where my staff checks, is the application complete, and the applicant at the time would say, I would like to be vested under a prior regulation. We'd have to make, or I have to make a determination within ten days and they have 45 days in which to complete that application. If the application is complete, then they can come in and continue with that application, but initially I only have ten days to make the determination

-- the application really only has a life of 45 days to be completed, to be accepted and then that's

-- that's how long we have right now.

[11:01:58]

>> Spelman: Okay. Let me be sure I understand this. There is a form, which we call a fair notice application form.

>> That's correct. That's turned in with that application for subdivision or site plan.

>> Spelman: Okay. Now, do developers ever just turn in the fair notice application form?

>> They have to give me something more than that. I've seen them range from a single sheet that might show a layout of the site plan, where the buildings are or where the parking is located, generally telling me how big, how tall, that kind of thing, not necessarily a completely engineered plan, although if they are actually filing it and they're very assured themselves of their grandfathering status, we've had plans,

you know, I barely can get my arms around some cases that you might have that will come in with great detail of engineering drawings, because somebody else that may have filed already, a vested claim, and it was approved before and they're just continuing on with that.

>> Spelman: Sure. So if I owned a lot and I wanted to develop it and I wanted to know what my vested rights were, I could file this fair notice of application form, and I'd have to back it up with something, which could be a sketch of a site plan or a sketch of a plat or something like that. It wouldn't have to be up to our usual standards, but I would have to file something besides the form.

>> Guernsey: That's correct.

>> Within ten days you would be able to check out vested right, vested rights associated with that lot, and get back to the developer as to whether

-- what those rights looked like. What would I then have to do after that? And how soon would I have to do it?

>> Guernsey: Well, if you had the application that was more complete, then it might actually be accepted in for review and go on its merry way. If it really is just one page and you don't have any of your engineering work done, that request or that vesting right would expire at the end of 45 days and you'd actually have to resubmit, at some point in the future make another claim of that vesting day.

[11:04:02]

>> Spelman: I haven't done my preliminary plan yet. I'm just asking you a question and giving you a rough sense for when it is. You have ten days, after that ten days I have 45 45 days or after that ten days I only have

--

>> that would include that ten-day period. If I were actually to approve it, then if the application is complete it would go on. As you've heard in testimony I can reconsider, and I have not limited the number of reconsiderations as long as you're bringing me additional information to consider. So I've had some that have submitted many, many times because they find another document that may prove out that they have vested. So I haven't limited that. I don't charge an additional fee for that, but at the end of 45 days, then that initial request really passes in its life and they'll have to resubmit a new one in the future.

>> Spelman: Okay. So I missed my 45 day window, I have my preliminary plan

-- haven't got it ready yet. I submit it on the 46th day. I have to put in a new fair notice application to go along with the preliminary plan on day 46?

>> Guernsey: That's right. And if I didn't say that it was vested and all conditions held the same, there hasn't been change in coordinates or anything, it proved out before, it will probably prove out again.

>> Spelman: Fair enough. So you're hovering here. Do you want to add to this?

>> Bret wright, assistant city attorney. I just want to make one point of clarification. What greg is speaking to with regard to current practice involves fair notice when basically you're submitting a dumbed down permit application. It doesn't have to be fully engineered. It doesn't have to have everything, but it gives us some notice of the nature of what you want to do, and you're submitting that in connection with the grandfathering claim, with a claim that you have a project that really began years ago with a plat or some other approval. And so that is part of the city's current process. What this

ordinance would introduce that is new that we believe is responsive to parts of the chapter 245 law is when you have a new project, you're not asserting grandfathering but you want to lock in vested rights. And what this would do is it would take that concept of fair notice and it would allow to you establish vested rights for a new project with something other than a permit application. It wouldn't be a napkin contend. It would be more than a napkin, but twoos less than fully designed, fully engineered contract. And that concept although never

-- has never been fully implemented in our code and this ordinance would add that to our code.

[11:06:47]

>> Spelman: This addition as laid out, or at least sketched out in the planning commission draft of april 22, would then be

-- I file my fair notice applicable, I fill out the form, I give perhaps a sketchy preliminary plan or a sketchy site plan, and then

-- this has been written, I would have one year to follow up with a preliminary plan, a final plat, something which would actually make real the idea of the

-- the fair notice application. Is that accurate?

>> That's accurate, particularly the motion that you distributed that you made available that my understanding of your motion with regard to that issue would clarify that, that yes, within the one year life span of a fair notice application, you could follow up with a real permit application, and then your project would start

-- would be vested to the date of the fair notice application and it would start to run from the date of the real permit application.

>> Spelman: Why would

-- would it be helpful, useful, necessary to have an entire year between the filing of the fair notice application and the requirement to fill

-- to back it up with a final plat or a site plan?

>> It's a policy issue. I have no view on that.

>> Spelman: The difference, though, between our current practice and the one-year time period that you're talking about here is that the one-year time period you're talking about in the planning commission draft is a new procedure designed for a new

-- somebody who doesn't know what their vested rights are, has not wanted to hire an engineer, spend a lot of money to come up with a preliminary plan, final plat of the site plan, but just wants to know where they stand, and then when they know where they stand would fill in? Is that

--

>> no, it's more like

-- it's more like a situation where somebody sees an ordinance that's coming down the road. And they want to establish grandfathering rights for a project before that ordinance takes effect.

[11:08:54]

>> Okay.

>> And so they submit an application, but they're not prepared to fully design or engineer a plan but they want to lock in their rights. That is what we in the ordinances that are before you is referred to as a new project fair notice application. When you simply want to get a determination from the department director whether you're grandfathered to something that is based on an old permit from years ago, that is what this ordinance refers to as the continuing project fair notice, and that is largely consistent with the staff's current practice. Some of that practice, though, is uncodified, and one of the things this ordinance does is just put everything on paper and explain as clearly as these things can possibly be clear, how that process works.

>> Spelman: I support the codification idea. I'm not sure that a year is the right amount of time, and if I could talk to mr. Willis, if I could ask a question of mr. Willis, mayor, I'd like to

-- or someone else from the real estate committee who's here who might be able to speak to what's practical and a reasonable period of time.

>> Mayor Jeffingwell: Mr. Willis? You get to finish up now. [Laughter]

>> thank you.

>> Spelman: Casey, if you're the wrong guy to ask

--

>> I might substitute in pam madeer because she is a specialty lawyer in this area, so I'm happy to stand by but I think you're better served by pam.

>> I'm an attorney at such low and here to answer questions.

>> If you could help me with this. I don't know what my rights are. I want to lock in my rights on a lot. I submit a fair notice application, I sketch out what I think the site plan is going to look like. Okay. Now, I've got

-- I'm locked in. I've gotten a favorable notice back from greg. In some period of time to follow up with a preliminary plan, a final plat, something. What is a reasonable amount of time for me to actually make that plan real?

>> I think you need more than a year to make that time real. 45 days is not sufficient at all. There's a lot of people that don't have a lot of money. You have your

-- you have your companies and people that really have a lot of money that they can put in a project and then you have people that do not. And it's not always feasible, as you know, engineers and consultants are very expensive and it's not always feasible to spend 100,000-plus dollars on engineering work until you know what code requirements you're going to be required to comply with. And so I think it's very important in those situations that

-- that once you submit your fair notice application, that you have an opportunity to work with the consultants to make a project that fits whatever regulations the city has determined that you need to comply with. And so 45 days does not make any sense whatsoever because it's not adequate time for them to do their work. I think you at least need a year, and I really think that you need more than that.

[11:11:51]

>> Spelman: What is the public policy value of having that

-- that

-- say it takes a year to come up with a good preliminary plat or something.

>> Yes.

>> Spelman: What's the value of having that year spent 57600 year and a half, anywhere between a year and two years to put together that site plan. You'd have to be able to evaluate, you know, the conditions. You have to bring in the appropriate consultants to look at every aspect from an engineering and other aspects. So you need quite a bit of time to do tha.

[11:13:54]

>> Spelman: I would get at some point over that year and a half period, you're going to begin that process and realize it's not going to work out, I need to go in a different direction.

>> Absolutely. There's many times where you put together the plan and then you realize some component doesn't work, or you check in with city staff even before you have actually gone through the process of filing and you call, for example, chuck lesniak and you say, you know, what do you think? And then you have to go back to the drawing board. And so it's really important to have that time to be able to tweak your plan. So that when you come into the city with your plan, it's already somewhat workable so that staff doesn't have to spend all their time giving you comments across the board on things that you should have had time to figure out before you submit.

>> Spelman: You have to spend the time somewhere along the line. If you don't spend it in the front end, you have to spend it in the back end responding to staff comments.

>> And it takes more staff time, because when staff gets rushed applications it's frustrating to them and requires more meetings.

>> Spelman: How do your clients deal with a 45 day window now?

>> It's very difficult. You

-- a lot of what we submit now is rushed, and so, you know, to some extent we've had to live with that, but there's a lot of inefficiencies with the 45 day window now. We often just turn something in and then figure

-- and then we have to work on it with staff, when if we had more time it would be done

-- it would be done in a different way that would reduce everyone's time on the back side.

>> Spelman: Okay. So more time than 45 days, you're thinking a year and a half

-- a year and a half seems excessive to me. I think more front end work would be appropriate, particularly if we're dealing with a de novo application.

>> Absolutely, but keep in mind that front work is done. So

-- I mean, but you do have to have timing to do the technical stuff on the back end, but 45 days, you know, even six months, that's really rushed, and, you know, engineers are busy and there's all these different projects, and it's very difficult. And obviously you stay on your consultants because time is money, and the longer they take the more it costs you but it's not reasonable to get a project done at all and drawn up

-- if

-- an appropriate project is done right in that amount of time.

[11:16:00]



>> Spelman: Mayor, I have no more questions on this issue. If anybody else wants to follow up on this issue I'll pass.

>> Mayor leffingwell: Council member morrison.

>> Morrison: Thanks. These are actually for staff, if that's all right, greg. I just want to get clear that we are talking about

-- we're using the term "fair notice" for two different things. One is called in the code fair notice continuing project, and the other is fair notice new project. Is that correct?

>> Guernsey: That's correct. On page 4 of 16 of the planning commission's draft, under 25-1-536, it explains the two types, and I think of the napkin and new napkin. New napkin is, it's never been used before, something that's just submitted. Old napkin, it was submitted previously and now I may be needing another napkin to continue that project on. It is something that was submitted and verified and continuing that project on. They may not have been able to finish everything, but it's a continue waiton of something else.

>> Fair notice application continuing project, that's when you're bringing in your old napkin.

>> Guernsey: Right.

>> Morrison: And the only other time it's referred to in the ordinance, if I understand correctly, is actually previous to that, and that is under contents of vested rights petition. You see under a 1-b, one of the things you have to bring in is your old napkin, right, a fair notice application submitted under b, would that just be a continuing project application at that point?

>> Right, you're looking at

-- on page 3 of 16 under 25-1-535, the contents of a vested rights application where it speaks to a notice application submitted under

-- and again that same section, and that's correct.

[11:18:02]

>> Morrison: So when we're talking about a fair notice application there, we'd really only be talking about a continuing project because you're bringing in your old napkin to get a determination of what your vested rights were with that old napkin.

>> Guernsey: That's right. Because you're looking at the past, and you're work offing off that application to submit your next one in the series.

>> Morrison: Right, so that's where you're talking about the current process is the 45

-- where the 45 days comes into play?

>> Guernsey: That's right. Usually if you're coming in and you're asking to be grandfathered, that's the continuing project. Others that if they're going to come under current code they would just say

-- they'd check a box saying "current code" and that would be their new napkin, the first in the series. So they might be submitting that preliminary plan and maybe next year they submit their final plat, and they might be asking for vesting because they submitted that final plat

--

>> morrison: Although know what this does is it adds a new concept, which is you can bring in a new napkin and that is the fair notice application new project.

>> Guernsey: That's correct.

>> Morrison: And that's

-- if I understand correctly, that puts a stake in the ground that says, I'm

-- I'm claiming today's code and I'll be

-- you want you to know I got a project, I'm claiming today's code is going to be what I work under, and then

-- but they haven't actually brought in a preliminary plan or a plat.

>> Guernsey: That's correct. I think bret brought in an explanation how it could be used one way and ms. Madear spoke to the other way. They may use that to circumvent an ordinance you might have pending that's going through a notification process, they want to avoid that process so they say, I know I'm going to develop this project. I'm going to submit this fair notice today, and then they'll submit a site plan application in the future will say after the council date, wherever council approves that, to circumvent that. It also could be used by a property owner saying I want to establish my right before I go hard, the money to pay this engineer, pay my site plan designer to lay all that out, start buying all my supplies up, and that could be used that way. I think there's probably legitimate arguments that could be made both ways on that, frankly.

[11:20:21]

>> Morrison: But let me ask you this. It's my understanding also that the statute foresees the new napkin process, the fair notice new project and that's why we've added it in here. Is that correct?

>> That's correct. I've talked to people in the past that have worked on or been involved with legislation. Certainly it's been recounted to me by numerous attorneys how we're not necessarily fair to their clients, and I think beyond

-- beyond that I think I'd allow my attorneys to probably discuss the issues of having this type of application available.

>> Morrison: I guess I don't

-- I'm not interested in delving into that. I just want to also talk a little bit about the one-year project life allowance with the fair notice application. Does that only apply to the new napkin? Is that correct? The fair notice new project.

>> If you go on and look at a different section under 25-1-552 d, that actually speaks to the life and speaks to just being one year, whether it's old or new. If you had a situation where someone

-- they filed a previous fair notice application, let's say it was based on a previous final plat, they want to confirm that they are indeed grandfathered, and now they're working on the site plan, and they still need to gather up enough information to design the ponds, water quality ponds, detention ponds, to make sure that the ownership issues that might be related, tree issues, inventory, surveying, that all would be done, but that still might be used an old

-- an old napkin of just

--

>> morrison: I meant

-- but fair notice application, continuing project, is it listed and referenced under section 551? 25-551? Because I don't think it is. I

-- and maybe I'm wrong. I think that the new project, fair notice application new project is listed under

25-1-55

-- I'm sorry, 2

-- 25-

-- page 11, section d of that.

[11:22:34]

>> Guernsey: Right, and that speaks to

-- based on

-- oh, it speaks to

-- that's correct.

>> Morrison: Exactly. So this was so confusing to me when I sat down to read this. I wanted to just walk through and clarify that we have the old napkin that's the continuing project. It's referenced in that section under new

-- under fair notice. The only time it's ever used is under the vested rights determination, you have to turn in your old napkin.

>> Guernsey: That's correct, council member, and also mr. Wood would like to address this same issue.

>> Morrison: Thank you.

>> I just want to clarify and say, I think it's very easy to get confused. It's very hard not to get confused by some of these concepts, but I want to distinguish the 45-day expiration for what we're now calling old napkins and the one year from

-- for what we're calling new napkins. And the 45 day requirement basically, we

-- some cities have a whole separate

-- they treat their grandfathering determinations as a separate application process. We don't do that.

We fold grandfathering determinations into review of the underlying development application. It provides a more expedited, unless it's denied and an applicant chooses to ask for reconsidering, it provides for an expedited process, and what that means is when you submit an old napkin, to get in the door, to get a grandfathering determination, the city makes a decision on whether you're grandfathered within ten days, when we meet two times a week to achieve that goal, and then once you get your decision you've got 45 days to actually

-- from the date of your application, you have 45 days to submit a real permit application, and so you're either going to be submitting a real permit application if you got grandfathering to 1985, you know, you can design your permit around 1985 regulations. If your grandfathering decision was denied during that ten-day review period, then you'll be either seeking reconsideration or you'll be accepting the decision and designing your project under current code. About you that 45 days just means you come in with your old napkin, you get a grandfathering decision in ten days, and then within 45 days you submit a real permit. The new project fair notice where you really are establishing vested rights for a new project, possibly in anticipation of some regulatory changes down the road, that would lock you in for a year under the proposals

-- the principal proposals that are before you in your backup, and council member spelman has provided in his motions, which are on the dais

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[11:25:26]

>> morrison: No, they're not. [Laughter]

>> spelman: Not yet. I wanted to nail down this issue before I started talking about amendments.

>> I thought I heard you make the motion. I apologize.

>> Just the main motion, not the amendments.

>> Mayor leffingwell: His motion was for the planning commission recommendation as commission to start with.

>> Morrison: I guess

-- and I'm going to be done talking about this now, but I want to say I have spoken with staff about personally I think it's unnecessarily confusing the way it's written, and I'll wait until you're through making your motions, but I intend to

-- I'll pass them out now so you all can study them during the

-- during the break, but what I would like to do would be what I consider non-substantial changes that actually would make it a little easier to understand, because I don't think we actually need the term "fair notice continuing project" in it. So I'm not making this motion now, but I'm sharing it with everybody for later. Thank you.

>> Spelman: Continuing that excellent practice, mayor

--

>> mayor leffingwell: Council member spelman. You're passing out too?

>> Spelman: I am as well. I wasn't as per spica as council member spelman, hers

-- but hers says councilman morrison on the top. Mine doesn't say anything on the top. That's mine.

>> Mayor leffingwell: Is there any difference in the content?

>> Spelman: I suspect so, but I really don't know because of course we have been unable to collaborate in any way, shape or fashion up until today.

>> Morrison: Mayor?

>> Mayor leffingwell: Council member morrison.

>> Morrison: If I may say, my motion says that it's really based on the staff report

-- staff recommendation, and I think that it works just as well on the pc recommendation, and so I'll look at it over the break and see if it needs any updates.

>> Spelman: I'll do the same.

>> Mayor leffingwell: And it appears to be a good time to start that break, if there's no objection, we'll put this item on the table until after we go into recess and come back approximately 6:45. If there's no objection. We're in recess. Perspicacious career. Clear

[11:36:10]

>> Mayor Leffingwell: Ladies and gentlemen, it is time for live music at austin city hall. Joining us today is cilantro boom box led by felix pacheko, their rocking latin based sound originally, organically integrates elements of hip hop, funk, electronica and traditional venezuelan music and described as vibrant harms and sense and are some of the characters of cilantro boom box styles. Let's welcome them and hear

from them. [Applause].

[ 🎵 Music playing 🎵 ]

>> maybe you can help us out. Okay. It is real easy. Come on! Hands up. Side to side. oh, come on! Up, side so side!

[ Music playing ] 🎵 🎵 🎵 🎵 🎵 🎵 🎵 🎵 🎵 🎵 🎵 🎵 🎵 🎵 🎵 🎵

[11:41:39]

>> Mayor Leffingwell: Okay. Cilantro boombox! [Applause] I just made the connection. That's cilantro hanging out of your coat pocket, suspect it? [Laughter] very good. It took me a long time to figure that out. What is that? It could be cilantro. So now tell us a little bit about yourselves and how people can find your music, your music and where they can find you and anything else self-promotion wise?

>> [Indiscernible - no mic].

>> We are celebrating tomorrow, actually, and we have a new song. We just played. It is available in itunes and come by tomorrow and we will be celebrating and partying and having fun, all of us people smiling and having a good time.

>> Mayor Leffingwell: Greet. Do you have a website that people can find out about you.

>> Cilantro boom box.Com and if you go there, you can get the first download for free and make sure to pirate it, and give it to everybody.

>> Mayor Leffingwell: That's great. Be it known that the city of austin texas is blessed with many talent whereas many of them have musical genre and whereas our music scene thrives because austin audience supports good music by legends, local favorites and newcomers alike and whereas we are pleased to showcase and support our local my situations and I therefore, lee leffingwell, mayor of the city of austin, texas, proclaim may 1st, 2014, as cilantro boombox day in austin. Congratulations.

[11:43:43]

[Applause].

>> [Indiscernible - no mic]. [Applause]

>> how are you?

>> Hey, guys.

>> Mayor Leffingwell: So it's getting to be that time of year where we are going to start getting very concerned here in austin, texas, and central texas with wildfires, and we know from our recent experience how devastating those can be. A couple of years ago, we had significant wildfires all around the city of austin. We were fortunate inside the city limits that due to the diligent efforts of some of the firefighters here behind me, we never got anything that got out of control. But around us, it did, and as we all know, it can be devastating. So we want to refocus our attention on preventing wildfires, and the first step in that process is to present this proclamation to our firefighters, to inspire them to bigger and better things. Be it known that whereas the city of austin has a wildfire risk, and whereas residents in areas for a potential for wildfires can impact the risks and severity of wildfires and reduce deaths, injuries, and property losses through their preparedness efforts, and whereas proactive actions from a single individual or entire neighborhood contribute to a safer community when wildfires happen. And

whereas austinites can become champions through committing a couple of hours or an entire day to improving their property's defensibility and thereby helping our city become a more fire adapted community and therefore, i, mayor lee leffingwell for the city of austin proclaim may 3rd, wildfire awareness day and preparedness day for austin, texas.

[11:47:02]

[Applause] did you want to come up and say a couple of words?

>> Mayor I want to thank you and your council support, after the wildfires and you were so great with this wildfire division. What I have behind me are some of the talented firefighters in the region. These are wildfire experts and it is a reason we are so much better than we are now and mayor, I would like to indulge for a minute, I would invite justice jones who is a wildfire community coordinator. Justice.

>> Thanks. In our city, wildfire is everyone's fight but in order to join in that fight you need to know your role. To celebrate wildfire preparedness day, we are hosting a workshop saturday may 3rd to empower our residents and the partners against wildfire and design solutions in communities we can use to reduce our risk of wildfire as it remains a fight that is can't factor in the city of austin. 45 percent of our population is places at risk for that wildfire so I would like to get the and public's assistance in helping with wildfires so that when the next one strikes, we are able to win the fight, and the community is able to withstand the impacts of the wildfire. Thank you. [Applause].

