

MINUTES
Troutdale City Council – Regular Meeting
Troutdale City Hall – Council Chambers
104 SE Kibling Avenue
Troutdale, OR 97060-2099

Tuesday, October 13, 2009

1. PLEDGE OF ALLEGIANCE, ROLL CALL, AGENDA UPDATE

Mayor Kight called the meeting to order at 7:00pm.

PRESENT: Mayor Kight, Councilor Hartmann, Councilor Wand, Councilor Thomas, Councilor White, and Councilor Kyle.

ABSENT: Councilor Daoust (excused).

STAFF: Dave Nelson, City Administrator; Rich Faith, Community Development Director; Elizabeth McCallum, Senior Planner; Debbie Stickney, City Recorder; and David Ross, City Attorney.

GUESTS: See Attached.

2. CONSENT AGENDA:

2.1 ACCEPT MINUTES: May 26, 2009 Work Session #2, July 14, 2009 Regular Meeting, August 25, 2009 Regular Meeting, August 25, 2009 Work Session and September 8, 2009 Regular Meeting.

MOTION: Councilor Hartmann moved to accept the Consent Agenda. Seconded by Councilor Kyle. Motion Passed Unanimously.

3. PUBLIC COMMENT: Please restrict comments to non-agenda items at this time.

None.

4. PUBLIC HEARING / ORDINANCE (Introduction): An ordinance amending the Troutdale Development Code (Text Amendment No. 42) and the Troutdale Municipal Code to comply with Title 13 of the Metro Urban Growth Management Functional Plan – Nature in Neighborhoods, and housekeeping amendments related to Title 13 and Metro Title 3 – Water Quality and Flood Management.

Mayor Kight read the ordinance title and opened the public hearing at 7:05pm.

Elizabeth McCallum, Senior Planner, stated before you is a text amendment pertaining to compliance with Metro's Title 13, Nature in Neighborhoods, and amendments to the text of the Troutdale Development Code (TDC) and Troutdale Municipal Code (TMC) classified as housekeeping to better organize the ordinance, and for consistency with the amendments proposed.

Elizabeth McCallum showed the Council a PowerPoint Presentation (copy attached as Exhibit A to these minutes). Ms. McCallum reviewed each of the slides in the presentation.

Councilor Thomas stated on Slide 6, I am not sure that I understand the correlation. Title 3 talks about protecting life and property from dangers associated with flooding, and you are comparing that to Title 13 moderate stream flows. How does that tie together?

Elizabeth McCallum replied moderation of stream flow and improved water storage – when you have a protected vegetated area you moderate the flow of any storm water that would leave the property. With storm water management development standards, the discharge of the treated storm water to the vegetated corridor and floodplain are to be at the pre-development rate, so that would be a moderated stream flow.

Elizabeth McCallum (in addition to the information provided on Slide 15) stated these maps include the urban planning area as well as recently annexed properties in the southerly portion of the city (Cochran Road, Sweetbriar Road, Strebin Road, Troutdale Road and Beaver Creek). Under the current mapping the floodplain (the blue hatched areas), the steep slope areas (the darker shaded area), and wetland areas are generally shown on the Title 3 Maps. The development standards of the Vegetation Corridor and Slope District currently apply to those areas on the property. The Metro Title 13 map is overlaid in the example on Slide 15. You can see that the yellowish-green and dark green areas poke out a little bit around the existing Title 3 regulated areas, but it is not substantially different. So the Planning Commission (PC) agreed with the Citizens Advisory Committee (CAC) and staff that applying these amendments to the existing mapped Title 3 areas was appropriate.

Elizabeth McCallum (in addition to the information provided on Slide 16) stated during the public hearing before the PC, Metro and the Audubon Society approached the PC (under Tab F in the staff report are copies of letters from Metro and the Audubon Society) requesting that the Habitat Conservation Areas (HCA) of publically owned parks and open space areas be regulated with some additional regulations over and above what we had drafted for the PC originally. These yellow highlighted parcels (Slide 16) are publically owned parcels that are used as parks or open space. These properties are owned by the City, Metro, and State of Oregon. The standard on Page 19 of Text Amendment No. 42 that would limit development in the HCA of those parcels to low impact outdoor recreations facilities was included in this Text Amendment No. 42 that is before you.