[11:49:27]

>> Thank you very much. My name is jerry sonders and with the environmental protection agency in texas and chief of the water enforcement branch. What I am here for is to thank the city of austin and austin utilities group for being our partners. We have been blessed over the last ten years to have an opportunity to work with the city, as well as the utility department in providing

-- they really have been sponsoring on our behalf, capacity maintenance and operation conference, and what that means is that you folks are at the forefront of being able to identify sensors in overflows and sensors in collection system and as a result of that they will be bold enough to step forward now for ten years and provide and sponsor a conference, both of their time, their money, their efforts here in austin and have

-- and recent years we have had over 400 attendees throughout various utilities in the state, they have joined the states and have really helped us in terms of spreading information to better protect waters of the state as well as the united states from sewage contamination and in doing it in a cost effective manner. It is for these reasons that I would like to present a plaque to the city of austin, austin water utilities and mostly to the mayor and to raj and chris here with austin water utility and the plaque says, all this for the city of austin, for maintenance operation and maintenance workshop in appreciation and recognition of your diligent and creative commitment

-- this was dated last summer, we were delayed getting down here. We had a few budget issues you may recall. [Laughter] but anyway we really appreciate what the city of austin is doing and your support as well, mayor. Thank you very much.

>> Mayor Leffingwell: Thank you. [Applause] coleen

[11:53:12]

>> Mayor Leffingwell: It is a great pleasure to be here tonight with the sons of anarchy from austin, texas, one of my favorite tv shows. [Laughter] you guys could be extras in that cast, really, but really, we are very proud to have you here to talk about motorcycle safety, motorcycle safety awareness. We do get a few motorcycles through austin, texas, rot riley comes through. They love my street, by the way, and I love the music of those motors going through, too. It is my pleasure to present a proclamation to you. I think we have three of them for your three different groups and so you will tell us about the three different groups in a minute. Are you going to be the spokesman?

>> I will be the spokesman.

>> Mayor Leffingwell: So there is four proclamations but I am only going to read it once was they are all the same. Is that all right?

>> Absolutely.

>> Mayor Leffingwell: Be it known whereas motorcycle cyclists are relatively unprotected and, therefore, more prone to injury or death in a crash than other vehicle drivers, and whereas all those who put themselves behind the wheel are responsible for being aware of motorcyclists regarding them with the same respect as any other vehicle traveling our highways. And whereas, it is the responsibility of riders and motorists alike to obey all traffic laws and safety rules. And whereas we encourage all austinites to do their part to increase safety and awareness in our community and for motorcycle riders and motorists to give each other mutual respect they deserve. Now, therefore, I lee leffingwell, mayor of the city of austin, texas, do hereby proclaim may 2014 as motorcycle safety awareness month in austin. Congratulations, guys. I know you will do a good job of promoting safety.

[11:55:13]

[Applause] so are you one of the recipients, what is your group?

>> Cycle stylz.

>> Mayor Leffingwell: Cycle stylz. Who is leading the other groups.

>> Alaverez.

>> And max steele.

>> Okay. Theirs is your group. Do you have an

--

>> do you have a name.

>> Ken did riders.

>> Kindred riders.

>> You can say something.

>> My name is john johnson, I want everybody to know may is the month of motorcycle safety awareness. We can't really do a whole lot as far as, you now, telling people not to text and drive but I think it's pretty self-explanatory. Any time you look down at your phone, you aren't paying attention to motorcyclists. We really just like to get that out there. Let everybody know that, you know, we are watching you before you watch us. We have

-- we would like to have more education and txdot and stuff like that. That's down the road, but we just wanted to get it, you know, out there that, you know, may is the month of being aware, and, yes, that's pretty much it.

>> Mayor Leffingwell: Great. [Applause].

>> Mayor Leffingwell: In that case, let's take a picture.

[11:57:50]

>> Tovo: Good evening, I am council member kathie tovo and it is my pleasure to introduce the next proclamation for several of your terrific staff from health and human services. Just yesterday, in fact, in the austin americans statesman, there was an article about the rise of preventable diseases right here in travis county, and so this next proclamation really speaks to the importance of immunizations and the work that our city and our county do to really spread that word and to advocate and educate our families here in the region. Be it known whereas giving babies the recommended recommendations by age 2 is the best way to protect them from 14 serious childhood diseases and whereas currently the u.S. Has the safest, most effective vaccine supply in its history, and whereas vaccine preventable diseases still circulate here and around the world, so continued vaccination is necessary to protect everyone from potential outbreaks. Even when diseases are rare in the u.S., They can be brought into the country, putting unvaccinated children at risk. And whereas people unvaccinated, diseases like whooping cough and measles do return and whereas during national infant immunization week week, we ask people to make it a priority and to talk to families about protecting their children by vaccines and so I therefore, kathie tovo, a council member of the city of austin of texas, do pronounce may 3, 2014, as national infant immunization week in austin. [Applause].

>> Hi, good evening, I am coleen christian with the city of austin immunization promise and national infant week is a great way to celebrate successes of early childhood immunizations. Vaccines are the biggest public health advancement we have had huns of years. They not only -- in hundreds of years and they not only protect the child but the community from spreading disease. Immunizations can't work without your help. The most cell nurseble need your help and er r physicians and others in your community to make sure they are appropriately immunized a and we need to thank the champions for helping them stay healthy. And, ms. Tovo, you with on of those champions.

[12:00:22]

[Applause].

>> Tovo: The next proclamation is in recommendation of mental health month and children's mental health awareness day and I appreciate all of you who have gathered here today to be a part of this. Be it known whereas one in five children in our community regardless of race, ethnicity or religious background is affected by mental illness, and estimated two-thirds of them do not have the support they need to succeed, and whereas may 8 has been set aside as children's mental health awareness to raise awareness about children's mental health, reduce stigma and celebrate resiliency and whereas the city of austin supports the development and implementation of system of care to make sure youths and families have the best care to build on their strengths and meet their needs and we urge all members of



the community to learn what good mental health needs and to support appropriate and accessible services for those who have mental illness. Now, I, therefore, Kathie Tovo on behalf of the Mayor Lee Leffingwell, Mayor of the City of Austin, Texas, do hereby proclaim, May 2014 Mental Health Month and May 8th, 2014, as Mental Health Children's Awareness Day.

[12:02:25]

[Applause]

>> Tovo: Thank you and I would like to invite Leshawn to say something.

>> On behalf of Children's Mental Health Partnership we thank you for your support and acknowledgment of children's mental health in your community. Thank you for proclaiming Mental Health Day and making May Mental Health Awareness Month. Mental health is essential to the health and well-being. Serious emotional and mental health disorders in children are real and treatable. The families deserve access to services and support that are family driven, youth guided and culturally appropriate. Their voices are valuable assets in determining effective services and treatments. Again, thank you for your time and for your support. [Applause]. Christianson,

>> Morrison: I think that everyone can agree that the great neighborhoods we have in this city are really the building blocks of what makes Austin such a wonderful city because they are our community and obviously we have great diversity in our neighborhoods and some of them have been around a long time and some of them have been around not so long but we are here today to celebrate one that has been around for 100 years, which is pretty amazing. It's the Old Enfield neighborhood and so I am very pleased to welcome Marlene Romanzack and to present this proclamation. In honor of the anniversary it says be it known whereas Old Enfield neighborhood is bounded by Peace Park, Windsor Road and Enfield Park and Mopac, it was one of the first places downtown subdivided by the past family escape and whereas streets bear neighbors of the past ancestral home of Enfield, Connecticut including Woodland, Hartford and others and the past names, and whereas the heart of the neighborhood is home of Past Mansion and home of two Texas senators and visited by Will Rodgers and Elizabeth Nay and other historic houses include those of Mom and Pa Ferguson, Roy Butler, Adam from Adam's Exdirect and so I,

[12:05:47]

>> Morrison: Do hereby proclaim May 4, 2014 as Old Enfield Neighborhood Day in Austin, Texas. Congratulations. Marlene Romanzack.

>> Wow, she said everything. We are so excited to celebrate the 100th anniversary of the city's largest intact master plan community, Infield, it was developed under the city's beautiful movement which swept the United States in the 1900s. Our neighborhood is about 400-acres and the boundaries, you explained. It is a great example of the intact eclectic style homes designed by architects around the United States. The focal point Peace Mansion known as Woodlawn was developed for Gene Shaw and another great part of us is Peace Park, the second oldest park in Austin and I want to thank Laura for your continuing efforts on preservation efforts. We want to protect neighborhoods and neighborhoods like ours. We lose our home, we lose our history and council members like.

>> Morrison: Laura Morrison have been champions for that and we thank you for that.

>> Morrison: Thank you, marlene.

[12:08:19]

>> Hi, there, I am council member chris riley and this is one of my favorite proclamations for the year because we are here to celebrate the beginning of bike month here in austin, texas. This is actually a national observance and we celebrate in a big way in austin. Austin is one of the leading cyclist cities in the country. We have wonderful cycling community with awesome advocates and advocacy going on and this time may 1st, it is time to step up and recognize that and celebrate the time that we are facing over the next month. I will start it off by reading the proclamation I am presenting on behalf of the mayor and the city council. Proclamation reads as follows. Be it known whereas the bicycle is an economical, healthy, convenient and environmentally sound form of transportation and an excellent tool for recreation and enjoyment of austin's scenic butte and whereas creating a bicycling friendly community has shown to improve citizen's health, well willing and quality of life and whereas bike texas, bike austin, the league of american bicyclists, schools, parks, police departments, public health districts, hospitals, companies and civic groups will be promoting cycling during the month of may and whereas these groups are also promoting public greater public awareness of bicycle operation and safety education in order to reduce collisions and necessary. Now, i, therefore, I lee leffingwell mayor of the city of austin do hereby proclaim may 2014 as national bicycling month. May 1st to 72014, bike to eat worth and may 14, bike to school day and may 16, as bike to workday and I want to go into that further but first I want to introduce a colleague on my council who has been a real champion on that, doing it well before I got to council, my colleague, mike martinez. [Applause]

>> Martinez: Thank you, council member. I just want to invite everyone out to bike to workday on may the 16th, as you heard council member riley. That is one of the dates he named in his proclamation, so for the 8th year in a row, I am proud to

-- my office is proud to be the sponsor of bike to workday. Since council member riley joined the city council he has been there with us every year as well. It is a fun day to ride in. We have a breakfast station here with some juice from juice land, really good organic juices. Breakfast tacos. And just kind of a way to gather and join in with the cycling community in the morning, so we encourage everyone to come down to city hall. We will have a breakfast station here as we have every year for the last 8 years, and chris and I

-- chris ride his bike in every day. It is a little difficult for me getting my 16 year old and 20 month year old to school on the bicycle, but I have regularly started using b cycle for the day for my meetings and errands downtown because it is very convenient and you don't have to worry about parking, you just take the b cycle. And so I really enjoy that and looking forward to having everybody here for bike to workday on may 16, city hall. Mr. Riley.

[12:11:37]

>> Riley: Thanks, I want to touch on a few highlights for the month ahead and let you know about resources are out there. If you are somebody who thought about biking in austin and haven't done it yet. This is the time to test those waters and get serious about it. There are events going on all month. If

you find yourself, hey, maybe I will try it out this once, any kind of ride you are interested in, whether biking to work or riding in the country, any biking, now is the time to check it out. A couple of references to be aware of. If you go to bike to work austin.Org, you will get a full list of activities for bike month. Just click on bike month and it will give you events for the whole

-- almost every day. There is classes on bike maintenance. There is classes to take on cycling in the city. There is family bike ride. Just any kind of ride you might imagine. One of the things you will see on there, right up towards the top is a very exciting event that's happening this weekend, may 3-4. And that's, for those of you who might have an interest in the future of cycling in austin, it is a very exciting time, for not just this month but the future going forward. We are in the midst of

-- actually we have just completed a merger of our two leading cycling organizations. We've had two great cycling organizations for many years here in austin, both the austin cycling association and bike austin and they just, as of last night, I am told, actually completed a merger that has been in the works for a long time. We are pleased to be joined tonight by the new president, as of last night, of the austin cycling association, eric benz who I will introduce in a minute, but if you want to join in, in talking about exactly what kind of role that this new merged organization can have in terms of promoting bicycling in our community and every aspect of the future of biking in austin, come on down to the summit that's going on this weekend and you can read all about it at bikeaustin.Org. It is going on saturday and sunday this weekend and we invite anybody interested in biking to join us for an open discussion about biking. Just a couple of other things I will mention. We still have a bike buddy program going on. If you google bike buddy austin, you can see others who are both experienced and inexperienced cyclists who are looking for partners to bike with. So if you never had a partner. If you are nervous about biking to work and want to see if somebody else is in your part of town going to work, you can find it at bike buddy and contact the person and have somebody to ride with. There are all kinds of ways to get into biking, so I encourage you to think about it this month. The weather is great and you will have an awesome time. With that, I will go ahead and introduce eric and we are joined by a couple of other folks that I will introduce after eric speaks for just a minute. Eric.

[12:14:35]

>> Thank you, I am eric benz representing bike austin, your local source for advocacy and encouragement and education in austin. We are helping the city of austin by planning and running the bike to work on may 16 and also hosting the bike month calendar on our website. Thank you so much for the proclamation and recognizing may as bike month. Thank you. [Applause].

>> Great, thanks, eric. Another thing you will see on the list of events going on this bike month is right up at the top, the very first week starting today, may 1-7 is bite to eat week, sponsored by the give hollow foundation and we have somebody here to talk about it. I will introduce them now.

>> Bike to eat week is an initiative program set up by the gasala program and local businesses to help them with bike to eat, they will help provide a meal in the restaurant to help enhance the community. We all know bikes mean business and partnering bikes up with businesses is good for everybody. That's just one of the things that our foundation does. We are a 501c3 based here in austin, texas. And our primary mission is developing youth riders, doing young rider education to help kids get bicycling into their daily lives. You can find out everything you need to know about bite to eat week at bitetoeat.Org

and found out the information at gasalafoundation day-to-day org. Thanks.

>> Thanks. [Applause]

>> Riley: And lastly joined tonight by a longtime friend of bicycling in austin, mr. Eric anderson. Many of you in bicycling have known him for a long time. He was one of the main inspirations on our cross town bike way, now known as the "lance armstrong bike way." Would you like to say a word?

[12:16:47]

>> Thank you, chris. For eye candy here, this is the original rendering of craig nasso, at cafe mundy a yellow jacket social club and I do hear that 786 will be running really soon. Looking forward to that. I just returned from three years in colorado. I got chronic pain management up there that I did not find here in texas. Another story. [Laughter] also, I hung with my dad who is 84 years old this april and we had a great 3 years together. He's now living with my oldest brother in virginia. Just flew in to town or drove into town, my first destination of course was the pfluger bridge and I saw the sunset four weeks ago sunday. I am so excited about the merger of bike austin and aca, with our new 10-1 city council and everything that is going on, the dramatic increase in bicycle modal split and what I have noticed, not being in austin 3 years, and this will be my parting shot

-- and we can talk a lot about other things later

-- there is an important barometer of how bike friendly your city is, okay. Now fort collins is a very bike friendly city, as is boulder, portland, minneapolis, et cetera. When I got my start in bicycle advocacy here in austin, texas, in '97, the modal split was one half percent by simple use. It has gone up dramatically, particularly in the last 5, 6 years. But the barometer is how many women are cycling. I only have my anecdotal eyes on the street, but I will tell you, the number of women riding has dramatically increased over the last five years and we have mike and chris and our city council and our very dedicated city staff to thank for that. With the bike austin merger and our partnership with the city, we can do great things and the people from portland are already scared about,3 austin, texas.

[12:19:17]

[Applause].

>> Riley: Thanks, eric, and I just want to close by extending out a thanks to all of our dedicated bike staff at the city of austin and along with all of the people involved with the bike organizations that we have mentioned that are working so hard to make austin a bike friendly community. I hope you take the opportunity this bike month to get involved, get on your bike, and be safe. Thank you. [Applause].

[12:25:03]

[City council is in recess].

[12:50:33]

>> Mayor Leffingwell: We are out of recess, and we will resume, take item number 72 off the table.

Continue discussion. There is a motion on the table for the planning commission recommendation with a second. Council member morrison.

>> Morrison: Thank you. I know we have probably more substantive issues to talk about with regard to fair notice but I really would like to bring forward my notion to start because I think, for me, it clarifies the last hour of conversation we just had, and basically it says that this concept of fair notice application continuing project, we don't really need that. Because the only place it was referred to was under the vested rights

-- and so I would rather take the guts of what is in that section because it adds so much confusion to the conversation and put it right into the fair note

-- excuse me, the petition, the vested rights petition section, and then that leaves under fair notice application, that just leaves the fair notice application, the new project fair notice application, and so that's basically what this notion does that I passed out.

>> Mayor Leffingwell: Is this an amendment to

--

>> Morrison: It is an amendment to the planning commission, despite the fact my motion sheet says it is really to march 12 staff recommendation. I believe the same works for the planning commission recommendation.

>> Mayor Leffingwell: So an amendment to the motion on the table?

>> Morrison: It is an amendment to the motion on the table. And the only thing I am wondering

-- might ask brent a question because we do have

-- I think we are okay

-- okay, it still says new project in here, so my notion is to do that listed here and I would say that where we used to have fair notice application continuing project listed as

-- under vested rights petition, now we are just going to say specifically that you have to have the development plan on a form that establishes the scope and intensity of the proposed development and land use. So it just takes that language and moves it over. And if I just ask staff to come up and it's my understandings this nonsubstantive. It just sort of reorganizes and relabels things. I wonder if you could provide your opinion on that.

[12:53:32]

>> Mayor Leffingwell: Before you start, do you mind, council member, I would like to have a clarification from council member spelman. Your motion was to close the public hearing and approve on first reading. Is that correct?

>> Spelman: That sounds like a very safe thing to guess.

>> Morrison: I am good with that.

>> Mayor Leffingwell: All right. Go ahead.

>> Yes, it is a nonsubstantial

-- nonsubstantive change in the terminology of the ordinance.

>> Morrison: Thank you. That's my motion, to amend the main motion.

>> Spelman: I have a question before

--

>> Mayor Leffingwell: Council member spelman.

>> Spelman:

-- I had a question for brent. Might as well be you since greg is sitting down and looking very comfortable. The amendment on the table would remove so far as I can tell, all mention of old napkin, fair notice application for continuing project. Is that an issue for us here?

>> No, because as council member morrison said, she struck the terminology but took the guts of it and put it into the requirements for a contents of a vested right to a petition. So when you submit a vested rights petition, you would have to provide us essentially the meat of what we

-- we are calling an old napkin earlier. So it is a nonsubstantive change in terminology.

>> Spelman: Okay. The only other issue that I provisionally have is this is spelling out in great detail things that are typically covered by administrative rule. Is that an issue for us here?

>> I mean, the change that's being proposed doesn't

-- doesn't

-- it just takes what was previously in one part of the ordinance and places it in another, and it

-- I think it still leaves the director discretion in terms of what the forms will look like, but it uses some of the statutory language to sort of guide and inform his process for developing those forms.

[12:55:41]

>> Spelman: Okay. Mayor, that amendment is friendly to the maker of this motion.

>> Mayor Leffingwell: Since council member morrison seconded, I believe that is incorporated.

>> Spelman: Mayor, I have another thing to consider. I handed this out before the break. It has a few more moving parts than council member morrison's amendments, so let me walk through them in bite size pieces, of which there are six. The first, I believe, responds to some concerns raised by mr. Bunch. His original proposal was that the director on his vested rights petition decision include findings of fact and conclusions of law. I am persuaded conclusions of law have additional side effects, which would get us into trouble in any subsequent litigation. In part, because it is unlikely that the head of the planning department is likely ever to be a lawyer or a judge, which I think inclusions of law really ought to be best reached by a judge and not an administrative official, but this does say "findings of fact" and that's the first amendment I make, that we replace the paragraph 25141 to include findings of fact to make it as explicit as we can.

>> Mayor Leffingwell: Is that acceptable, council member morrison?

>> Morrison: Yes.

>> Mayor Leffingwell: It is incorporated.

>> Spelman: Second point on project consent agreements, the issue here is that project consent agreements ought to be limited to truly exceptional cases, and the current phrase in the claim is the claim in vested rights. Anybody can make a claim if they want to. It is easy to do that. So instead of a complain, it must be reasonable, so I say vested rights which have been verified or reasonably likely to exhaust for the project.

[12:57:44]

>> Mayor Leffingwell: So that's acceptable? I think there is a typo there.

>> Spelman: Yes. There is actually a typo in the summary of the motion but there is not a typo in the text of the amendment. Reasonably likely.

>> Mayor Leffingwell: Good.

>> Spelman: Yes. The third is responsive to the staff's concern about site plans active at the time of project expiration current. Current practice, it's complicated but I understand what staff would like the future practice to be is if a site plan is active at the time of expiration, that the developer be allowed to pull building permits pursuant to that site plan up until the expiration of a site plan itself. That means if we adopted a flat nine years or flat any other number of years for a project to continue, that if the site plan were pulled before the time of expiration and were otherwise to continue beyond the time of expiration, that the developer would be allowed to pull site plans

-- would be allowed to pull building permits even after the 9-year period has expired. I have a question about that, if I could, and I think maybe Greg would be the right person to answer that question. Greg, I have listed this as an amendment, which I am suggesting largely on the basis of staff's belief that this is a really important thing to do. I wonder if you can explain to all of the rest of us why it's so important that we allow building permits to be pulled after the expiration date, just because a site plan is active?

>> Guernsey: If you recall, we had

-- an issue came up with project duration, where the project could expire before the permit would expire. It's very difficult for

-- for staff, for the development community, for the provider, the financial institution, to explain to them, that even though they have an active site plan and it says right on its face, it is good for two more years, I am going to reject the building permit to construct the building on there unless they meet current code. I am very fearful of that. That was just vetted, and so what I am trying to make sure is that we align the dates for the project and the permit that it relates to, to be one in the same. And so if the site plan, let's say, were approved in the 8th year, and there was a 3-year life to the site plan, during the life of that site plan, I could go pull the building permits I need to go finish my project, even though it might go beyond the 9th year.

[13:00:27]

>> Spelman: In addition to leading to an uncomfortable conversation, which we all have some of probably every day, I would presume lead to some litigation risk on the city's part?

>> Guernsey: Like probably law to actually speak to that, but certainly there is probably an issue raised if the permit is still alive and the project has died. I think that could cause some confusion and about litigation, I will leave that to my attorneys.

>> Spelman: Your attorney is still sitting down and does not appear to want to answer that particular question. [Laughter]. [One moment, please, for change in captioners]

>> it would be a new project subject to current code. So it only sort of extends the project life to the extent you have an active construction approval.

>> Spelman: So there's a limit on this because a site plan would not necessarily cover the entire project, at least as it was originally envisioned.

>> That's correct.

>> Spelman: Okay. Mayor, I would submit this amendment.  
>> Guernsey: And council member, that includes both the director  
-- the director's approval, but if the commission is a part of that, then it would also ride with the  
commission, the extension they could grant as well.

[13:02:29]

>> Spelman: That would be part b.  
>> Guernsey: That would be part b. Two parts.  
>> Spelman: A and b are both included in my suggested amendments.  
>> Morrison: I can only accept one of them as a friendly, so if we could split them up and just look at a  
and then b.  
>> Spelman: Okay. Let me submit part 25-1-551 d part a, and that's friendly?  
>> Morrison: Yes, and just to clarify, that's the part that says that when the nine years hits, the site plan  
doesn't drop dead.  
>> Spelman: Right.  
>> Morrison: It continues to live until the end of it.  
>> Spelman: Okay.  
>> Morrison: Yes, I would  
-- I would consider that  
-- I see some consternation on the diocese first.  
>> Mayor Ieffingwell: Council member tovo.  
>> Tovo: Yeah, mayor, if I could. I have an amendment I've passed out that I'd like to just refer to before  
we vote on. And this is the one on page 8. Which offers a slightly different approach. Council member  
spelman, I agree with you that the project should not die if there's an existing site plan. Where I do have  
concerns, though, is if the site plan can then be extended, as you've provided for in provision b, because  
that  
-- in addition to being able to get a director's  
-- I'm sorry. So you should have gotten a very small  
-- a set of four  
-- everybody got, let's see, four or five. 6, 8?  
>> This is the one on page #. I don't have one.  
>> I'll get you another copy. I'm passing down another page 8 to council member morrison.  
>> Morrison: I have 3 and 4.  
>> Tovo: You should have gotten five pages from me, but in any case. So the upshot is that I think it's  
absolutely reasonable to allow what the staff has suggested, which is for that site plan to extend beyond  
the planning commission's cap. However, because there are provisions in the code that allow that site  
plan extension, and it's my understanding that the land use commission can actually extend, and it's  
within their discretion to determine a time limit, that we could have site plans really extending  
-- extending enough years that it really, I think, changes the nature of what the planning commission had  
intended. And so I would propose that we do accept a, if and only we also say your site plan lives on but  
you don't have the ability to extend it.



[13:05:06]

>> Mayor leffingwell: So we can go through this

-- this is going to be very complex. I think if we don't go through it in an orderly way, it's going to be very confusing. /So what we have now is an amendment that's friendly that's been accepted as friendly. That doesn't mean that later on when you get the floor you can't go back and amend what has already been done, but I think it's better just to make sure we know what we're doing, that we

-- we do it that way. This amendment has already been accepted as friendly.

>> Tovo: But I guess, mayor, my point is that I would just like the sponsors to consider that

--

>> mayor leffingwell: Yes, they consider it and you want them to reconsider it.

>> Tovo: That doing

-- doing the one without a clear understanding of what we're going to do on the other has the effect of extending

-- could have the effect of extending well beyond the nine years.

>> Morrison: Mayor?

>> Mayor leffingwell: Council member morrison.

>> Morrison: Could I suggest that maybe on any of these amendments, if anyone would like to have a vote on it, rather than the friendly process, that we have a vote? And I'd be glad to take a vote on this and then we can have specific discussion about it.

>> Mayor leffingwell: All right. So you

-- you do not agree with it as a friendly amendment and we'll go to the procedure of voting on every proposed amendment.

>> Morrison: No, mayor, I said

--

>> mayor leffingwell: If anyone disagrees.

>> Morrison: I wanted to make

-- like we've done with the budget, if there's any objection we would take a vote on it.

>> Mayor leffingwell: I think that's an acceptable way to go. So now we're talking about

--

>> morrison: A.

>> Spelman:551 d, subpart a. Let's just talk about d subpart a first of all.

>> Mayor leffingwell: So now we have a proposal to approve council member spelman's version of d subpart a. I will second that, and we'll vote on that before we go on.

>> Morrison: I guess the question is, there's

-- I think there's a question in the air, and that is can we decide on that really independent of whether or not we're going to cut off a daisy chain in the end? That's really the question.

[13:07:11]

>> Mayor leffingwell: Well, that's an argument for or against what's on the table.

>> Morrison: Right, and I guess from my point of view, I can think of those separately, so I'm  
-- I can support the motion.  
>> Mayor leffingwell: Well, let's take  
-- let's take a vote, as we decided. All in favor of council member spelman's amendment  
--  
>> tovo: Mayor  
--  
>> mayor leffingwell: For part a, say aye.  
>> Tovo: Mayor? I'd like another moment of discussion before we vote, please.  
>> Mayor leffingwell: Council member tovo, go ahead.  
>> Tovo: I guess I would wonder if we could amend the proposed amendment to include the provision  
that I have distributed so that we would have some clarity about  
-- because I can fully support what is in a. I think it's reasonable and it makes sense. However, if it  
doesn't include  
-- if it doesn't include an end to what could be an endless daisy chain, then I can't support a. Then I do  
want to go with the planning commission's initial recommendation.  
>> Mayor leffingwell: I must say, you know, we've been through this a couple times in the last few  
meetings, and it just gets very confusing. So I think it's better if we go step by step by step, you know,  
and build this as we go along, and then you can come back and see what you've got and see if you want  
to offer another amendment.  
>> Tovo: I appreciate that, mayor, but in the interest of better policy I'm just suggesting that if there is a  
procedural way for me to amend or to suggest an amendment to council member spelman's  
amendment, then I would like to do so, and perhaps that's a robert's rules of order question best  
answered by our attorney.  
>> Mayor leffingwell: So we'll vote on each individual amendment, and if you don't like it, vote against  
it.  
>> Tovo: Well, I think  
--  
>> mayor leffingwell: All in favor say aye.  
>> Aye.  
>> Mayor leffingwell: Aye. Opposed say no. Are there any nos? That passes. That's incorporated as an  
amendment.

[13:09:18]

>> Spelman: Mayor, may I continue?  
>> Mayor leffingwell: Please.  
>> I suspect this is the part where we're going to get to a disagreement. So I won't try and make this as a  
friendly amendment. I'll just try and make this as an amendment, and I'll anticipate that there will be an  
amendment to my amendment coming from council member tovo  
--  
>> mayor leffingwell: We're not going to do that. We're going to vote on the amendments.

>> Spelman: Just one amendment at a time? Yes.

>> Let me put forth the amendm I have in mine and that is to allow to the capacity of the director or land commissioner to extend a site plan associated with the project. Amendm amendm

-- proposed by council member speaking man for d for subparagraph b and I will second that. Any discussion? Council member morrison.

>> Morrison: I'm not going to support this motion. I think that, you know, this is the dreaded daisy chain where a site plan can essentially live forever, depending on certain circumstances. And I think that when we get to managed growth agreements, I am going to be supportive of a way to in circumstances, have the council consider, when a project is about to expire and a recession has hit or something like that, that we could

-- we could address that through a managed growth agreement, but I think it's very fair and we've been advised that we are very much within our authority to actually have expirations of projects. And so I want to make sure that I'm going to support what's going to come down the road as an option, and that is that once you've passed that nine years, you don't get any more extensions. But if it's an extraordinary -- so that we can set the standard for reasonable time limits, but in extraordinary circumstances like there have been, and I've supported every single one of them that came forward to us in the past six years, that there will be a way to extend it with council consideration, and I think that's the appropriate way to do it. So that's why I don't support the situation with amendment b.

[13:11:33]

>> Cole: Mayor, I have a question.

>> Mayor leffingwell: Mayor pro tem?

>> Cole: Can I ask this of staff and then I'll ask council member morrison? Where is greg? So, greg, help me. In. A we put a limit of nine

-- in a we put a limit of nine years on the project, and then we have a mechanism by which we can extend those nine years through a managed growth agreement. Help me with the, quote, dreaded daisy chain.

>> Guernsey: Okay. On b, what is suggested is that under our normal circumstance there's a site plan, there's an administrative extension that's available, and so b allows for the extension by the director for a one year extension. The ordinance also has been changed, when you speak to extensions, that there is some progress. I've put significant infrastructure in. I put up a building, but the essence of that is that they've come forward in good faith, they've made progress, and the director can grant an extension. So I grant that extension. It would be beyond the ninth year. Then after that the applicant

-- property owner has the right to request another extension, but the director can't extend it, only the commission can. So that would go before the planning commission or the zoning and platting commission, and they could entertain an additional extension, which is not necessarily time set to a specific date. The commission has extended one year, ten years, I think the longest I've seen is maybe 20 years for some larger churches that have

-- don't necessarily have all the resources to build out as quickly as maybe a commercial company. So that's what that section, I think, is speaking of. And, in essence, what we have been doing by practice for years and years and years and years.

[13:13:39]

>> Cole: Okay. Let me ask mr. Lloyd to come and not give us an answer but give us an answer on the legal implications of this. We've been doing it for years. Do you any concern with us continuing to do this?

>> No. You mean granting extensions of site plans?

>> Cole: Yes.

>> No.

>> Cole: Okay. Thank you.

>> Mayor leffingwell: Council member spelman.

>> Spelman: Brent or greg, could you direct me where in this ordinance there are guidelines for the director in his decision to grant administrative extensions of a site plan?

>> Yes. At page

-- and I am referring

-- I know we have dueling drafts, but I'm going to refer to the march 12 staff draft, and in that document starting at page 15, there are site plan extension criteria. And in speaks to the situation where a site plan is still alive, but the project life for purposes of vested rights has passed. And under this provision an applicant could get a site plan extension. It's different from the normal site plan extension criteria in that it requires that the developer have done more to actually build out the site plan. In a normal site plan context where you're not building a grandfathered project, it's fairly low bar to get a site plan extension. It's really good cause, not a lot has to have been done. These were written in a manner to require more of the developer by way of actual construction activity.

>> Spelman: For those of us who are working off the pc version that is also on page 15 of 16 is also part 8.

>> Yes. And I don't believe there was any differences between the two.

[13:15:40]

>> Spelman: No. No, they're the same. So this would require a good-faith expectation the site plan would be construct, a tia would have been met, one structure on the site plan would have have to be constructed or a significant portion would have to be constructed. That's what you're referring to as forward progress on that site plan, not necessarily leading to building permit?

>> That's correct.

>> Spelman: Okay. Mayor, it seems to me that we have two ways of going about this. One of them is by allowing a

-- an extension of the site plan, which whatever its costs in terms of time, at least would be very clean and simple. We would understand exactly what site plan we're working with, the developer would not have to enter into any new agreements. The alternative is to go to an mga, if that's it, that's a whole new agreement that opens up frankly a whole new can of worms. It's less limited than a side plan, or could be less limited than a site plan, and it could start from not scratch. We're not talking about scratch in anything, certainly after an eight-year period, about you it could open up more opportunities than a

site plan would, and it seems to me if what we're trying to do is get a project clearly delimited from beginning to end, under very specialized circumstances for a an  
-- an extension of the site plan would be a cleaner and simpler way about it than requiring a developer to go off and get a whole new agreement.

>> Cole: Mayor, I have a question.

>> Mayor leffingwell: Mayor pro tem.

>> Cole: I have this question of council member morrison. You suggested that an mga was an alternative for a developer, and I know that you have supported several MGAs IN THE PAST. And can you tell me your rationale why that is a good alternative as opposed to an extension of the site plan?

>> Morrison: Yes, because I think that it's fair for us to expect, as a rule, for our projects to progress and to go through and to be done in nine years. That's sort of where we've settled. And I don't support having a project drop dead when nine years hits, and that's why I supported a, because that says if you're

-- if you got your site plan, then let's keep going and you go ahead and build it out and you can pull all your permits on that. But I also think it's fair to have an expectation, for the community to have an expectation, that there will be an end to projects unless there's a public discussion about it, unless there's high-level policy consideration of it, because what happens

-- remember why we're doing this is because we enact new ordinances that presumably reflect our values, and for instance, the heritage tree ordinance, right? And so we want to, and we have a fair

-- it's fair for us to expect, and we have the authority for us to expect, that eventually our projects are going to start complying with our new ordinances that reflect our values, and that's the goal, is how do we corral them and really move forward in that direction. And allowing the director to over and over again extend, and it could be 20 years, I just don't

-- I think that we need to set as a high bar and a high standard in the community that we have that expectation. I am going to support, by THE WAY, MGAs IN THE CASE Of what the staff has already in their proposal, that I know I'm coming in with a big project and I'm going to, from

-- from the very start, I'm going to come to an agreement with council about how long this project is really going to take. So we're just talking about guys that get stuck in a recession or something like that, and I think that's fair, and I think it's fair

-- I think it supports our community values to be moving in that direction. It's a high level, it's at the council level. We've only had to do that 19 times

-- 18 times in six years. 18 times. And I don't think that's too much to ask. One other thing. As I understand it, the managed growth agreements, all they do is extend the time. They don't open up the whole thing for a whole new discussion about what the project is going to be.

[13:20:02]

>> Spelman: Mayor?

>> Mayor leffingwell: Council member spelman.

>> If we are concerned about daisy chaining, and I understand the concern, this could go on for five to ten years and that's a whole 'nother story. As the

-- I think this is true in both pc draft and the staff draft, the director would have the discretion to extend

the expiration date only one time for a period of only one year. Is that correct, greg? This is on page 15 a 16 of both drafts we're talk about under part 8 section d.

>> Guernsey: Yes, in the staff draft I don't believe the commission made a provision for it in their

-- I don't believe the commission made a provision for it in their draft.

>> Spelman: I'm just looking at the commission version here, and it's identical to the staff draft. I'm just looking at the commission version, the staff draft did not have the one time only, that's right. No, it didn't

-- never mind. The version I'm looking at give gives you one time only one year only and I'm not going to suggest any revisions of that section of the ordinance.

>> Mayor leffingwell: And that is planning commission recommendation you're looking at?

>> Spelman: Yes, it is.

>> Mayor leffingwell: Okay. So I'm

-- I'm going to support the proposed amendment, because it's a long-standing practice and it makes sense. There's lots of reasons why you might need that extra year. We can all imagine that, and I don't think it's excessive. I don't think it promotes a perpetual extension. Council member tovo.

>> Tovo: Mayor, I need clarification. I have some questions for staff, but now I need clarifications from council member spelman. Are you suggesting that your part b is only going to allow a director's extension but not a land use commission extension? Because it was my understanding, and I didn't go back and check, but I thought the provisions in the code that are identified in b also

-- well, they do. They say, or section 25-5-63 extension of a relief site plan by the land use commission. Are you proposing striking that?

[13:22:08]

>> Spelman: I do not have in front of me 25-5-63 because that was not amended in either the staff or planning commission drafts. So I would have to go back and see if there are safeguards similar to those that are written in for the director's extensions for the land use commission extensions. I haven't seen that yet.

>> Tovo: But as I understand your proceedings, you are suggesting that someone would be entitled to both a director's extension as well as a land use commission extension?

>> Spelman: That is the text of my motion.

>> Tovo: Okay.

>> And just for clarity's sake, the provision which is not in the ordinance, because it's not amended, that relates to land use commission extensions, if you've gotten a director's extension, then you can go into the land use commission and ask for an extension. So unless council directs otherwise, which you can, but unless you tell us otherwise, you will

-- if you approve any of the ordinances that are before you, a land use commission extension will be available, the land use commission would use the same criteria as the director in evaluating whether to grant the extension.

>> Spelman: Is that in the original

-- in the current version of the land development code?

>> Yes.

>> Spelman: It is. So this just mirrors what we already have in the land development code, then?

>> Yes, insofar as once you've gotten a director's extension, you can go to the land use commission. And if you wanted us to include language prohibiting people

-- limiting them to only one-year director's extensions without having an option to go to the land use commission to get more time, we could do that. We just need you to be clear on the record, and we'll make that change.

>> Spelman: Let me get further clarification. I'm not sure I understood what you said. I'll wait. I was going to ask fred a question but he seems to be talking to greg. I can pull it up and see for myself, but you probably know off the top of your head, greg or brent, either of you, the current text of the section 25-563, which is extension of release site plan by the land use commission, does that language mirror the language amended here or does it simply allow for the land use commission to extend only if

-- only using the same guidelines as the director would have

--

[13:24:35]

>> it is a shorthand, and it says the land use commission. When you get to them for an extension, they look at it the same way the director does under those criteria. So

--

>> spelman: So further progress would have to have been made beyond that year's extension granted by the director for the land use commission to consider a further extension of the site plan, meaning a structure would have had to have been built since the last extension or further progress on the infrastructure would have had to have been mailed. Is that an accurate reading of what you're talking about?

>> Yes.

>> Spelman: So further progress would have to be necessary to justify the land use extension

-- land use commission extension .

>> Guernsey: Yes, and I think the concern I have really deals with the project mentioning the extension, which is found under 21-1-55 d, both on the staff version on page 10 of 16 that adds under

-- under the staff version, that paragraph a and paragraph b, which you have echoed, council member, on your a and b that you put in here. So that way if the site plan is extended, the project is also extended, so they go hand in hand and are not disjointed.

>> Spelman: Thank you.

>> Mayor leffingwell: Okay. Council member tovo.

>> Tovo: I have a couple questions. Mr. Wood, you were asked the question before about whether this provision gives you heartburn, and I just want to clarify your answer. I assume that you're talking from a legal perspective, that there's nothing legally wrong with provision b.

>> I'm always speaking from a legal perspective, yes. [Laughter]

>> tovo: Okay, and I asked that question because, you know, I share the concerns that council member morrison talked about, what were ultimately

-- well, let me ask you a question. Is there anything that would prevent the land use commission from, say, extending the site plan for 20 years?

[13:26:41]

>> Under the text of the land use commission extension criteria in 63, which is not before you because we're not amending it, no. The people can go

-- once they've gotten a one-year

-- the director is limited to one-year limited administrative extension, then you can go to the commission and ask for any length of time.

>> Tovo: That, let me say, gives me heartburn, what we're talking about, I heard one staff member say in this context that we have people who come and claim grandfathering back to the Ibj administration. So if what we're trying to do is make sure as many projects as possible comply with our current code, this provision takes us far away from that, because we do have a land use commission, that yes, hopefully will use that kind of criteria and be careful about it, but they ultimately have the ability to extend a site plan as long as they want. And that really, I think, is not consistent with our

-- with our values and our codes here. And so we are striking a good balance by allowing those projects a reasonable amount of time to finish, the ability to live out their permits, but not to extend, you know, past

-- past a reasonable amount of time, without coming into code. I mean, anybody has a right to continue their project under current code. This would undo that.

>> Spelman: Mayor, one final point, if I could.

>> Mayor leffingwell: Council member spelman.

>> I'm now looking at the text of 25-5-63, and as promised by our staff, the land use commission may extend the expiration date if the land use commission determines a request complies with requirements for extension by the director under 25-562, which we're amending here. So further progress would have to have been made on the infrastructure or another building would have to have been built under the current site plan to justify any such extension. It also mentions in part d of 25-563 that an interested party may appeal the land use commission's decision under this section of the council. If somebody believes this was unfairly granted they could appeal to the council either to get the extension or to stop the extension if they thought it was improperly granted.

[13:28:56]

>> Mayor leffingwell: That's an important point. So I think we're ready to vote. All in favor of the amendment with regard to d subparagraph b say aye.

>> Aye.

>> Mayor leffingwell: Aye. Opposed say no.

>> No.

>> Mayor leffingwell: So I believe the nos were council member martinez, tovo and morrison. That passes on a vote

--

>> cole: No, I voted no.

>> Mayor leffingwell: You voted no?



>> Cole: Yes.

>> Mayor leffingwell: That motion fails on a vote of 3-4 for martinez, tovo, morrison and cole voting know.

>> Spelman: Mayor, allow me to come up with my backup plan, which is the implication to extend the site plan associated with the project may be approved in corners with 25-562, extension by relieve site plan full stop and remove the land use commission entirely.

>> Mayor leffingwell: Okay.

>> Spelman: One time

-- one year only, one time only by the director, no land use commission extensions allowed.

>> Mayor leffingwell: All right. I'll second that proposed amendment. Discussion? Council member tovo.

>> Tovo: A quick question for our legal staff. Under existing code there's no ability to go back and ask the director for another extension under this particular citation?

>> That's correct.

>> Tovo: So it would only ever be one time, one extension?

>> Yes.

>> Mayor leffingwell: Further discussion? All in favor say aye.

>> Aye.

>> Mayor leffingwell: Opposed say no.

>> No.

>> Mayor leffingwell: Passes on a vote of 6-1, council member morrison voting no.

>> Spelman: Mayor, if I may?

>> Mayor leffingwell: Go ahead.

>> Spelman: I've got three more but I'll make them quick. On managed growth agreements, I have two amendments. The criteria from the director to recommend approval are set forth in 25-5-153, on page 11 of the planning commission draft. The way this is written is criteria would prohibit recommending mga under a whole bunch of criteria, if it claims grandfathering, if it's located in the barton springs zone, if it requires variances, and we have heard SEVERAL ACCOUNTS OF MGAs Which violate those restrictions but might be very good ideas. THE IDEAS FOR MGAs

-- ALL MGAs HAVE TO BE APPROVED By the city council. They can't be administratively approved. That means that if we eliminated section b of 25-1-553, said, you want to apply for a managed growth agreement, you can apply for it and city council can say yes or no, that would allow the council to make a decision as to whether or not an mga is properly granted or not. This is going to put a little bit more work on the city council taking some of that administrative authority from the staff. On the other hand, I can imagine a lot of cases under which this would be absolutely appropriate, if, for example, there was a managed growth agreement which did not quite come up to current code but did match most of current code, and which later on I'll have a suggestion as to what would be an appropriate standard for an mga to deserve a positive recommendation by the director. But it seems to me that if it were good in all other respects, if it were in the right place, if it really were a project which took longer to build than expected, it was a multi-phase project in a town center, for example, and it resulted in a development that is stapti substantially environmentally superior to what we could expect, it would make sense for city council to see it, even if it didn't meet a threshold of acreage, even if it did not imagine current code in all respects. So the text of the amendment is given here, basically what this does is allows you to put

in an mga. The director, however, would make a recommendation on the basis of the extent to which the project complies with the current regulations of the title. If you're almost in compliance with current code at the time you submit an mga, that would be a positive. If you absolutely do not, that would presumably be a large negative. And then whether the project is going to require a longer period of time, it's my understanding that is the best we can do at trying to describe a multi-phase project. If you start defining phases, things get incredibly complicated. It's substantially

- furthers goals and poles of policies of imagine austin comprehensive plan. That seems to be the best we can do with that mythical town center. Rather than defining a town center, let's say it's consistent with a comprehensive plan. And I would arc it has to result
- argue it has to result in development of superior environmentally. Absent the word substantially I can imagine someone say I have an mga is better in some respects, and because of that you have to be willing to take it. And I don't think we should have to
- the director should have to make a positive recommendation on something which is better in some respects and worse in others. It should just be plain better. And things "substantially" is the best shorthand I could think of to capture that basic idea. So this would allow us to see all such cases but armed with the director's opinion as to whether or not this was a good idea for us based on the sort of criteria that I think the city council would like to be able to apply.

[13:34:26]

>> Mayor leffingwell: So the

-- let me make sure I understand. It's basically deleting the specific requirements for regulations, size and location.

>> Spelman: That's correct.

>> Mayor leffingwell: And using only environmental superiority.

>> Spelman: Yes.

>> Mayor leffingwell: With that understanding I second. Council member morrison?

>> Morrison: I know we're only considering amendments one at a time, but I think that it's important to talk about right now that for me, what the staff had envisioned was that you could only submit an mga application when you're just at the beginning of your project, when you come in with one of the projects we were hearing about today, that you know it's going to take 15 years or whatever, and you sit down with staff and you agree with council, in the very beginning, this is a long complex project, it's got many phases, we're going to just have this many years to work on it. That's what was envisioned, which doesn't really line up with what we've been using MGAs FOR. What we've been using them for is to help people keep their projects alive as they went through the recession. And as far as I'm concerned, there were very

-- I'm okay with opening up to the

-- not only having them when they're at the

-- they beginning when you're planning your project, and it really will be managed growth because you really do know how long you've got. That's not bad for a big, long

-- big, complex pro. To open up the other kind

-- so the first one I would say is prospective mga. RETROSPECTIVE MGAs ARE THE Kind that we've been

seeing. Somebody comes in, my gosh, I have to keep this thing alive for the next two years till the economy comes back. That's not in the staff thing here. You're about to make the -- or pc. You're about to make that motion here, but for me the criteria should be different for the two. For me the criteria for the prospective really should have a size element to it or phases or something like that. That's really fair, because we don't want people just to come in and say, you know, I'm about to build this half-acre development. I want to have 15 years to do it. So I -- I can't talk -- I can't support something -- anything about adjusting criteria until I really know which of the two types I'm talking about. So I don't know if there's a way, if it would be supported to have two types, because I will support two types. If there's a way to have this discussion separately.

[13:37:02]

>> Spelman: Fortunately we're only doing this on first reading, which gives us an opportunity to figure out the language that would support that. It seems like a very reasonable point -- idea to me, though.

>> Morrison: Well, and clearly

-- I mean, and I was just thinking about this and talking with staff about this yesterday, and other folks, so there really wasn't time to come up with language or criteria specific to each. And so I wonder if we couldn't just here today have a motion that says we're going to have two different kinds, prospective and retrospective, and then we start talking about what that -- we just in general talk about what the criteria for each one of them and then the staff could go back and draft it.

>> Mayor leffingwell: If council member spelman wants to amend his motion, that's his prerogative. Otherwise we vote on it as is, and you'll have the opportunity to amend later today or in a subsequent reading.

>> Spelman: I do not, mayor, and I don't believe council member morrison either has language to support that I think that very good idea, but if we could amend as I've written here with the understanding that on second and third reading we will further amend it to include two different kinds of MGAs OR DISTINGUISH Between the criteria under WHICH MGAs WOULD BE Allowed at the beginning of the project

-- at the beginning of the vesting period and then partway through the vesting period, I think that would be a reasonable thing to do.

>> Mayor leffingwell: Okay. That makes sense, but I want just a couple of things. First, I think I heard it said earlier today that our ordinance is already longer than the state law governing this subject, and there is some value in not introducing extra complexity into it, because there is discretion always on the part of the council on these MGAs TO MAKE THAT Decision, to make that judgment based on all the criteria, and rather than trying to nail everything down in the ordinance, I think it makes sense to allow the mga is for extraordinary circumstances, basically, and I think the council deserves to hear what those are and make a decision. So I'm going to support it as written. If a better idea comes down the road on subsequent reading I'll be glad to listen to that.

[13:39:22]

>> Cole: Mayor, I have --

>> mayor leffingwell: Council member martinez.

>> Martinez: Thanks, mayor. I wanted to ask a couple questions about this potential amendment. Greg or Brent, when you

-- when you read the terms "substantially superior environmentally," how do you interpret that? What do you

-- what is the standard you're setting and what does it have to be superior to? Is it the vested rights that are within the project? Because under 25-1-553 e, it also states that when the council approves it, the council may not waive or modify current regulations applicable to the project. So when it says current regulations, it doesn't mean current at the time the MGA is requested. It means current at the time it was vested, does it not?

>> Yes, Chuck lives next to the environmental officer. Yes, it does. I'll look at my attorney on that.

-- On that question.

>> I think Chuck can speak to the environmental issues, but as a legal matter I just want to be clear. So the drafts for the MGA provisions that are before you all contemplate that this is done for projects that are filed for review under current code. So in that circumstance the environmental officer would be looking at environmental superiority with the benchmark being current regulations. Should council amend the MGA provisions to allow projects with vested rights to earlier regulations to apply FOR MGAs, AS I BELIEVE Council member Spelman's motion would do, then I think the environmental officer would need to use as a baseline for environmental superiority those older regulations. And we would

-- should council do that I think we would

-- between now and second reading, make some amendments to clarify that.

>> Martinez: But could we

-- and I know we're not going to amend an amendment that's being proposed, but on second reading could we create an amendment that would allow that day's regulation to be the floor for what becomes superior in an MGA request?

[13:41:37]

>> Yes.

>> Mayor leffingwell: Council member Morrison, did you want the floor?

>> Mayor leffingwell: Tovo, I'm sorry.

>> Tovo: I wonder if the staff could just

--

>> mayor leffingwell: Looking at me like

-- [laughter]

>> Tovo: I wonder if the staff could just speak to the rationale for having the initial criteria in there, particularly with regard to the current regulations. I assume it has to do really with what Mr. Lesniak was describing, which is if you have a project that's

-- they're going to be under older regulations which is in the best

-- when the staff created the managed growth amendments, this was after planning commission are acted, we came back to council, council directed myself, staff to go back and talk to the stakeholder groups, sos, environmental groups, and received information from them we felt it probably was appropriate to put back in the mga. In the example that we were given at a work session last november, for larger projects, the

-- for projects that spoke to scofield farms, 750 acres, crestview, which we had put in the mga agreement to speak to town centers, regional centers, that kind of thing, 74 acres, mill [inaudible] being 700, southpark

-- domain 272 acres, so the staff came up with the 250 because we were looking at larger projects, and as mr. Pasteur had mention the, there was a comment, I don't know if it's attributable to andy or not, but it takes time and patience to create great places. So I took that to heart and we put that in dealing with those mgas, we really only have authorities for life of projects that are within the city. That's why it says zoning jurisdiction. I heard from the environmental community, again, about their concerns of the barton springs zone, so that was added in, that if we're going to talk about longer projects, I think probably it should not be in the barton springs zone and don't necessarily require variances except in certain residential situations. So that is the reason why you have the criteria. I don't dispute there's been very few. They have all been smaller. I think the largest one I think that we looked at on the list was only about 134 acres, many of them were below 20. But given what I was asked and given the examples that we were given, I thought that was reasonable. There's a great amount of land still in austin around f1 going up all along 130. Granted, there's not a lot of projects that are probably on the western side of the city, but there are areas where you can get to a higher number. Where that number is 250 or 150 or 100 or 50, if this council desires to certainly go to a lower number, I think staff is just concerned that there is no bottom end to this, because I think you'll probably see a lot of application

-- more applications and I will see a lot more applications coming across my desk asking for that additional

--

[13:45:03]

>> tovo: Thank you, and the amendment before us

-- the amendment before us does remove the prohibition against mgas within the barton springs zone as well.

>> Guernsey: As I understand the motion

--

>> tovo: It's one of the criteria that's being struck.

>> Yes.

>> Tovo: Okay. Thank you.

>> Mayor leffingwell: Council member morrison.

>> Morrison: So I guess I'd just like to mention with regard to what mr. Guernsey was saying, that for me it's real clear that the size of the project would

-- should be some size. I don't know if it's 250 or 150 or whatever, some large size, should be a criteria

for prospective mgas, but maybe not a criteria for retrospective mgas, because those are the ones that are caught

-- when we look at the past 18 that's when you get really small ones and they have

-- what do you think

--

>> and that's correct. You still have the existing MGAs THAT EXIST AND AT Some point those are going to expire too. So that

-- perhaps that second amendment that was discussed, maybe will be able to address those that are still out there that are not done yet.

>> Morrison: So I guess what

-- so I'm a little bit torn because I sense an openness to talk about, you know, between first and second reading, to try and come up with language to have the two different kinds and two different criteria, and I could look forward to working with you on that. So I'm a little bit torn because this amendment just opens it up so much, that I can I'm not going to support it, but just as a symbol of my intention to work on it I will support the next one.

>> Mayor leffingwell: Okay. All those in favor of the amendment say aye.

>> Aye.

>> Mayor leffingwell: Opposed say no.

>> No.

>> Cole: I said aye.

>> Mayor leffingwell: Let's see a show of hands in favor. Opposed. That fails on a vote of 3-4 with riley martinez, tovo, morrison voting no.

[13:47:17]

>> Cole: Mayor?

>> Spelman: Mayor, may I finish?

>> Mayor leffingwell: Council member spelman.

>> Spelman: I do not have a backup plan for 4, but I will have one in a couple of weeks, or whenever we next consider this. 5 I think stands by itself

--

>> cole: Council member spelman, may I ask you a question about that? Mayor?

>> Mayor leffingwell: Ask a question about what? Mayor pro tem.

>> Cole: Council member spelman, you said that you are going to have a backup plan for 4, and that is one of the main reasons that I supported it. I wanted to say, but we're moving so quickly, that I really do like the idea of having separate criteria for prospective and retroactive, so I hope you're able to do that.

>> Spelman: That would get me four votes.

>> Cole: It would.

>> Spelman: So I think we'll have to come up with some.

>> Cole: Okay.

>> Spelman: On 5, this was actually set up the possibility of both prospective and RETROSPECTIVE MGAs. Basically it would allow an mga application to be submitted before a project expires but after it begins,

and that last section, c-is

-- c2, it must be submitted at least one year prior to the expiration of the project. This would give staff time to process it and give the city council time to review it and make a decision on it BECAUSE ALL MGAs HAVE GOT To be reviewed by the city council. Propos propos ed amendment, item 5 on managed growth agreements as written.

>> Spelman: As written

-- partly scribbled, but yes.

>> Mayor leffingwell: With the c subparagraph 2 change to one year prior to expiration?

>> Spelman: That's right.

>> Mayor leffingwell: All right. I'll second that. Is there any discussion?

>> Tovo: Just a quick question.

>> Mayor leffingwell: Council member tovo.

>> Tovo: The motion sheet talks about amending 25-1-552, but we are amending 25-1-553, am I right?

>> Spelman: That's correct.

>> Tovo: Okay. I just wanted to check that. And it is as written on here and the one year prior to expiration is of your motion as well?

[13:49:20]

>> Spelman: Yes.

>> Tovo: Okay.

>> Mayor leffingwell: Those in favor say aye.

>> Aye.

>> Mayor leffingwell: Aye. Opposed say no. I believe that passes on a 7-0 vote.

>> Spelman: It's nice to have the wind behind me as I go into the very last one. [Laughter] this is, as we have found today, if we didn't know before, very complicated, and one of the pieces of complications is the

-- both the staff recommendation and the pc commission version on 25-1-552. We're trying to define expiration, there was a lack of clarity as to exactly what it is the planning commission wawnl'd. It wanted. It seemed not to want the staff version but they weren't quite sure what they did want, and the staff ver complicated because there is a different project expiration period for every possible first application you submit. And it seems to me that this is an opportunity for us to simplify things in the following way.

What I believe the planning commission was getting at is what has sometimes been referred to as nine years flat. You start your period whe your resting period starts you get nine years and that's when they pull the plug and it shouldn't necessarily depend on when you submitted it first. On the other hand, if all you're starting with is a building permit, well, you shouldn't really have to get

-- you shouldn't need nine years to build on a building permit. So that was the reason why the staff did what it did, is to write only one year for a building permit and three years for a final plat and so on. And

it seems to me we can cut through a lot of this gourdion knot in the following way. Eliminate almost all of 25-1-552, and go street down to h, in the planning commission draft, which basically says you get nine years. The reason that would work, however, is because of something else which is

-- has also been written in this draft from the beginning, which is section 25-1-551 section c, which

states, if all permits for a project expire, the project expires. Now, there's been some question as to which trumps what, and at my request Mr. Lloyd has come up with language which calls, as I understand it, for the following. Submit an application when your vesting period starts you get nine years, but if in the middle of that nine-year period all your project permits have expired, it's over. You're done, and you got to start over again. So the nine years only lasts so long as you've got an active permit in place. This seems to me to be a lot simpler than having different vesting periods associated with different kinds of initial applications, but would largely mirror that because you're not -- you're going to have a site plan will take longer to expire than a preliminary plat, which will take longer to expire than a building permit and so on. And it's just simpler to look at -- see whether you have a permit which is outstanding. If you don't have any permits on the project, then you got to start over again. So that's basically what I'm getting at here, is you get nine years, period. There is one thing which I thought we needed to pull out, and that is original section d, which is now relettered to be section b, and that is that the vesting date approved is based only on a fair notice application, the famous napkin. If all you're doing is you're putting in a new napkin, since old napkins are no longer covered by this, thank you, all you're doing is putting in a new napkin, the project expires one year after the date that the new napkin was submitted, unless you submit a permit application, a real application, you make it real with a preliminary plan, a final plat, a site plan or some other application, which is much more specific than the napkin was. So with the exception of that, it seems to me that nine years flat will work for all other kinds of projects because when they expire you've got nothing else going on, that's the proper time for the project to expire.

[13:53:39]

>> Mayor Leffingwell: At the end of nine years

-- at the end of nine years if you don't have something else going on it expires?

>> Spelman: At the end of two years if you don't have any permit that's currently

-- if all your permits have expired in one or two or seven years, they've all expired and you don't have any project, the project is gone, you have to start over again. But if you have an active permit going through the entire duration you get up to nine years.

>> Mayor Leffingwell: That's the proposed amendment.

>> Spelman: That is.

>> Mayor Leffingwell: Is there a second to that? Council member Riley seconds that. I'm just concerned how we get from the language to a flat nine years to now we have nine years with conditions.

>> Spelman: Well, the conditions have always been there, Mayor. Under 25-1-551, which I'm not proposing to amend because I think it's fine just the way it is, it states, if all permits for a project expire, the project expires. If that's all we had in a nine-year flat, then I think that would be a simpler way of accomplishing everything in the staff draft that the staff draft is trying to accomplish. For example, in section c, if the vesting date is based on the final plat, you get four years. In section e it says, if the vesting date is based on the site plan you get, well, as long as the site plan goes on. If it's f, you get as long as the building permit goes on. If it's g you get as long as, well, whatever other thing might have been, maybe a surface extension request, which I'm given to understand is six months. This is complicated. We can get through all the complications by saying, look, if you haven't got any



outstanding permits, then 25-1-55 1c applies. All permits have expired, the project expires. Otherwise as long as your permits have not all expired, you get nine years.

[13:55:53]

>> Mayor leffingwell: All right.

>> Spelman: Does that clarify?

>> Mayor leffingwell: I'll be happy to support it on first reading subject to further examination on second reading. But I also have a lot of trepidation about not having your proposal for 4 in there, and I may not vote for the end product if that is not in there in some form.

>> Spelman: Mayor, I'm sorry.

>> Mayor leffingwell: It doesn't have anything to do with your amendment. Sorry.

>> Spelman: Oh, okay.

>> Mayor leffingwell: Further discussion? Council member morrison.

>> Morrison: I wonder if staff could help me understand the impact of this, because I don't really -- what's different? Can you tell me something that could happen? You know, because we've walked through many examples about preliminary plan is submitted and then that can last for five years, say, before that you get a plat, then you get a site plan, then you get an extension, you get to nine years. But the preliminary

-- so can you tell me what would be different?

>> Guernsey: Well, it sounds what this amendment would do would bring back the cutoff again at nine years, and so even if I had a site plan that was alive and it was alive in year 8, I couldn't go past the 9 even though the site plan might be still alive for two more years.

>> Morrison: So we're contradicting what we previously adopted?

>> Guernsey: I think so. I mean, certainly it works well when

-- when it's smaller, so I understood that if I only had, let's say, a site plan and I didn't pull my building permits at the end of that site plan the

-- I couldn't put a building permit, and that might be only after four years. When you go the other way and I have a prelim and let's say a couple years later I do the final and I pull a site plan, I'm not quite sure what happens if I spend like three or four years doing my prelim, three or four years and do my final, I get up to the eighth year and I get my site plan approved, I'm not quite sure what happens under this scenario. Once I hit that nine-year mark.

[13:58:12]

>> Morrison: So rather than try and understand this, you know, maybe there's a way to simplify things, but I am not comfortable adopting this here, and so I'd rather leave it as it is. So I won't support this, although if there can be some more exploration about ways to simplify it, I'm certainly open to that before second reading.

>> Spelman: I am looking at the text

-- mayor?

>> Mayor leffingwell: Council member spelman.

>> Spelman: I'm looking at the text of the motion sheet, and finding it does not completely match the text I have scribbled in my marked-up version, which I think is clearer. What I was trying to do was to take the planning commission's recommendation, which is listed under h in the planning commission draft, which basically says you get nine years. Now, it seems to me in the context of a through g, that you get nine years is at least ambiguous. Do you get nine years regardless of what happened in a through g or does a through g apply or what have you, and I wasn't clear what that meant. But it seemed to me that if nine years is long enough to build a project, then we say you get nine years, and as I scribbled down here and did not appear to have transcribed properly on to my motion sheet, it says so long as 55 1c does not apply. 551c is if all permits to the project expire, the project expires. So my bad. Let me also mention, however, that it's not my intention to contradict what I just did with a and newly amended b on site plans. So I certainly don't want to contradict myself, at least not in the space of a single meeting. [Laughter] and even if your project expires, at least not -- not so obviously. After nine years, if you have an active site plan it's still my intention to allow you to pull building permits off of that site plan, possibly with a one-year -- one-time only extension by the director. So if we need to do something to this language to adequately reflect that intent, we need to do something to the language, but that is my intent.

[14:00:27]

>> Mayor Ieffingwell: So you understand the intent? You were shaking your head yes.  
>> Yes, we understand the intent. [One moment, please, for change in captioners.]  
>> the draft motion sheet that I have would say except as provided in the catchall language that we have in 551 that says if all permits for a project expire, the project expires, which is language that's been in city code for a long time. If you had a project that was not grandfathered to anything other than a building permit, land had redeveloped. You had no more grandfathering claim to a plat, you were just standing on your building permit, then the language that's in councilmember spelman's motion sheet would ensure that when your permit expires your project expires. So it would achieve the same result as the versions that are before you for those projects that are only grandfathered a construction permit. One difference I would point out is that under the staff -- march 12th staff draft for a project that begins with a prelim to get the full amount of time you have to actually final plat out of that prelim. Now, if we give a prelim project a flat nine years you could let your prelim expire after -- in year six and your project would still be alive. So you would refile your prelim and it would relate back to that original -- actually, no, because you would have let all your permits expire. Scratch everything that I said in the last 20 seconds. The rest of what I said accurately characterizes it.

[14:03:08]

>> How does the concept of progress apply within councilmember spelman's amendment.  
>> How does the concept of progress apply?  
>> Or the projects

-- it would seem to me if certain projects that would otherwise not have been alive for nine years are now getting nine years, then we may

-- I believe that's accurate. I think when we finally got to the bottom of the flat nine concept that was the case, that certain projects I wouldn't have otherwise had nine years to be alive now will have nine years to be alive.

>> Yes. And that's consistent with I think is the intent of the planning commission recommendation. Councilmember spelman just does it in a little bit of a different way.

>> Okay. All right. Thank you.

>> Mayor Leffingwell: Councilmember morrison.

>> Morrison: I had the opportunity to work with councilmember tovo

-- not morrison, tovo, and some folks from the reca community and staff and we were trying to sort through what did flat nine mean from their perspective. And I came away with something different than what you're proposing here, so if you're confused

-- I appreciate your questions because the example that I took away was that even within the nine years if all my experiments expire that I could still come back and resurrect it afterwards. I guess as I said I'm not going to support this. I'm open to thinking about it, but I think there are so many unknowns and it's such a complex thing that it would be better to contemplate it for a little while.

>> Mayor Leffingwell: Okay. I guess we're ready to vote on this. I'm going to support it. I'm not totally sure I complete understand, but that's the beauty of three separate readings, I guess. So those in favor say aye? Opposed say no? Hands on the nose? That fails on a vote of 3-4 with martinez, tovo, morrison and cole voting no. Okay. Anything else? I have a question. With all that we've done so far, where do we stand with regard to the question about when the clock starts?

[14:05:49]

>> I believe the planning commission still had it starting at the date of application, so that hasn't changed.

>> So I would like to offer an amendment and say the clock would start ticking at the time of approval, which we have just heard could take some amount of time between a year and two years. So I would like to offer that as an amendment. The clock starts ticking at the time of approval, not of the time of application.

>> Spelman: Mayor, question? I'm amenable the idea. I just wondered what approval of what.

>> Mayor Leffingwell: Any permit still in effect at the end of that time frame would lapse if expires. If reflected the new permit would abide by the rules and regulations

-- this is rules in effect at the time, the clock would start at the time of approval, not application. That's the nine year clock.

>> Spelman: One of the reasons, mayor, why I did not submit that formally is because I was given to understand that if a fair notice application would be required for any first submittal

-- and help me if I'm wrong about this. Would a fair notice application be required with any submittal of a first permit for a new project?

>> Under this ordinance the new project fair notice application would be one way to accrue grandfathering rights. Most developers have and probably would continue to just submit standard

permit applications. So it would be I think in either case the date you approve vested rights is the date of your submittal. The question arises for measuring the clock

-- for starting the clock on the life of your project does the council want that clock to start on the date the application was submitted or on the date it was approved. And the issue

-- the core issue around this particular requirement is whether

-- is the amount of time it can take to get an application approved and whether that can count against the life of the project or not. And there are arguments on both sides of that and that's for the council to decide.

[14:08:22]

>> Spelman: If a fair notice application were submitted for whatever reason, we could reasonably accept an acceptance of that application within 10 working days. As Mr. Guernsey said earlier. And would that be the first approval if we were to go with the mayor's suggestion? There would be a approval of fair notice application, would that be the first approval or when the preliminary plat, final plat or site plan were approved? That's up to us to decide, I presume. Mayor, I think I need to yield. She's insisting.

>> Mayor Leffingwell: Councilmember morrison.

>> Morrison: I believe you just use the term fair notice application in terms of an old project. We are only using fair notice applications for new projects and so you're talking about an old project, so we start -- so old projects I don't believe

--

>> Spelman: So come back in 10 days is what you're telling me.

>> Morrison: Exactly.

>> Spelman: Is that good? Okay. I'll still getting around the old napkin. I don't understand the new napkin. Given that's not an issue, then the first thing submitted, preliminary plan, final plat, whatever it is, I will second your motion, mayor.

>> Mayor Leffingwell: All right. Further discussion?

>> Morrison: Yes, mayor.

>> Mayor Leffingwell: Councilmember morrison.

>> Morrison: I'd like to explain why I'm not going to support this motion. Because we're talking about starting the clock on the approval date although

-- but the other side of the coin is they're vesting back to the code that was in place on the submittal date. So it sounds like sort of having your cake and eating it too and I think those two should line up. And obviously we're not going to require them to have their project be compliant with the code that is in place on the day it's approved. We allow them to be client with the code on the day it was submitted. That's the only day it would work. I think those two things should line up, so I will stick with supporting the planning commission recommendation.

[14:10:39]

>> Mayor Leffingwell: I just think the possibility of it taking too much time, an extraordinary amount of time, and we've seen that, we've gone through these times where we weren't able to approve permit

applications on a timely basis and that could happen to anybody at any time. And I think it's unfair to penalize the applicant for something that is really in the hands of the city. So councilmember tovo.

>> Tovo: I would just say I appreciate that point. We certainly have heard that from our development community, but I will say that one of the things that we did a little earlier in this discussion is allow for an additional year through a director's extension of a site plan. And so that more than mitigates, I think, the time that it would take for an application to move through the approval process. So I'm also -- I'm supportive of the planning commission's recommendation and not of this motion.

>> Mayor Leffingwell: Is there any discussion? Those in favor of the amendment say aye? Opposed say no. That fails on a vote of 3-4 with martinez, tovo, morrison and cole voting no. Anything else? Councilmember tovo.

>> Tovo: Yes, thank you, mayor. You were calling for any additional amendments, I assume.

>> Mayor Leffingwell: Whatever.

>> Tovo: Okay. Great. So I may have passed out five sheets, one of which is a moot point. So I would like to look at page 3. And this is I think a real easy one. This basically adds for -- in consideration of a project's consent agreement it adds language saying that the director shall seek a recommendation from the environmental board and the land use commission. And that's the only adjustment to that section. So I would submit that as a friendly amendment. And this is page 3. And just as a point of clarification, it does say that the motion is to the march 12th staff recommendation, and that's

-- it's clearly an amendment to the one that we're considering, which is the pc version. But it should still be the same section of code, which is 25-1-544. That is page eight out of 16 in the APRIL 22nd, 2014, PC Version. So again, it adds for a hearing at the environmental board and the land use commission of any project consent agreements. Friendly?

[14:13:25]

>> Mayor Leffingwell: No, we're not

--

>> Tovo: Then I move approval.

>> Mayor Leffingwell: Is there a second for that? Seconded by councilmember morrison. Discussion? Councilmember spelman.

>> Spelman: Quick clarification. How much longer is that going to take? Are we talking about a month, two months, to get on these two commission's agendas?

>> My guess is it would take about a month at least. May take longer at the environmental board. They meet every other wednesday in the month. We'd have to time it, depending on the zoning and platting commission or planning commission, so the approval would follow or denial of -- denial would follow the following week. So it could be maybe as short as maybe three weeks in order to get backup and posting. And maybe four or five on the high side. So I would say three to five.

>> Spelman: Okay. That's what I needed to know. Thank you.

>> Mayor Leffingwell: Councilmember riley.

>> Riley: Question for greg. Would you expect that getting recommendation from the environmental board, land use commission, would require an executive session? It seems like when we discussed these

things with council, often matters like this would be in executive session. Is that right?

>> Planning commission, I'm not sure about the environmental board.

>> Riley: If this were a matter before council, would you expect that

-- since this relates to some dispute over the legal rights involved. Often we've discussed matters like this in executive session. Would you expect a recommendation from council on something like this to be discussed in executive session?

>> No, not always. You may have actually an instance where someone clearly is grandfathered for an office project and they want to build a multi-family project. They may come before me or before you and simply just say all meet all current requirements except I want slightly more impervious cover. That is a pretty easy one probably for both commission, council and staff to look at and make a decision.

[14:15:53]

>> Riley: You don't see any procedural difficulties with any of these matters?

>> Not necessarily. Certainly each case is going to be unique and you might have some that are not as clear, but I think councilmember spelman actually made a motion that you adopted earlier that kind of gets to being those cases

-- [overlapping speakers].

>> Riley: There's fairly objective criteria and we don't necessarily need to get into the subjective legal issues that we have at times in the past.

>> This is discretionary actions not one of litigation.

>> Riley: Great. Thanks.

>> Mayor Leffingwell: Councilmember martinez.

>> Martinez: We're still talking about the pending amendment?

>> Mayor Leffingwell: Yes.

>> Martinez: I'm not-not supportive of this, but we've seen how many times things get postponed when they go through our boards and commissions process. And so on second reading I want to work on some language that tightens that up. If they start asking for two and three months delay so they can review the complexity of the project, at that point we start adding

-- it becomes just a delay tactic. If we want true input from these land use commissions I'm all for it.

Then we should be getting that because that's why we appoint them. I just don't want to see this used as another tool to add more time. So if we can work on the language towards second reading, I would be more comfortable with it.

>> Mayor Leffingwell: I believe, and this is probably a question for mr. Guernsey, on items that require action by the land use commission before they come to council, I believe

-- I think there's a provision if they don't act within 90 days the council can take it up without their recommendation, even though it's required. Is that correct?

>> I would have to go back and actually look at that. I know when they reached an impasse, particularly they have forwarded a motion or forwarded a recommendation for that.

>> Mayor Leffingwell: I mean in the case where they continue to postpone and postpone. I know that's different from when they just forward it without a recommendation.

[14:18:01]

>> I don't believe that language is

-- if it's particularly in there. Although I recall a council meeting where we have a council that kept asking for the commission to act and basically said if they don't act by a certain time that the council was going to take that as a recommendation.

>> Mayor Leffingwell: That might be the context, but I specifically remember the 90 days.

>> I can go back and research that.

>> Mayor Leffingwell: The point is even so, 90 days, that's three months. That's a very long time. And for something like that, I think that may pose an undue burden. And so even though in this case I realize there's an opportunity to change it on second reading, I'm not going to support it on first reading even. Any other comments? Those in favor say aye? I can't see martinez. Opposed say no. Passes on a vote of 6-1 with myself voting no. Go ahead.

>> Tovo: Next is page

-- is the page noted as 7, and this also amends

-- scratch the language at the top that says it amends, the staff recommendation it's amending the pc version. And this amends 25-1-554, subsection c. Also within the project consent agreements. This is on page c

-- I'm sorry, 8. 8 of 16. And so this language just changes an or to an and. And it says the director may recommend a project consent agreement for approval to the city council if the director finds that the... And compatibility with adjacent land uses than to the full extent of its vested rights. I think we want it to do both. A project certainly could be compatible with adjacent land uses, but not offer a greater degree of environmental protection and I think we really want to reserve project consent agreements for those opportunities. I mean, those projects that do both.

[14:20:16]

>> Is there a second for that? Seconded by councilmember morrison? Any discussion?

>> Spelman: Mayor? Two things. One is I don't know that they need to do both, although they ought to be substantially greater in one or the other. And of course it would be better if it were both. Second to just mention that we've already made a change at least to the main motion, makes a change in vested rights, so it's no longer claim vested rights, but claims are likely verified or likely to exist. So we have a higher standard for vested rights than merely a claim. At least that's what's on the table right now.

>> Mayor Leffingwell: Councilmember tovo.

>> Tovo: Councilmember spelman, I appreciate your last point, but your earlier motion, which I was very supportive of the language of

-- the language that clarified unclear rights, and you

-- you adapted language or proposed language that we accepted that really gave body to that as being a reasonable claim did not amend this part.

>> Spelman: I just wanted to mention that the claim vested rights, that

-- those last three words have already been amended. That's not what you're talking about amending. I just wanted to mention that.

>> Tovo: Right. Though it's an interesting point that perhaps we should look at that. We might want to look at those particular three words on the next version. But I stand by my assertion that we still consider making an and.

>> Spelman: We have already raised the standard in what respect is my point.

>> Tovo: Got you, thanks.

>> Mayor Leffingwell: All in favor? Opposed say no as far as it passes on a vote of five to two with myself and councilmember spelman voting no. Next?

>> Tovo: So number 4, page 4, is-- would require a higher level of support for project consent agreements that are located within the barton springs zone. And this would require a super majority of council. I believe our legal counsel probably wants to address this. This is not

-- this is, as I understand it, a provision that the council could waive with a majority vote, but the

-- my rationale for including it is that these should be project consent agreements within the barton springs zone should be subject to a higher level of scrutiny. And if the council does decide not to let a super majority be the way of it, they would at least have to waive their provision of having it be a super majority.

[14:23:15]

>> Spelman: Mayor, question?

>> Tovo: I'm sorry, for the record I should say what I'm amending, which is not the staff recommendation, it's the pc version, and it would add language to 25-1-554, subsection f. Shall I read it? That's sufficient? Okay. Thanks.

>> Spelman: My question is to the extent that a project consent agreement would be modifying site development regulations included in sos ordinance, we would already need a majority of the council to do that. Is that accurate?

>> Yes. When you're dealing with project consent agreement where, for example, a developer is grandfathered to a project that the community doesn't like and the developer is willing to do a project that's different for which they don't have grandfathering, but they would like some relaxed entitlements in exchange for doing that project that they don't have grandfathering, then that would clearly be an s.O.S. Amendment. And under existing ordinances adopted by referendum, that would take a three-quarters majority vote. There are other situations where a project consent agreement is

-- would be based on a situation where a developer

-- the grandfathering law for a particular project is unclear. The grandfathering situation for that property is unclear. Project consent agreements would then provide council a tool for dealing with those cases short of litigation. And in those scenarios it's not clear at all that the super majority requirement would apply. Generally a super majority

-- not generally, just as a blanket statement a super majority requirement has to derive from the charter or from a referendum. They can't be imposed by ordinance unless the ordinance is implementing a state law provision that establishes a super majority requirement. So for those reasons I would recommend against inclusion of this language. But there are situations where a project consent agreement would require three-quarters majority.



[14:25:41]

>> Mayor Leffingwell: To put it in simpler terms, although that was a good explanation for me, you can't -- an ordinance can't require super majority because you could change that requirement by another ordinance.

>> That's correct, unless the ordinance is implementing a state law

--

>> Mayor Leffingwell: Right. And the other point is there are actually two kinds of super majorities dividending on who defines it, state law or the charter. There can either be a requirement for two-thirds super majority or three-fourths super majority. And I think that needs to be specified in any case. I'm not going to vote for it anyway, but I think that needs which kind of super majority.

>> Tovo: Sure, but just to clarify. I did acknowledge that the super majority does not

-- I didn't do it as eloquently as our legal staff did. It doesn't derive from a refuse den dumb or from state law so it would be a provision that a council could waive on a majority vote. But it does add a level of execute

-- it does add a higher level of scrutiny any for those projects taking place in the barton springs zone that wouldn't necessarily require an s.O.S. Variance and it would require a conscious act of the council to waive that provision of requiring a super majority. So it sends a signal that these are very critical that we should treat them with more scrutiny, and that a super majority is the ideal. Though again it is waivable.

>> Mayor Leffingwell: Still, it's kind of counterintuitive that a sprinkle majority could waive the requirement for a super majority vote.

>> Spelman: It is still true that if the project consent agreement would be waiving or modifying requirements of s.O.S., which would otherwise apply, it would require a super majority either way.

>> Mayor Leffingwell: At the end of the day you would still have to have the three-fourth super majority. So let's see, did we have a second on that? Seconded by councilmember morrison. Is there any further discussion? Those in favor say aye? Opposed say no. No's raise your hand, please. That loses on a vote of five-two with councilmember tovo and morrison voting aye. Okay. Next? Councilmember tovo, did you have additional items?

[14:28:21]

>> Tovo: I have one last one. And this is page 6 of the motion sheets I handed out. And it's section 25-1-article 13. Sorry, I'm

-- I'm just having a little trouble matching up all these drafts.

>> Mayor Leffingwell: You're on your page 6, is that correct?

>> Tovo: Yes, on my last motion sheet, which is page 6. And this is under dormant projects. Okay. It's on page 12 of 16 on the 4-22-2014 draft. One concern we heard was about some language in part 3, and this would

-- this is a pretty simple fix and maybe our

-- mr. Lloyd can explain exactly what it would do. In essence what I'm proposing is just taking out the language, is amended to repeal article 13 and simply says is amended to read as follows: And then the staff would strike it out. It achieves the same end. It amends exactly the sections we're amending here,

it just takes out the language to repeal.

>> Mayor Leffingwell: Is there a second to that? Councilmember morrison. Councilmember spelman?

>> Spelman: Why?

>> Tovo: I believe it's cleaner language and also I'm concerned about saying that a provision that we had in our code is repealed. In my mind that language might suggest to certain people that there was something questionable about its existence.

>> Mayor Leffingwell: What is normal legal practice on something like that? I understand the point. I just -- how do you normally do it?

[14:30:29]

>> So because of the large number of changes that these amendments would make to our dormancy provision from a simple drafting standpoint it makes sense to repeal and replace. There are very smart lawyers who are in this room right now sitting back there who are uncomfortable with the word repeal because they believe that it will create a window in time in which there is nothing on the books to act as a limit on those projects for which dormancy is our only tool. We do not agree with that. We think the draft before you that uses the word repeal is absolutely fine. But we have no problem with going through the exercise of underlining and striking through. We have no problem with that at all.

>> Mayor Leffingwell: So do you think the amendment is good practice as proposed? Legal practice. Not policy practice. I mean, I'm just asking what is normal legal practice? You said that you refer to it as being repealed normally or you just strike it out and it's gone?

>> Instead of draft legal practice, I would use the word drafting convention. As I said, because of the number of changes that are graphically being made to that provision, our standard approach would be to repeal and replace. It's cleaner, it's easier from a drafting standpoint. But from a legal standpoint if the council is more comfortable with us going through the exercise of underline and strike-throughs, avoiding use of the word repeal, we have no problem with that.

>> Mayor Leffingwell: Okay. Councilmember tovo.

>> Tovo: Just to clarify, it achieves exactly the same end.

>> Yes.

>> Tovo: Thank you.

>> Mayor Leffingwell: Any other comments? Those in favor of the proposed amendment say aye? Opposed say no? It passes on a vote of seven-0. That's it for you?

[14:32:42]

>> Tovo: I'm finished for today. Thank you.

>> Mayor Leffingwell: Okay. That's a better way of putting it, I guess. Councilmember morrison.

>> Morrison: I have two amendments that I would like to propose. And the first one I think cleans up some of the language or the logic that's presented in part 8 on page 15. And I will talk you through it. In part 8 we're talking about when the director may extend the expiration after site plan. We've looked at this already today. And there's one condition that has to be satisfied under number one, and then there's another condition under number two. If the site plan does not substantially comply

-- I'm just going to walk through the lodge I think because it's really about the logic here. Then if the site plan does not substantially comply, director may grant an extension. If there's good cause. And a and b and c or d. You see the connectors there, a and b or c and d. And I really think that it was meant to be a and b and either c or d because c and d, they want to

-- c and d are the ways that they're capturing

-- that there is progress being made. And there's one of two ways that progress can be made. In c, at least one structure was constructed. And in d, a significant portion of the infrastructure was required. So I wanted it to be reflected that they also have to have, a, filed the original application with good faith expectation. And b, the traffic impact analysis has been done. And they've shown some kind of progress. And so the amendment that I have in front of you replaced

-- deletes d and it replaces c with the appropriate language.

[14:35:01]

>> Spelman: Second.

>> Mayor Leffingwell: All right. Proposed amendment by councilmember morrison. Seconded by councilmember spelman. Clarification? Further discussion? Those in favor say aye? Opposed say no? It passes on a vote of seven to zero.

>> Morrison: Then the last thing I want to suggest is not just a clarification, it is a change to a number. And what I'm concerned about is the expiration of the fair notice application that's now the new napkin that we're talking about. Right now the vesting date-- let's see. The project expires one year after the new napkin is submitted. And I'm going to make a motion to decrease that to six months because the concern I have is that we're going to find that with that long one year that there may well not be much at all done. It's just a twinkle in somebody's eye. And somebody will put the stake in the ground and say, do you know what? I want to work from here. As opposed to a project really having motivation and there are things in the works that is making it

-- that are making it happen. So there really is a reality of a project that has gotten started and I'm afraid that if we give it a whole year, there's going to be very little of that and we're going to see a whole new flurry of this concept of fair notice application. So with that I would like to make a motion that on page 11

-- this is under section 25-1-522, subsection d, that we change the expiration one year after the date from when the application was submitted to be one-half year after the date that the application was submitted.

[14:37:16]

>> Mayor Leffingwell: Motion by councilmember morrison. Is there a second for that? Councilmember tovo seconds. And I'm not going to support this proposed amendment. Any other comments? Hearing none, all those in favor say aye? Opposed say no. Hands. Hands, please, on the no's. And that fails on a vote of three-four with councilmember riley, might self, spelman and mayor pro tem cole voting no. And that's it. Anything else?

>> [Inaudible].

>> Mayor Leffingwell: Just checking to see if there are any other amendments proposed. If not, that leads us to the main motion as amended. Councilmember spelman.

>> Spelman: Just a reminder we're only voting this on first reading. And closing the public hearing of course.

>> Mayor Leffingwell: We clarified that awhile back. An hour or so ago. So the motion is to approve what we have here on first reading. Realizing that it is first reading only, it's very tempting to vote aye on this for me and see what happens, but I think symbolically I'm going to vote no because I think there's a couple of serious flaws that would cause me if they're not changed to vote no at the end of the day. So all in favor say aye? Councilmember riley.

>> Riley: Just a quick question for staff. Since there is a lot of public interest in this, could you give us some idea of when we could expect to see this back for second reading? And more specifically when we might expect to see it

-- like an actual draft of the ordinance as approved tonight? I assume that would be posted at the time that the agenda is posted, but if you could just speak to that.

[14:39:18]

>> The changes are not difficult to draft, so I think realistically we will

-- I think greg is in agreement with this, we will strive to have the draft before the second reading draft before council at your may 15th or may 22nd meeting.

>> Riley: So it will be posted at the time that that agenda is posted

-- well, on the draft agenda or would it just be the friday before? Any sense of when that might be available?

>> We would strive for the draft agenda.

>> And then probably COME ON THE 22nd.

>> Riley: So on the 22nd. It would be accessible on the city's website on the draft agenda for the MEETING FOR THE 22nd.

>> That's correct.

>> Riley: Got it. Thanks. Mar.

>> Mayor Leffingwell: Councilmember martinez.

>> Martinez: Sorry, mayor, likewise because of the significant public interest in this, I just wanted a clarifying point. Was the motion to close the public hearing as well or should we consider leaving it open because of the public interest?

>> Mayor Leffingwell: The motion is to keep it closed. If the council always retains the option to reopen a public hearing if that's appropriate at the time. Or to ask questions of anyone present. So those in favor of the motion, say aye. Opposed say no. No. That passes on first reading only on a vote of six-one with myself voting no. And that takes us to item 66. Mr. Sadowsky?

[14:41:19]

>> Evening, mr. Mayor, mayor pro tem, councilmembers. Steve sadowsky, the preservation office and planning development and review. The case before us is the baylor house at 16 open west 10th street.

This is a 1950 house that was recommended for historic zoning by the historic landmark commission upon an application for demolition. Went to the planning commission. The planning commission has forwarded it to the council on a split vote with no recommendation. This house was built in 1949, 1950. It's at 1607 west 10th street. The history of the house is that it was built by Kerry Baylor who lived next door to it. He built it as a renter house. He had renters in there between 1950 and 52 and then from 1952 to around 1963 his son Charles Baylor and his wife, Charles' wife, Mary Freeman Baylor, rented the house. During that time

-- excuse me. In 1963 Charles and Mary Freeman Baylor purchased the house next door at 1609 west 10th street. There is a deed on record in the Travis County deed records that indicate the purchase of this house in 1963 and the paying off of the debt to Kerry Baylor in 1971. The issue here is which of these houses is more appropriate for landmark designation. As you all know, this is a National Register Historic District and I want to go on record saying that I am generally opposed to the demolition of any house that contributes to a National Register District. But here are our tools right now. When we're faced with demolition, the only tool that we have absent a local historic district is to designate the house as an historic landmark. And in staff's evaluation of this case for many months now, staff cannot support 1607 as an historic landmark. The house is almost completely associated with

-- the significance of the house is with the Bayers, who lived here from 1952 to 1963. Baylor family history indicates that they may have lived here for a little bit longer, but deed records, city directory research starting in 1964, which would be information gleaned in 1963, shows that Charles and Mary Freeman Baylor moved next door to 1609, probably in the winter of 1963. This house at 1607 was then rented out to a woman named Nancy Chambers who just as an aside, lived to be 109 years old. She was a former tenant of Kerry Baylor who owned the house. She lived on West Lynn Street. After his son and Mary Freeman Baylor moved next door, he moved Nancy Chambers into this house where she lived for many years and the Bayers lived next door. Under our code, the criteria for landmark designation indicates that the council can designate a structure or site as an historic landmark if the property is at least 50 years old. We have that. It represents a period of significance of at least 50 years ago. We have that. The property retains a high degree of integrity. We have that. It has to meet two of our criteria if it's not already listed in the National Register of Historic Places. Those are generally architecture and we have recently modified our criteria for landmark designation that includes a vernacular house such as the one at 1607. Historical associations

-- and here I've highlighted the most significant language. The property has long-standing significant associations with persons, groups, institutions that contributed significantly to the history of the city, state or nation. Finally is community value. The property has a unique location, physical characteristic or significant feature that contributes to the character, image or cultural identity of the city, neighborhood or a particular group. As I said, all of the documentary evidence shows that Charles and Mary Freeman Baylor moved from 1607 to 1609 in the winter of 1963. This is certainly not to say that Mary Freeman Baylor and the entire Baylor family are not extremely significant to the history of the city overall and the history of Clarksville. Mary Freeman Baylor was an amazing woman and it was through her single handed efforts that Clarksville was basically brought up to the standards of the rest of the city. Clarksville was a very long neglected area. Didn't have paved streets, sewers, any of the modern convenience that the rest of Austin enjoyed, and it was through the efforts of Mary Freeman Baylor that Clarksville finally got up to the rest of the standards of the city. However I'm going to quote to you now from the handbook of

texas which is published by the texas state historical association, and this is the article on mary frances freeman baylor. After 1964, and I want y'all to pay particular attention to the dates. After 1964 baylor became an active supporter and volunteer in lbj's war on poverty. She began to petition the city to fund much needed improvements in clarksville. In 1968 she secured employment with the city's health and human services which appointed her director of the clarksville neighborhood center. From 1968 to 1970 she was the lead organizer in the protest of the proposed route of mopac, which took out a significant portion of clarksville. And in 1975 she was the organizer of the protest against the cross town expressway, which would have taken out the rest of clarksville. From 1975 to 79 she convinced city officials to redirect federal funds towards basic infrastructure improvements in clarksville to repair dilapidated homes, pave sidewalks and streets, install storm drains and sewers and construct a playground. In 1978 she founded the ccbc and convinced the city to construct the clarksville health clinic in 1982. The point of all of this is that she was not living at 1607 west 10th at the time that she accomplished all of these incredible achievements. She was living next door. The-- this is a very, very difficult case. As I said, I generally do not support efforts to demolish contributing structures in historic districts, but in this case the only tool that we have is designated

-- designating it as an historic landmark, and staff cannot support this house as a landmark when it is clear from the documentary evidence that mary freeman baylor did not live here at the time of her greatest significance to the clarksville community and to the city of austin. The house is listed a a priority one in the clarksville survey that was done a number of years ago, but staff has an issue with that as well. That was not a city

-- that was not a city completed survey. And the reason for that is because the survey says that this house has a 1925 construction date so staff is assuming that the people who did that survey were under the impression that this house was much older than it really is. A building permit on file with the city says the building permit was obtained in the fall of 1949. The lot is 3,000 square feet approximately and I want to close just by saying that the

-- if this house is designated and the owner is forced to keep it on site, this is a 528 square foot house on a 3,000 square foot lot. Any addition made to this house is going to go up. So what we're going to be left with is not this house as it stands anyway. This is way too expensive a piece of property to have a 500 square foot house on it. There are going to be additions made whether it's through this owner, a subsequent owner, this house

-- speaking realistically, this house can't stay the way it is. The only way it can do that is if it is moved to another site. I want to add that I have been in discussions with the parks and recreation department to move this house to the clarksville neighborhood center. I think it would be a great auxiliary building there, but the director of parks and recreation said that they don't have enough resources to even maintain the neighborhood center, never mind take on a new project. Staff can't support this house for landmark designation. The house next door not nearly as pretty, but if we do want to landmark a house that has significant associations as required by code with mary freeman baylor, this is the house. We have to take it as it is. It has the history. It has the community value. It has the historical associations. I hope no matter what you all decide tonight we can accomplish two things in the future. The first of which, I really hope we can spur clarksville into being a local historic district at this point. We tried to do it several years ago. That effort failed. I think it's really time to start again. The second thing is I hope you will consider giving more funding to the parks and recreation department so they can become a much

more active participant in historic preservation. Thank you.

[14:52:17]

>> Mayor Leffingwell: Thank you, mr. Sadowsky. We appreciate your budgetary recommendations.

[Laughter]. Join the crowd. So one question. This requires a three-fourth super majority

--

>> it does. The owner has filed a valid petition, yes, sir.

>> Tovo: I have a question for mr. Sadowsky. I appreciate your recommendations toward the end of your discussion. You talked about the city directories. In my experience they're not always completely accurate. Would you say that that's true?

>> I would say they are

-- they are a very good source. They are not infallible.

>> Tovo: They are a very good source, but they are not infallible. By that you mean they're not always accurate.

>> No, councilmember, here if this was a case of a mistake over one year or two years, I think

-- I would say well, that was a typo or a mistake. This was nine years and it's harder for me to reconcile that that same mistake was repeated in city directories nine years in a row than if it were one year or two years. That combined with the deed evidence showing that the baylor's purchased the house at 1609 at the same year that the city directories showed them living there to me is more convincing than just wondering whether the city directories are accurate or depending solely on them for information.

>> Tovo: I appreciate that point. It does seem either in the testimony at the landmark commission or in some of the literature and I hope we will hear this soon from the public who is gathered here. I thought there was a question about whether or not those might not be accurate. I wonder since this was an area of town where the infrastructure was not comparable to other parts of town and really it wasn't getting the resources and the services that other parts of town were, I with a would not if that wasn't always reflected in the way they were updating the city directory. Just a thought.

[14:54:24]

>> The thing is too there was also testimony at the landmark commission that address numbers changed and things like that and how can you do that? In your backup I went through every single year of the city directories.

>> I did see that.

>> And checked that dependence the sandborn maps and for these three houses, the house at 1605, the house up for consideration tonight at 1607, and this one, to make sure that there wasn't any discrepancy there. So I think that there's an argument that clarksville was certainly a neglected part of the city, but the city directories were done by an independent publisher who didn't have any vested interest in

-- their interest was in providing accurate information. As I said, they're not infallible, but

--

>> Tovo: I appreciate that. They are a fabulous resource, but again, I've encountered those situations

myself where the numbers have changed or the names are clearly wrong. They're misspelled from various times. But anyway, thanks for your thoughts on that.

>> Mayor Leffingwell: Councilmember Riley.

>> Riley: Just a couple of questions. First, you mentioned an issue with the 2000 clarksville survey where this was listed as priority one. That was based on an error. Had when this was listed as a priority one property in the clarksville survey of 2000 you

-- can you go over what you were saying about that. That was based on an error about the original date of the house?

>> That's something that I question because that clarksville survey identified four realms of priorities, priority one being the highest. But it also lists this house as being a 1925 house rather than a 1949, 1950 house.

>> Riley: So there was some

-- you think there might have been a misunderstanding about the date. Someone thought this was a 1925 house.

[14:56:25]

>> Well, no, the building permit indicates 1949 and 50. And my question really was if they thought this was an earlier house, and actually, council councilmember, if you look at the windows, the windows are probably salvaged from another house. I mean, they're not 1950 windows definitely. So I think anybody not knowing the documentary history of this house would make a mistake and think that this house is actually older than it really is. And assign it a higher priority because of that belief of its age.

>> Riley: Got it. The other question was about the size of the lot. How many ask square feet is this?

>> Approximately 3,000.

>> Riley: I notice all the lots around there are very shallow whereas the lots immediately to the south along 19 and a half are deep. That seems unusual even for this neighborhood. Do you know the story with that?

>> Yeah. I really don't know. If you look at the lots being through from ninth to 10 and a half, these lots on 10th street take up only a third of those lots. Where you would think they would take up a full half of them.

>> Riley: Right. Okay. Thanks.

>> But I don't know the reason why.

>> Riley: Thanks.

>> Morrison: You spent some time talking about making the point that she lived there in your view just certain years and her activism and historic actions were not necessarily the same years. And I know that those years are going to be disputed, but even if you're right and she didn't live there in those years, I'm wondering about what our code says in terms of listing

-- using as a criteria the historic association, ie, this was the house of a certain person who was an historic person and meaningful to our city. I don't see anywhere in the code where it says that that historic association has a requirement that the house has to be

-- the building has to have been associated with that person during the same years of their actions that made them an historically notable person. And I'm a little brain dead. I apologize. So can you speak to



that? I hear you saying it's not so

-- it can't be recommended because she didn't live in it in the years that she was active, but I don't see that that's a requirement in our code or a consideration in our code.

[14:59:06]

>> It -- I tend to disagree. Gently.

>> Morrison: You can be ferocious about it if you would like. That's fine.

>> The code says the property has long-standing significant associations with persons of historic importance which contributed significantly to the history of the city. And that's where I'm basing that justification on. The house at 1609 I think has those. The house at 1607 has them to an extent, but not during the period of her civic activism. [One moment, please, for change in captioners]

>> wouldn't we be saying that this house has the greatest association with mary freeman baylor? I know I would be making that argument, despite what it looks like.

>> Here you're making

--

>> that's where I have a dilemma.

> Necessarily that it doesn't allow it, it's just you would like to see the house associated that is strongest with her.

>> That has the strongest, yes.

>> Not that that's an option for us. But thank you.

[15:01:08]

>> Sure.

>> Mayor leffingwell: So we have a number of speakers. Aand we'll go first to those signed up in favor, in favor of granting historic landmark status. Linda teem is first, and you have three minutes, linda.

>> Good evening, mayor, council members, mayor pro tem. I'm linda teem. I'm speaking this evening on behalf of preservation austin. Preservation austin supports city historic landmark designation for the baylor house at 1607 west 10th street. A category 1 contributing structure to the coxville national register historic district. We can come back to that if I have time. The baylor house, constructed in 1950, has the distinction of being the home of mary francis freeman baylor, an important african-american civic leader in clarksville, who founded the clarksville community development corporation, advocated for the neighborhoods' infrastructure improvements, organized to preserve clarksville in the face of highway development and helped obtain federal funds to begin their affordable housing program. Mary baylor's insisters were some of the original ancestors in clark ville founded in 1871 as a friedman's community. Clark ville lost structures from nrhd in recent years. The clarksville neighborhood -- because we've lost so many of those structures, we feel that this is a of particular urgency to keep the ones we have left. They're vanishing. Preserve austin landmark is worthy

-- this house is worthy of the designation not only because of the high degree of architectural integrity which makes it a category 1 contributing structure to the national register district, but because this is also this house that holds the memories of mary's family and in the memory of the community mary's

role as a neighborhood advocate. That aside from the lists in the directories, in the community's mind, this is the house that's associated with mary during that period of time. The loss of this home would constitute an architectural gap in the historic district of clarksville, and even more significantly, it would be the loss of a manifestation of long held community identity in the mary baylor who advocated for clarksville when it was almost exclusively an african-american neighborhood and was marginalized from basic city services. Protecting this property as a historic landmark would speak to strong community concerns that the landmarks program should reflect austin's diverse cultural heritage. We understand that neighborhood residents have met with the owner to discuss how desired square footage can be added to the house while maintaining historic integrity. We gret that despite those efforts the owner has proceeded to seek demolition. We join neighborhood residents and the historic landmark commission with our request that the baylor house be protected as a city of austin historic landmark so that it continues to represent this important and unique part of the history of african-american experience in austin.

[15:04:50]

>> Mayor leffingwell: Thank you, linda.

>> Thank you.

>> Mayor leffingwell: Aubrey carter. Aubrey carter.

>> [Inaudible]

>> mayor leffingwell: Oh. You want to go in order.

>> Yes, [inaudible]

>> mayor leffingwell: Let me see if I can find that. Why don't you

-- whoever is programmed come up next just come up and announce your name.

>> [Inaudible]

>> mayor leffingwell: Okay. In the meantime I'll try to find that list.

>> [Inaudible] good evening. My name is mary reed. I'm the president of the clark ville community development association. The neighborhood organization for historic clarksville, established in the late '70s as austin's first cdc, our board is elected by residents of the neighborhood. One of our missions is to protect the history of clarksville, which includes its old homes. To do that representatives of the ccdc try to meet with everyone who applies for a building demo permit in our national register historic district, and therefore we met with representatives for the owners of 1607 west 10th street, including its builder and business partner, and the zoning consultant, david cantilosi. When it became clear after several meetings we were getting nowhere in our efforts to show them

-- to work with them so we could save the house and they could get the square footage they wanted and that they were intent on demolishing the property or moving it out of austin, we asked the landmark commission to initiate the historic zoning process. We believe 1607 merits historic status for four basic reasons: One, it's located in historic clarksville, one of the earliest freedom communities established west of the mississippi after the civil war. Clarksville was founded by freed slave charles clark. He bought a couple acres of land across from where 1607 is located, built a home for himself and sold the rest of the land to other freed slaves. Slarks ville has been on the national

-- clarksville on the national rej still since the late '70s. 1707 is a contributing structure to the nrhd, by

former historic preservation officer barbara stark land noted it exhibited an exceptional degree of character. It's exceptional to the character of clarksville and the ability to remain on the register that we retain all contributing houses, not just a couple. And I want to note that 1609 is noncontributing. 3, mary freeman baylor lived at 1607 with her family during part of the '60s and the early '70s. You will hear more about mary later, and you've already heard a good bit about her, but in brief she was an important clarksville leader. It's likely there would be no clarksville today if it were not for her. She stopped construction of the crosstown expressway that would have run through our neighborhood. She also helped found the ccdc, and was instrumental in obtaining federal funds to begin our affordable housing program. Our neighborhood park is named after her. And finally, 4, mary started her community organizing while she was living in 1607, and it was there that she began teaching clarksville residents how to advocate for themselves. For example, very early meetings to discuss how clarksville could get basic public services, like paved streets, sewers, streetlights, sidewalks, services that other west austin neighborhoods enjoyed were held there. I think it's also important to note that sean cube check and andrew mill a.m. Had hardly newcomers to real estate development in austin. Sean

-- somebody in my group is going to read

-- present something that's only going to take a minute, so could I have one of her minutes to just finish this, or part of her minute?

[15:08:52]

>> Cole: Do you want mary reed's time? So meade reed, you will only have

-- mary reed, you will only have two minutes.

>> [Inaudible]

>> cole: I'm sorry, terry taylor?

>> Cole: O connell.

>> Take a minute?

>> Cole: Yes.

>> Hardly newcomers to real estate in austin. He's for more land properties, he's a builder and they're business partners. When we first met they told us they had done many projects in central austin and had worked successfully with other neighborhoods. Therefore, although sean argued that the planning commission hearing on historic zoning for 1607, that before he bought the house the city told him he could do pretty much whatever he wanted with it, even though it was in an nrhd, it's unlikely given sean and andrew's backgrounds that they did not realize that our neighborhood might oppose the demolition of 1607 and might even pursue historic zoning. Furthermore, when I asked allison mcgee, former city historic preservation officer what she had told sean about the process, she wrote in her email to me, quote, if I spoke with him prior to purchasing I would have told him about the review process and that it included the possibility of designation, as I told every person inquiring about nrhd properties. Also david can'tloci knows the rules as he brings dozens of projects to the preservation office every year, end quote.

>> Cole: Thank you.

>> Thanks.

>> Cole: Malcolm greenstein?

>> Actually it's supposed to be

--

>> cole: Okay.

>> Good evening, my name is aubrey carter. I live in clarksville and I'm a member of the clarksville community development corporation. The images are self-explanatory. Starting in september of last year the ccdc representatives and other neighborhood representatives made every evident through meetings, emails and phone calls to identify win-win situation for all parties involved. Throughout all of our communications we were very clear that we respected their desire for a larger home, but that we wanted to save 1607 and we felt that the house that sean and andrew wanted to build in its place added -- would detract from the streetscape and added back to the neighborhood nothing in place of the historic document that they were destroying, being the house with the red dot underneath it up there. We shared with them the addresses of old clarksville homes that had been in a state of disrepair and then had been remodeled and enlarged, and I offered to andrew and sean a sketch showing how they could

-- how they could get the square footage that they wanted and satisfy the city's off-street parking requirements at the same time. The ccdc also offered to support them if they asked the board of adjustment for a waiver of that requirement, something that the landmark commission had encouraged them to do. Instead, sean and andrew continued their efforts to demolish 1607. I now want to show you a set of images that are houses that had been in very bad states of disrepair and were successfully remodeled. These are all on either 11th or 10th streets in clarksville. And then finally I would like to put a diagram up. The one

-- what these are are top and bottom. The tops are the front view of the existing house. The bottoms are viewed from the back, but what those are is three options for how to get the square footage that you want. As you notice, I have on the one to the far left, that is basically three of the houses. One is on the ground, two are combined and cantilevered as a second floor leaving the entire lot open, they can park two cars under there. They have on the southwest corner an opening to the sky to plant a large tree. So I'm not trying to design the house for them, I'm trying to show that there are multiple massing arrangements that can provide them with the square footage that they wanted to get without tearing the house down. Thank you very much.

[15:13:41]

>> Cole: Now, malcolm greenstein.

>> Mayor pro tem?

>> Cole: Yes, council member riley?

>> Riley: Mr. Carter?

>> Yes.

>> Riley: I'd like to ask a couple questions if I could. First I want to thank you for presenting these images because I've been wondering what could be done with a lot that small. It seems like a significant challenge to figure out how to add square footage on a lot that's 3,000 square feet. I'm not

-- I wonder whether in the images you presented, whether there would be issues with either impervious cover or the McMansion ordinance.

>> Well, I will tell you

-- I will tell you that I assumed some relaxation of setbacks. You can see at the back of the lot they have the same 5-foot setback that they would on the sides. The front setback is as it is so

-- and you can see I made very few articulations in the one over to the side, but my contention still is that within the McMansion ordinance, and this is

-- this is a substandard lot, which means they do get? Relaxation of setbacks, density, floor to area ratio, those things. So I'm assuming that they could get the square footage that they wanted through

-- through regulations and codes, if they were, right? So I'm just trying to show that they can get that.

I'm not trying to say that these are the solutions. I'm just trying to say that you can pretty easily amass the square footage that they want. Now, if you take a straight 40% of that lot, they get 1200 square feet. They want 2300 square feet. I assume that there are allowances for these tiny lots that would allow them to get

-- and I believe there are. That's sort of been confirmed. I'm just trying to say they don't need to tear the house down to get those.

[15:15:42]

>> Riley: Okay, and I heard you say that the neighborhood would be supportive of a request for a waiver from the board of adjustment from the off-street parking requirement.

>> I'm sorry.

>> Riley: It seems like part of the problem here is trying to accommodate off-street parking on a site that -- with a house that originally did not have that

--

>> well, and we addressed that right early on to try to get that relaxed, and there is no mechanism for getting the off-street parking requirement removed.

>> Riley: But if there were such a mechanism, the neighborhood would be supportive of allowing some expansion of square footage of the house without adding off-street parking?

>> We had said that we would support that.

>> Riley: Okay, that's good to know.

>> I would not personally want that if I were them, and they don't need to have it, but we did say that we would support it if that's where it had to go.

>> Riley: Okay, good enough. Thanks.

>> Cole: Okay, malcolm?

>> Council, my name is malcolm greenstein. I was one of the founders of the clarksville community development corporation. I'm the only one who's still on the board now, which indicates how old I am. Mary was a friend of mine. It's a proud thing that I can say. I really got to see her work in the community. I was noticing that as these people came from around the country to celebrate the 50th anniversary of the signing of the civil rights bill, that in 1964 austin was a racially segregated city. And except for maybe rainy street, the only significant minority community was clark ville, and -- clarksville, and mary was the soul of clarksville and it was because of her that all these things you heard about happened. Just one little incident showing mary's cleverness, after the city finally relented and stopped trying to destroy clarksville and provided the facilities, it became a place where people

wanted to live and gentrification set in, which is why we started the clarksville community development corporation, and one of the developers lived in clarksville, so every sunday after church mary led the church choir to this person's house and hymns were sung in front of the developer's house, every sunday. It was my chance to hear hymns. I didn't get to do that much growing up. And it was such a clever thing to do, because the community got involved, they sang, we had food, and the developers finally figured out that maybe there was a better place to live than clarksville. Maybe there was a better thing to do than try to destroy the neighborhood. And mary was the kind of person who came up with these very clever ideas. If there is any way to recognize her, recognize mary as a civil rights pioneer that she is, giving historic designation to 160,710th street is the way  
-- 1707 tenth street is the way to do it.

[15:19:12]

>> Cole: Thank you, mr. Greenstein. Linda baylor?

>> Hi, I'm linda baylor. I'm the third child born to charles and mary baylor. I've lived in the 1600 block of west 10th street my entire life, similar to my mother. There were many meetings and get togethers and 1607 west 10th street. In 1967 when I was 13 years old I began to realize and take interest in the meetings. The discussions consisted of unpaved streets, no streetlights, potholes, flooding, drainage problems, and I timely lived in 1613 west 10th street and my house was built in the '20s, and I also think that 1607 was built in the '20s. The meetings at 1607 during our stay at 1607 from the mid-'60s until we moved in 1971 next door always consisted of improvements for the residents of clarksville. We were not able to move into 1609 when we purchased it because it needed a lot of repairs, and also I went to visit the history center yesterday, and I checked the city directories to see where I was between the years of 1983 1986, and they said I was living at 1609, and I moved from 1609 to 1613 in 1982. So I know the directories are not correct. I saw a lot of my relatives that lived in the 1600 blocks. Their names are misspelled. Their occupation was not correct. And also when my mother passed away in march of 1997, the house of representatives of the 75th legislature passed a resolution paying tribute to the life of mary francis freeman baylor. Thank you.

[15:21:35]

>> Cole: Thank you, ms. Baylor. Cynthia baylor?

>> Good evening. I'm cynthia baylor. I'm the oldest of charles and mary baylor's family. And I just wanted to let you all know that we did live in 1607 west 10th when I graduated from the old anderson high school. And I was

-- you know, I was there when we had meetings and when my mother had meetings concerned the poor drainage. The drainage there was bad, and they had to carry us across the creek when

-- on west 10th street when it rained in order for us to get to school at upper clarksville. And I'm just here to say what I know for a fact, that we did live there, and I was there

-- that was 1966. Thank you.

>> Cole: Thank you, ms. Baylor. Kim o'brien?

>> Good evening. This case has been difficult because documentary evidence sadowsky says one thing

and the women who once lived in 1607 west 10th says something else. Who are we to live? Linda and Cynthia Baylor were not children at the time in question. They were not only old enough to know where they lived when but also be fully aware of the work their mother was doing. They were in which living room meetings were held and which back yards the community gathered. Regarding the documentary evidence

-- I also visited the history center and looked at the city's directories for the years 1964, the year staff says that the Bayers moved next door, through 1971 the year that the family says the Bayers actually did move, and, in fact, they say the Bayers lived at 1609, the directories do. But they said something else interesting. And each one I looked at, each one contained a disclaimer on the second page, and it says, the publishers cannot and do not guarantee the correctness of all information furnished them, though the complete absence of errors or omissions, hence no responsibility for same can be or is assumed. The publishers earnestly request the bringing to their attention of inaccuracies so it may be corrected in the next edition of the directory. In order to know there's an inaccuracy one would have to consult the city directory. Odds are good the Bayers never had cause to do so. I believe you have a letter in your packet from John Hanenberger whose association with Clark Villain Mrs. Baylor dates BACK TO THE 1970s. John states he's often stymied by trying to use the city directories to trace the movement of African-American families in Austin. Not to disparage the publisher of the directory but we need to remember that during the time period we're talking about Clarksville didn't have paved streets, street signs or house numbers. How easy would it have been to make a mistake. Which brings me back to my

[15:24:50]

original question: What are we to believe? Documentary evidence that itself says might be wrong or the recollections of the two women who just testified? There's no reason to doubt the memories or the motives of Mary Baylor's children. A few weeks ago capacity crowds filled the LBJ library to reflect on the passage of President Johnson's landmark civil rights bill and to celebrate those who fought so hard to make it happen. Clarksville was blessed with two unflagging lawyers, Pauline Brown and Mary Baylor are our angels. They organized their neighbors and fought to see that their community finally received what was so long overdue. Mopac to Pauline's house, please don't let Mr. Cubecheck take Mary Baylor's.

>> Mayor Leffingwell: Terry Taylor?

>> [Inaudible] Baylor was supposed to give this testimony but she was unable to make it so so I'll read her testimony for mere. I'm here to support historic landmark status for 1607 west 10th street and more specifically to discuss imagine Austin and relevance to this case. On page 122 under historic preservation policies for the Austin plan for the commute we believe these items specifically relate to the preservation of 1607 west 10th street. LUT, which is land use and transportation, p 38 says, preserve and interpret historic resources, those objects, buildings, structures, sites, places or districts with historic, cultural or aesthetic significance in Austin for residents and visitors. LUT 39 states, maintain and update inventories of historic resources including locally significant historic properties, not listed on national or state registers, archaeological sites, et cetera. LUT 41 states protect historic building structures, sites, places and districts and neighborhoods throughout the city. And LUT 42 states, retain the character of national register and local historic districts and ensure that development and redevelopment is

compatible with historic resources and character. I also would like to point out that the applicant has in the past inferred that his proposal would further imagine austin's goal of increased density. Given his plan to replace an affordable single-family home with an expensive single-family home, I don't believe he's supporting that particular imagine austin goal.

[15:27:23]

>> Mayor leffingwell: Thank you. Steven asherry?

>> It's asher, a-s-c-h-r-e-l. It's unusual.

>> Mayor leffingwell: L on end?

>> An l, sorry. I would love to just repeat everything they said because they said it very eloquently, so I have one rather mundane reason to support the rezoning, which I sent you all a letter regarding the reason that the planning commission had passed

-- or had a motion denying and the split over this motion was a sense of fair place, like they had

-- mr. Rourke had put forward a motion that said

-- it was

-- it made it seem as if we were changing the rules in the middle of this project that they had started, and I just wanted to remind you and them that their presentation that you will hear and see will only present facts that they should have known before they bought the house. They'll talk about traffic, they'll talk about the restaurant. There's a tower that's nearby that they're going to call an eyesore. There's all these things that are in their presentation. There's a photograph that he takes over the hood of an old suburban to sort of represent that it's sort of a rundown neighborhood and we're here to fix it. And I just want you to see

-- to see through the picture that they're

-- that they're trying to present to you and that there's nothing new under the sun. It was a number one house when they bought it and they should know that there was a possibility that this would be one of the outcomes. And I just

-- just listening to mr. Sadowsky, I can't

-- I'm having a hard time believing that his reading of long-standing association makes any sense

-- it makes no sense at all. It seems like the only way to read that

-- or if we were to read it the way he reads it, then abe lincoln's childhood home would have no significance whatsoever because he wasn't the president when he lived in it. And so why should we pay any attention to old houses that people don't live in? But this is the house that we associate with mary baylor. It's architecturally sound, in vernacular, and it's the house that the neighborhood associates and it's where a lot of the meetings took place. And so this is the house, not 1609, the house that we should landmark historic. Thank you.

[15:30:11]

>> Mayor leffingwell: Kathie --cathy tyler?

>> Hi, I'm cathy tyler. It was my really good fortune to be able to work side by side with mary baylor for eight years as a vista and as a city employee, and she is my



-- she was a very important mentor to me. She was a very important friend until she died, and I can hear her voice in my head tonight, and I'm trying not to say what I think she would say. [Laughter] if 1609 is not an historic house, then clarksville is not an historic neighborhood. It is very representative of clarksville. The criteria that mr. Sadowsky read to us, the historic association, I think everyone has talked about mary baylor's association with the house. Carrie baylor, who built the house, was known as the mayor of clarksville. He's linda and cynthia's grandfather, and he is a very colorful figure that had a lot to do with clarksville being a neighborhood and all its character. And the rule said historic association, persons groups, associations. The very first project that clarksville community development undertook was a rehab project and the very first house we rehabbed was 1607 west 10th. I think ms. Chambers also should be recognized as a person for living in the house for so many years too, because she was a perfect example of what clarksville was as a neighborhood. And then the other thing was community value, which is the cultural identity of a community. What more could represent the culture identity of clarksville as a place where the community residents came together, whether it was at the beginning of mary's civil activeness or at the middle or at the end, they came together there. It was the very first house chosen to be rehabbed. The community

-- the use from the community learned construction skills on that

-- the youth from the community learned construction skills on that house. And finally I would say, given the small lots, the 3,000-square-foot, those are the things that were very typical of clarksville that, you know, you wouldn't find in the city anywhere else. Clarksville was before the city, so it didn't

-- many things didn't meet code. The streets not being paved, the sewer running without

-- outside of culverts, all those kinds of things weren't found in any other part of the city, and those are the kinds of things that clarksville residents learned to live and were actually grateful for. They just felt such, and still do

-- feel such a pride of living in the neighborhood. So appreciate it.

[15:33:28]

>> Mayor leffingwell: Thank you. Last name keys, no first name is listed. So you can tell us when you get up here.

>> I'm margaret keys, and I know many of you, mayor, mayor pro tem, council members. I'm a lifelong resident of austin, and I've been in clarksville for over 20 years now, and I cannot imagine turning on to 10th street without seeing those structures. And if I had my way we'd save them both, because there's a way in clarksville that we do represent, that's kind of the gateway to clarksville, that particular street. I was told that the seller 1607 was charles walker, who was the second cousin of the baylors father. The family didn't receive any money from the sale, but the issue that I want to speak to just as a broader one for our city, I think that we have long been a city of tradition and vision, and where those two things fuse, and what I see is that we're fast losing a lot of our tradition, especially in the urban core, and as is it kind of moves into clarksville and the housing changes and the gentrification happens, we have very few kind of remnants to preserve, and we have a very unique, rich history in clarksville. And that's what I want to speak to in addition to everything you've heard tonight. Thank you very much.

[15:35:29]

>> Mayor leffingwell: Thank you. That's all the speakers we have in favor signed up wanting to speak. So we'll go to those against. David kensihelosi.

>> [Inaudible]

>> mayor leffingwell: I don't have that list so if you have an order maybe you ought to try to get it up to me. But go ahead and come up and start. Do you have the order there with you printed?

>> [Inaudible]

>> mayor leffingwell: Okay. Give it to the clerk, please.

>> How much time do I have?

>> Mayor leffingwell: Three minutes.

>> Three minutes?

>> Mayor leffingwell: Three minutes.

>> Okay. I'll try to be very brief and to the point. I'm jan cubecheck and I'm the father of the owner of the lot that desires to build his residence for his family there. My understanding is, is that the lot is 3,000 square feet, as has been talked about here. But the house that is there is 528 square feet. It's in a very seriously dilapidated condition. It does not possess any significant architectural value. That's one of the criteria that your preservation officer has addressed already. And that's set forth in your ordinance that the council has passed, or the predecessor councils have passed. That's in section 25-2 of the city code, and it provides that architecture should embody distinguishing characteristics of a recognized architectural style, type or method of construction, technology, innovation and design or construction, high artistic value in representing ethnic or folk art and a number of other circumstances such as -- or factors such as outstanding

-- it is an outstanding example of the work of an architect, builder or artisan, or it's a particular one of a kind property. This is just a 528-square-foot property that has been allowed to deteriorate in this neighborhood by these folks that are so concerned about its current preservation. When somebody wants to come in and improve that location, and they live in that community and they drive by it daily, but now they're chagrined that somebody wants to actually go do something with it. That falls -- that indicates falsity in my opinion. The preservation officer is a trained person in looking at the records. I've looked at the sanford insurance map records, I've looked at the city directories. Nine or ten years cannot be wrong, and the substantial connection as to the property is what I would submit is the most rational thing to apply when you're trying to designate a piece of property, not whether there's been some association, but the most significant association that has occurred. Otherwise you just get into a free-fall and decide that you're going to nominate anything. So the other thing about this is, is that there's been some great mention made about contributing structure no.1 classification. If I could ask you to go to the second slide there, a little further, please. Okay. So what this talks about here, in your ordinance, is at section 25-2-350 contributing structure -- contributing structure means a structure that contributes a historic character to the historic area, combining district was built during the period of significance for the district.

[15:39:31]

>> Mayor leffingwell: And your time has expired.

>> Beg pardon?

>> Mayor leffingwell: Your time has expired.

>> Yeah, okay. I wanted to

--

>> mayor leffingwell: Do you want to donate your time? Who are you?

>> We'd like to donate one minute.

>> Mayor leffingwell: You can donate three minutes.

>> Okay. We'll donate

--

>> mayor leffingwell: And your name?

>> [Inaudible] cubecheck.

>> Mayor leffingwell: All right. You have another three minutes.

>> Thank you. So in this ordinance that you've passed that you need to adhere to, it talks about a contributing structure being one which was built during the period of significance for the district and which retains its appearance from that time. Now, if you could go to the next sheet, please. Okay. It's probably hard for you to read it in the audience, but this came from the preservation office. Imposs ible.

>> Now, the significance of this is this is the list of contributing rank 1 properties in the clarksville district. There are a total of 29 total properties. There are only two properties listed later, in 1948 and 1950. There is one property, 1607, which is the property that's before you, is shown on this contributing list as having been built in 1925. The actual permit was taken out by the city in 1949 as has been testified. The water tap and the sewer connections were done in 1952. 1607 is not properly designated as a contributing rank 1 proper because it must be built during the period of significance for the district. If you take the 29 properties that you have here, there are two that are listed on there, 1948 and 1950, one erroneously as 1925, the property before you, and then you look at

-- look at this list, you have six properties that were built in the teens of the last century, 11 properties that were built in the '20s, four properties that were built in the '30s, for a cumulative total 21 of 29 locations that are built at a different period, at a significantly different period than the property that's before you. So I would not give much weight to the fact that this is ostensibly a contributing property. The staff evening has made a very good report before you. The planning commission was not one bit convinced, overwhelmed by the value of this property being designated historical. My son does not want to build a McMansion there. He has offered repeated designs that respect the scale of the property to the neighborhood. This will not have any adverse

-- deleterious effect on the neighborhood at all. We care very much for the neighborhood. My son does as well. This is at the entrance of an area that is highly commercial at the intersection of west lynn. It directly looks into the side lot of the galaxy restaurant. There really is not a significant case made here. I respectfully submit to you, to designate this 528 of-square-foot as a historical property.

[15:42:55]

>> Mayor leffingwell: Are you the owner of the property or is your son? Did you purchase the property?

>> I'm sorry.

>> Mayor leffingwell: Did you proper the property

--

>> I did not purchase the property, my so that did.

>> Mayor leffingwell: Your son did.

>> He's the one

--

>> mayor leffingwell: I'll save my questions for him. David kensihalosi?

>> Good evening, mr. Mayor, mayor pro tem, council members, david kensihalosi. I'm going to speak to my level of involvement during the initial period of due diligence and as the case made its case before the historic landmark commission. Before my client purchased the property I was engaged to perform a series of due diligence questions and tasks. I met extensively with the residential zoning staff several times. I met with historic staff and we looked at a lot of different neighborhood plans and other relative code and other concerns that we would have to keep in mind if we were to redevelop the property. This included subchapter f, McMansion, impervious cover, amnesty, historic, et cetera. And I can say without a doubt unequivocally that the zoning staff in the residential permit department never raised an issue of a potential historic or otherwise an issue that would prohibit this ultimately being demolished and permitted. I then went to the historic staff and met with them and had a fairly brief conversation, but at no point was a historic nature or pending issue that would prohibit us from moving forward with a full demolition mentioned. So based on that and some other knowledge that we presented and discussed, the client bought the property, and as we moved forward to the permitting process and [inaudible] process and started to engage the clarksville neighborhood association, I myself met with them personally at length at our initial meeting within the neighborhood, and at no time was that -- were the issues that we're hearing tonight brought up. And it seems, though, that only came up after the neighborhood sort of discovered that they weren't getting what they wanted out of the applicant, even though the applicant was proposing to amend and did amend the site plans and the elevations to their own economic fee several times. And so all throughout the historic landmark commission cases we have a consistent recommendation from staff, which is release the demo and eventually it became release

-- or approve or relocate a move-off permit. And to this day the staff recommendation is the same. It's consistent. And I would say that we have done the due diligence. This was not bought on a last-minute whim. We got the answers we thought were professional and comprehensive from the city staff that we interviewed, and we've done the work that we could to try to alleviate some of the concerns. And in closing I would just state that although I'm usually on the opposite side of the fence proposing something to be approved, I would state that in this case I think the council needs to look at it very closely to deny the request. Thank you.

[15:46:24]

>> Mayor leffingwell: Andrew milam?

>> Good evening, my name is andrew milam. I'm the proposed builder of this project. This house was in disrepair. Every element of the property, siding, studs, drywall, plumbing, roof, electrical, hvac, flooring, doors, foundation, needed to be replaced. There is either wood rot orator might damage in every wood

element of the property. The homeowner has approached me to build this project for them, they engaged me in this process initially when they put it under contract. I inspected the property, and I told them that it was beyond reasonable repair and a new house should be built. The homeowners and I then began the work of creating a design for their new family home. They wanted something contemporary. The neighborhood association received copies of the plan and a few of the neighbors were immediately upset by the proposed design. The homeowners were anxious to start construction and move into their property. So we discussed compromise in the design and accommodating the request of staff and a few neighbors. A revision was made that drastically altered the original appearance of the house. Staff was satisfied and recommended the historic commission approve the demolition application. The neighborhood only had four individuals attend that first meeting and they discussed their dislike of the proposed design. The approval was postponed for another meeting. After that the homeowner and myself met with these neighbors to discuss what could be done to improve the design in their eyes. Two things were mentioned: Lower the front elevation roofline and save as much as possible of the front elevation of the property. The homeowner lowered the entire right side front elevation and directed me to rebuild the front porch on the new house as it stands currently today. Each time a revision was made the neighbors demanded more changes be made. The neighbors began to move the discussion away from their initial complaint of aesthetic design to a new cause discovered well after the process had begun. Meanwhile historical staff kept their recommendation to approve demolition. Historical staff researching the history of the house, studying the proposed design, still recommended approval of demolition and release of the permit. They recommended release of permit six times. The historic [inaudible] was limited to 1400 square feet. This is due to the size of the lot and the existing area behind the house that could be built in. The proposal that we've met with on the -- on the neighborhood either don't fit in the setbacks -- none of them fit in the setbacks and then in addition they're extremely expensive. The homeowners have two children and a third already on their way. They would like to build a very modest four bedroom house, 1400 square feet is simply not enough room. The neighborhood would like to make this an issue about Mary Baylor and her life and accomplishments, but please don't let this sway your opinion. This is about aesthetics. Mary Baylor according to city records lived next door from 1964 on. She did her civic work in the late '60s and mostly in the '70s and '80s. The Bayers still own 1609 West 10th. This is where she lived when she did her civic work. This is the right house for historic designation. The extended Baylor family-owned 1607 West 10th until March 13. I ask you to do the fair and just thing, deny this application and let the family build the house the city already told them they could build. Thank you.

[15:50:03]

>> Mayor Jeffingwell: Thank you. Sean Cusecheck? Now, you're the person that donated your time, correct?

>> No, Seth did, my brother, Seth Cusecheck.

>> Hi, good evening, my name is Sean Cusecheck, I am the owner of 1607 West 10th. My wife and I request that you deny any zoning changes to our property. City staff and the planning commission do not recommend zoning this property historic, and staff has raised a very legitimate question about

initiating historic zoning on the baylor house next door at 1609 west 10th. The baylors do, in fact, still own that property. I put this property, 1607, under contract in january 2013. It was listed in the multiple listing service. It was on the market for 22 days, and I executed a contract and the sellers represented throughout the process in their remarks that it was a, quote, great opportunity for someone to build in the heart of clarksville, and, quote, value of the property is in the land, and according to the city you can build up to a 2300-square-foot home. Prior to closing on the property I spent over two months hiring a permit expeditor and builder to explore the viability of the project and research its affordability and feasible. My team researched all the code and setback requirements and verified that the 21-square-foot home I planned to build would meet all zoning requirements. Since we knew the property was located in a national historic district my team went down to meet with historic staff. Staff spent time researching the history of the house and didn't find a reason I wouldn't be allowed to build my home. Only then did I finalize my purchase of the property with ms. Baylor's heirs. Since that time I have been making every effort to get the approvals in place for my family home. I live in south austin in a 1r5 hundred-square-foot house, I have an 8 yort daughter and is-year-old son and my wife is pregnant with her third child. My wife and I work downtown and want a lifestyle that allows us to minimize time cars and maximize time with kids. We drive fuel

-- we embrace a set of values that minimizes our impact on the local environment. This house we plan to build is the answer to how we can improve our living situation and adhere to our values. I want to echo and agree with what andrew said about my team's willingness to work with and implement the design changes. I did spend additional funds two times we had, we had a total of two different revisions to our original plans. And really did everything we could to satisfy the neighborhood. In the last revision basically implemented a very reasonable design with a front porch elevation

[15:52:57]

[inaudible] the neighborhood. I did what I could to compromise with the few neighborhood representatives, only to have them object to our revised drawings. For months our opponents's objection to our plans was based on exterior design and as andrew mentioned I think when they were losing traction on that argument they shifted their focus to historical significance. The baylor family

-- the baylor family's heirs sold and profited from the sale. They represented the property as a new construction opportunity. If the baylors would like to honor their mother's legacy, I encourage them to do it with one of the other properties they still own on west 10th street. Do not let them try to force it on to me and my property. I ask for your support in denying historic zoning.

>> Mayor leffingwell: I have a couple of questions for you.

>> Sir.

>> Mayor leffingwell: You bought the property from the baylor family?

>> I did. It was

-- it was charles walker, who was an heir of the baylor family.

>> Mayor leffingwell: Okay. And it was represented by the seller to you as a property basically a tear-down, build a new house.

>> It was. Can I get one of the last slides on the powerpoint? I want to actually put on the powerpoint

presentation the

-- the actual listing. So it's

-- you know, it is what it is. As a matter of fact, while we're waiting here, you know, 1622 west 10th was recently, like this week, just submitted for demolition, and ronnie baylor actually owns that property to this day. Dar demolition was the applicant on that proper. I went through hcl on monday and it was postponed per staff's recommendation. Another opportunity for them to actually sell one of the houses they currently own.

>> Mayor leffingwell: Was the baylor family member who sold the property to you

-- was he in any way connected with the baylor family members who are now asking for historic landmark designation?

[15:55:00]

>> So I want to submit one thing for your consideration, if I can put it on the

-- we have a boundary agreement.

>> Mayor leffingwell: Well, you need to be on a microphone when you're talking because this has to be on the record.

>> This is 1622 west 10th. This is actually the property that

-- that is on the market currently. This is not our property. This is owned by ronnie baylor. It went through

-- like they submitted a

-- I think probably the person buying the property submitted a

-- so the baylors continue to represent other properties that they own for demolition and new construction purposes. This is about a third of an acre. It's down the street. I want to go towards the end. Yeah. I can thumb through it here. Let me get back to 1607 here. Okay. So this is the listing itself. It says agent remarks. Back on the market, make sure to read the attachment. The attachment I'll get into more detail here. It had to do with the boundary agreement that we later had signed. But then it says just clear as day, the value of the property is in the land. The lot is approximately 4 feet by 64 feet according to the city you can build up to a 6300-square-foot home which they verified on their end before they got into contract with us. This is a great opportunity for someone to build in the heart of clarksville. So beyond even reading that and being comfortable with that and this being my trade and me understanding due diligence, beyond all that I still spent time, money and effort getting my team to spend time down at the city and get comfortable before ever purchasing the property. A couple of exterior photos, some newer construction. This is the house that

-- well, there's a house and I guess part of a vacant lot, but

-- that the baylors currently ronnie baylor does, it says fantastic clarksville location. The lot can support one or two structures, and I believe if I remember correctly, mary baylor actually lived in that house for one year back in the early '60s, according to city records on mr. Sadowsky's report from this last week. So if they're so opposed to us doing what we want to do with our lot, why are they still doing the same thing and selling property under the pretense that it's available to be built on and new construction and this and that, and renege. The last thing I was going to say is if we can go to the actual projector.

[15:58:08]

>> Mayor leffingwell: Really, I think you've answered the question I asked you.

>> Okay.

>> Mayor leffingwell: I think I get the picture. Okay. We do have one more speaker. Claudia scott.

>> Good evening, as mentioned already, sean and I purchased 1607 west 10th, we intended to move to clarksville to raise our family in a diverse urban and central austin neighborhood. And sean and I very much care about sustainable design and mindful use of resources. We're not coming in to change everything, and mess everything up. We care about smart architecture, and I also believe that the future of a successful city is in dense and smart development. When we

-- I guess to go back to

-- I really want to respect and applaud mary baylor's powerful and amazing accomplishments and activism, so going back to west 10th, 1607 west 10th, at the time we looked at this it was marked as a tear-down house and we've learned new things since then. [One moment, please, for change in captioners.]

[16:00:46]

>> we wouldn't want to demolish it. It is what it is right now. Therefore it's a little bit of an unfair situation to go from selling it at a tear down to all of a sudden caring about a property that was never cared for. Thanks.

>> Mayor Leffingwell: Thank you, that's all the speakers that I have signed up to speak. If you signed up and I didn't call your name, please let me know now. Thank you. Council if there's no objection, I would like to table this item and extend our rules for past 10:00.

>> Second.

>> If there's no objection we will extend the meeting past 10 and bring this item back up on the table. We have completed the speakers. I will entertain discussion on a motion. Councilmember morrison.

>> Morrison: I wonder if I could ask somebody from the neighborhood to speak to the issue of who sold this house to the new owners because I guess it was suggested, ms. Baylor that maybe you all sold it to them suggesting it could be torn down, could you explain that a little bit?

>> No, we did not sell the house to shaun. Charles douglas walker, a second cousin of my father, sold the house to shaun. The baylors did not own the house. The baylors did not sell the house to shaun.

>> Morrison: Thank you, I appreciate that clarification.

>> You're welcome.

>> Mayor Leffingwell: Councilmember martinez.

>> Martinez: I wanted to ask mr. Sadowsky and maybe a neighborhood representative, we got a letter from mr. Canceloci talking about the early meetings with the different iterations of perspective design. In that he states that staff and or some of the neighbors that met never brought up the baylor family. Can you speak to that?

[16:02:54]



>> I wish I could, councilmember. Those discussions were with my colleague who is no longer employed by the city. I was no part of those conversations so I would really hate to speculate as to what was discussed.

>> Martinez: Thanks, steve. Can anyone from the neighborhood, did any of you

-- did anyone from the favorable position, were you part of those meetings that are being referred to, the early meetings? Dave, I'll certainly call you up as well.

>> We received a letter from the agent of the owner of the property saying that in

-- I don't know

-- there's no number on the letter. Just says in multiple meetings or in several meetings, pull up the email so I don't

-- misquote him. In some early meetings with the neighborhood that the issue of the baylor family and ms. Baylor and this being potentially historic was not ever brought up.

>> Mayor Leffingwell: Identify yourself, please.

>> When I first

--

>> Martinez: State your name.

>> I'm sorry, my name is mary reed, I'm sorry. When I initially contacted shaun kubicek asking to meet with him to talk about this project, the initial meeting was because we didn't know anything about what was being

-- going to be built there and we wanted to make sure that we understood what was going to happen, what their plans were. We explained clearly that we did not want the house demolished. That we wanted something, we wanted the house saved and that we had problems with the design that he was presenting to us. At the time we didn't

-- to be honest I didn't get into the mary baylor connection because at the time we were just dealing with the issue of what was going to be

-- that we wanted the house saved and what was going to be, if they got a building, if they got a demo permit what was going to be built in its place. I don't even know if I knew that mary baylor lived there at that time because I don't know the history of every house in the neighborhood. Then as it became clear to us that they were intent on demolishing the house and they weren't interested in determining any way to save the house and add on to it, then of course we started researching and found out more about it, then we determined there was a whole lot more to the house than just the architecture and the fact that it was a contributing structure.

[16:05:36]

>> Martinez: Thank you for that, I appreciate that. Mr. Canceloci? You looked like you wanted to add something to this?

>> Yeah, I would just add. It certainly never came up. It wasn't anything on the record until the third or fourth meeting that occurred at the historic landmark commission. It certainly doesn't happen in my one-on-one meetings with mary reed, albert carter and a few other neighborhood representatives. It certainly didn't come up with ms. Alison McGee, in my initial meetings with her and subsequent discussions can torry hasse who is also with the historic department. We would think, I think ms. Reed

just articulated this, we would think if it was such a well-known fact and contributing factor to the structure, being historic, that would be a widely known and publicized and certainly discussed issue off the bat, regardless of any proposed design the fact that we were demolish, requesting to demolish the house was certainly noticed properly from the city to the neighborhood, there was no -- there was no misunderstanding about what our intent was. And so they can get sidetracked about the design and my clients certainly tried to appease them with multiple design changes, but I would think that at the beginning of the -- of the discussion, which was in, you know, late summer, early fall, that that would have come up first and foremost versus the third and fourth hlc meeting which occurred later on in the fall towards november, december, january. Thank you.

[16:07:37]

>> Riley: I have a question. Steve, I want to ask you about the condition for the house, that issue often comes historic zoning cases, especially in owner opposed, we have seen a wide spectrum of houses in terms of conditions a lot of arguments about salvageability. There have been houses designated historic that seemed to be in pretty poor condition. We have seen houses fixed up to very impressive state that were in poor condition. It's hard to gauge from the dais what condition it is and how salvageable it is. Do you have any position of whether this could actually be brought back to a habitable condition?

>> I have not done a full study of it, councilmember. I have been on the property several times. A lot of the house has deteriorated. A lot of the wood on the house would need to be replaced. Doesn't mean that the house couldn't be rehab at that rehabilitated, but the house definitely looks like it has been neglected for some time. There are areas where the paint failed and wood is rotting.

>> Riley: Have you seen houses that have been designated historic and were in worse condition than this?

>> Definitely. Doesn't stop me from being them forward, either. It really comes down to how much of the house can be salvaged. There's no point in preserving a house as a historic landmark if it is going to 80% new material. Then it's a new house. You are not preserving the historic fabric. I don't have a figure as to how much of this would be salvageable, how much would have to be replaced. It's my impression from okay the property there's a lot of wood rot.

[16:09:42]

>> Riley: You don't have a accepts of it would that be 80% or whatever.

>> Never looked at it from that perspective. Just something to notice.

>> Riley: I do see someone from the neighborhood wanting to chime in on this. Sir, I would welcome your end put on this.

>> [Indiscernible] carter. I just want to address the salvageability issue. I personally have bought and lived in and rehabilitated 1619 west 10th street, which is basically the same house as 1607. And 1712. Both of which, 1712 had holes that you could fall through in the floor. And it's a beautiful house now. 1619 had plank wall instruction with squashed roaches behind the

-- the wallpaper, had holes in the walls, had discontinuous rafters in the ceiling. It's a beautiful house

now. And it looks exactly like it did when we bought it. Just a different color.

>> Riley: Okay, thanks. And in the interest of fairness, I should ask representative of the owner to address the same issue.

>> I would like to speak to that fact because I've been inside the property, I have seen the termites coming out of the dry wall. I tried to show the pictures of the exterior, wood rot with the siding. Most of the doors have wood rot on them as well. What we ended up with in the final design was a proposal that rebuilt that front elevation, which is very similar to what aubrey is putting up there. If you saw the structures that he was proposing, they are essentially a brand new house on top of the small front elevation structure and that small front elevation structure based on the condition of the house would have to be totally rebuilt. So you're talking about exorbitant costs to try to keep this little tent of a front elevation and that's

-- that's what they've been proposing that we try to do, but we feel like our design meets the intent of what they are asking.

[16:11:51]

>> Mayor Leffingwell: Could

-- are you finished?

>> Riley: Actually, I would like to ask one represented question of the neighborhood if I could. It's on a different point if you wanted to follow up on that point.

>> Mayor Leffingwell: I just wanted to follow up on that point. In your opinion, you're the proposed builder, right?

>> Right.

>> Mayor Leffingwell: Would it cost significantly more to obviously you can restore anything if you pour enough money into it. What about the cost of restoring versus building a whole new house, how do they compare?

>> The cost would be significantly more. I would estimate 40 to 70% depending on the design.

>> Mayor Leffingwell: That's for the existing 500-foot structure, you wouldn't

--

>> the 500-foot structure would be a lot more. The percentage would be much higher, probably 100% more. Maybe 120% for the 500 square foot. The cantilevered options, those costs would be in the range of 30 to 50% more than what we have proposed for that square footage of the house. So it's a big economic issue. I think that's at the heart of what we're discussing here is the economic value of the property and how it was sold and then how it needs to be built.

>> Mayor Leffingwell: Mr. Sadowsky said that his opinion was it would be mostly a new house, all of the materials would be replaced and therefore it wouldn't be the same house, that it wouldn't be an historic house.

>> I agree. It's likely a lot of the studs along the exterior walls would need to be replaced. All of the siding clearly needs to be replaced from the pictures. Front doors have holes in the corner, all around. I don't know how you reshape a wood door without buying a wood door. The porch has holes in it. All new wood for the front porch.

>> Mayor Leffingwell: Thank you. Thank you, councilmember. You have it back.

[16:13:54]

>> Riley: I would like to ask a representative of the neighborhood about the negotiations that went on earlier. In particular the concept of seeking some agreement whereby there might be some redevelopment of the property, preserved or featured some elements of the facade. I'm just curious, I understand that there were discussions about adding some square footage. Well, in fact mr. Carter you went so far as to prepare drawings. And I'm just curious, I understand that at some point during the discussions, the parties got cross-ways and there was no longer a real dialogue and it became just a -- just a two sides opposing each other in this historic zoning case. I wonder, could you -- if the property really were in a state where it was very hard to -- hard to salvage, if 80% of the wood did have to be replaced, I wonder if there's any -- if there is still any hope of a win-win agreement where some significant part of the front facade could be preserved in more or less the same form that it's there. But then there could be some significant rebuilding behind and going up. Is that -- if the owner were willing to have a conversation about something like that, were willing to go back to seeking some sort of compromise along those lines, would the neighborhood still be agreeable to something like that?

>> Well, I can't speak for the whole neighborhood committee, but what I can say is that at that property that I mentioned a moment ago that I renovated, 1712, Barbara Stockland was then the historic officer. She requested that we can tear down everything except the front facade. The house was built back exactly like it was, the front facade was never changed. Regarding the wood condition on this house, the house that I did at 1619 was in its original plank wall construction, rotting, square nails, termites, all of that stuff. We built stud walls inside the existing walls. That's all that you have got to do. They have to build the stud walls anyway. We went inside against the existing walls, it was done. I disagree that it's going to increase the costs, the amount that he's saying that it would. You have to have new doors anyway. You have to have all of that new stuff anyway. Whether it goes in this door hole or that door hole makes no difference. So I don't agree that he's -- also, the cantilevered pieces, if he builds a two story building, then he's got a cantilevered second floor already. It just happens to have a floor underneath it, which he could do with any of those proposals that I made.

[16:16:46]

>> Riley: Part of the reason that I ask, I assume that any significant -- if the house were zoned historic, any significant additions to the house would have to go through a whole certificate of appropriateness process and I wonder if there might be some compromise possible that would entail as an alternative to historic zoning an agreement that would entail voluntary preservation of the front facade with an agreement about what would be built behind it. I understand that's what you are seeking, that there were discussions along those lines earlier in the history of this case, and I just felt the need to ask whether there's any -- whether there would be any

--

>> I would

-- I can't answer for the whole ccdc. But personally that was where we were going at first can we come to some sort of common ground about a significant portion of this house being saved. We kept getting nothing, so we dug in, too.

>> Riley: I see, okay, okay. Then my very last question I'm going to ask, since I see a number of hands going up on the part of the owner. My very last question if the neighborhood were willing to get back to that conversation, this is a question for the owners, if the neighborhood were willing to go back to a conversation along those lines as an alternative to historic zoning seeking some resolution in which the front facade would be preserved in its existing form with some agreement about what would be built hyped it. If there were willingness on both sides to resume that conversation, then

-- if the neighborhood were willing to resume that conversation, I just wanted to ask if the owners would be willing to

--

>> I'm happy to resume the conversation.

>> Riley: Okay. Just wanted to ask the owners if they would have any interest in a resolution along those lines.

>> Thanks, I appreciate you bringing that up. For our particular needs, this goes back to six, seven, eight months ago, we evaluated that as best as we possibly could. We have two masters on this deal. One master is the neighborhood group of which there's 13, 14 outspoken people. The other 260 neighbors are unspoken for. So they are a minority frankly. But the second point is we looked into that option. If you keep within the city code, you asked a really good question earlier about McMansion, impervious cover, floor to area, all of that stuff. We've evaluated all of that. If we satisfy the city, we can't satisfy the neighborhood and if we satisfy the neighborhood we can't satisfy the city. It's a confluence of catch 22s. At the end of the day we're not interested in a 1200 square foot house. We want two off street parking. That's what the city code calls for. This house doesn't have a curb cut right now. So if you kept the exact front elevation of the house and you added a parking spot, two off street parking would go through the front porch that is coveted by all of us. So I'm asking for a vote. I really want a vote.

[16:20:09]

>> Riley: Thank you.

>> Cole: Mayor?

>> Mayor Leffingwell: Mayor pro tem cole?

>> Cole: We've had a significant amount of testimony and I definitely understand the owners' position in wanting a vote. I was especially moved by the testimony of mr. Green stein that he actually knew mary baylor. I have lived in austin for approximately 30 years and I've been on the council since 2006 and I cannot recall having the opportunity to zone historic a home for an african-american female. So I don't think I'm going to recuse myself on that basis. I think I'm simply going to say that I'm very proud at this moment to make the motion that

-- to make the motion that we grant the historic zoning and close the public hearing.

>> Mayor Leffingwell: So mayor pro tem cole moves to close the public hearing, is that on all three

readings.

>> Cole: All three readings.

>> Mayor Leffingwell: Is there a second for that?

>> Riley: Mayor? I'll second that motion.

>> Mayor Leffingwell: Councilmember riley seconds. So let me just say that I'm not going to support the motion. It's not recommended by the city's historic

-- historic designation officer. It's not supported by the planning commission. From the testimony we've heard today there was absolutely no rope to think that the

-- no reason to think that the owners of the property would have any reason to expect there would be a problem with that. It was advertised basically as a tear down, they bought it as such with that in mind. I think it's basically unfair to them and I can't

-- [indiscernible]

-- the structure itself, does not look like it's worth preserving. Perhaps it's worth a marker for some time that this remarkable woman lived there for a while. But I think it's unfair of the owners to the property not to grant their demolish permit request.

[16:22:29]

>> Cole: I need to change my motion to make this on first reading because the ordinance is not ready.

>> Mayor Leffingwell: First reading only. Councilmember riley? Okay? Other discussion?

>> Riley: I would like to speak to my second. I, too, understand the plight of the owner and sympathize with it, but I am persuaded by the arguments of the neighborhood. Very important part of what makes clarksville a special neighborhood is its historic character and a critical part of that historic character is the very period of the

-- of significance that we're talking about for this house. It was lived in by a woman who played a key role in turning clarksville around and bringing the amenities that are there

-- amenities that are there today. [Indiscernible] cultural and historical significance, having historical associations with people who contributed significantly to the history of the city and significant amount of community value for this neighborhood in particular. I agree that it is reflective of the

-- tells a very important part of the clarksville story and I can understand why the neighborhood feels strongly about preserving it and so I'm happy to support the motion.

>> Mayor Leffingwell: Councilmember morrison?

>> Morrison: I'm very excited to support this motion. A couple of things, it might be what was in ms. Baylors mind when she said she didn't want to say what ms. Baylor

-- I heard somebody say that, I didn't think of this myself. I just think that the irony of we're having to, you know, deal with this gentrification issue with ms. Baylor's house when she spent her life trying to

[16:24:35]

-- fight gentrification and preserve clarksville. But also this is about the history of our city. When I read the background of the programs that she was involved in getting started in the rental rehab and the youth programs and all of these wonderful programs, these are programs we still, you know, that have

now grown across the city, serving the people of austin and we're proud to have them. She really started building our city and then, thirdly, to me it's an example of civil rights coming to life in the history of our nation, so it's national recognition, too. So I appreciate the motion and I think that it's terrific that we could be considering zoning something in honor of an african-american female.

>> Mayor Leffingwell: Councilmember tovo.

>> I agree with all of my colleagues. I really appreciate all of the people who took time to write or to speak at this meeting or some of the other earlier meetings that have preceded them. I found the backup really very compelling. I want to also mention a resource that someone lent to me. It's a documentary about clarksville that was done in 1970, it was done by the center for southern broadcasting. It was a professor at u.T. Who did it. It really I think brings to light some of the issues that mary baylor was really

-- was fighting. It talks about the cross town parkway and mopac construction and also has some

-- has some glimpses of the neighborhood at that time. For me it really was very

-- it was another piece of the story about why her life was so significant and the work that she did was so significant and her house as ms. Team said, this is the home that was associated with mary freeman baylor in the eyes of the community. I just really appreciate the testimony especially from ms. Tyler and -- and the other gentlemen who worked with her and could speak concretely to how this house functioned in that work that they did with the youth. And lastly, thank you to the family members who came down. So thank you all. I think that you've really helped us understand why this house is significant and will be such a value to have in our historic landmark portfolio.

[16:27:10]

>> Mayor Leffingwell: Councilmember martinez.

>> Martinez: I'll be brief, mayor. I'm not as enthusiastic about taking action on this item. But because you're asking for an up or vote down today I'm going to give you that and I'm going to support this motion. I think you had an opportunity to

-- the motion still may fail. But, you know, I would rather that you guys would have come to an agreement on something that was compatible. I do think that there is some significance in this home and in ms. Baylor and what she contributed to austin. I would much, much rather see continued negotiations and hopefully achieving an agreement. But if you are asking for a vote up or down tonight, I respect that as well. If I have to vote on this motion, I'll be voting in favor of it.

>> Professor: Any other comments?

>> Mayor Leffingwell: Any other comments? All in favor of the motion by mayor pro tem cole say aye.

>> Aye.

>> Opposed say no.

>> No.

>> Mayor Leffingwell: Passes on first reading on a vote of 5-2. Note that to pass on all three readings it will require a vote of 6-1 at least, or 7-0. That completes our agenda for tonight, without objection we stand adjourned at 10:28.