Elizabeth McCallum (in addition to the information provided on Slide 17) stated it is a little difficult with all of the different maps to show, but I am presenting a detail of the area that shows Depot Park to the north, Beaver Creek area, Harlow Canyon, Glenn Otto Park, and

the Sandy River. These are the HCA overlays. The intent of the current language before you is that those HCA that are underneath or part of these yellow highlighted tax lots, which are publically owned parks and open spaces, are to be regulated with that exception language. You do have before you this evening a letter that came in from Metro after the staff report was put together that is dated October 12th from Brian Harper. Mr. Harper is here to discuss options of how that current language might be furthered revised. That would be based upon the discussion that we had during the work sessions about limiting development in the city owned areas.

Elizabeth McCallum (in addition to the information provided on Slides 18-22) stated Metro has acquired properties with the 1995 and 2006 Natural Area Bond Measures as Mr. Harper mentioned in his letter to you. Mr. Harper and other Metro staff are amenable to revisions to the language that would only apply the preservation of the HCA on those properties owned by Metro that were specifically purchased with that bond money and for which they are intended for natural areas not intended for future development. In the October 12th letter from Brian Harper, he is agreeable to revising the language of TDC 4.311 which is discussed on pages 3 & 4 of my staff report. Metro is agreeable to allowing the City to only have the more restrictive applicability statement for HCA be on Metro owned parcels that were purchased with the Metro green space bond money. The other areas within the city that I was able to identify that belong to Metro are the Douglass Cemetery and the Mountain View Cemetery; those are not intended for anything other than cemetery use so it wouldn't apply to them. We have two parcels that Metro purchased from a private property owner on the west side of Troutdale Road that have Beaver Creek frontage so it would apply to that property. There is also an area east of Beaver Creek that was purchased with open space money. There are two parcels on the east side of the river that Metro purchased of which a portion is outside of the city. The applicability statement that Metro would like to see is that the development standards for the Vegetation Corridor District also apply to the HCA of these parcels and the Beaver Creek Canyon parcel.

Elizabeth McCallum reviewed Slides 23 – 29. The PC found that the criteria (shown on Slide 27) were met. The ordinance includes findings that explain those criteria, the purpose of these amendments and how they substantially satisfy Metro's Title 13. The findings also address the public notification, hearing procedure, testimony received at the PC hearings, testimony received since the PC's recommendation, and a place holder for additional testimony that may be received this evening. You have two letters that were received after the staff report was prepared for this hearing. In the packet you have a letter from Tom Bouillion following up on his request to allow for off-site mitigation outside of the city limits or the urban planning area because the PC adopted the standard that would require mitigation for tree removal within the city limits or the city's urban planning area. I have spoken briefly about Brian Harper's letter from Metro about the applicability of the standards to the HCA as well as the Vegetation Corridor areas on properties owned by Metro purchased with the Metro open space bond money. We received (via fax) a letter late this afternoon from a property owner, Mr. Peter Matzke, voicing his concerns that these standards are a taking of his property rights. Mr. Matzke did attend many of the CAC meetings and we briefly spoke with him at the meeting about some of his concerns about these standards and the floodplain management standards. We did follow-up with FEMA as well about the floodplain mapping.

The PC does recommend the proposed amendments to the City Council for adoption. There are three options: A) Confirm the recommendation of the PC and enact an ordinance adopting these amendments; B) Revise the recommendation of the PC, adopt additional findings to support the revisions, and enact an ordinance adopting the amendments as revised; C) Reject the proposed amendments as recommended by the Troutdale PC and adopt findings supporting this decision. Staff is recommending Option B based upon conversations that we had at the work sessions, and in light of other additional testimony there may be other revisions that Council may wish to consider. Prior to the close of the hearing on this matter staff is requesting direction from Council on any changes to be made to the amendments and ordinance. Staff will incorporate those changes prior to the second hearing on this ordinance.

Mayor Kight stated this is a very complex and complicated subject. I am concerned that when we enact things like this that there are always those unintended consequences. In my mind I am not sure how specific property will be harmed, damaged, or affected.

Councilor Hartmann asked does Troutdale suffer from any land use negligence that we know of? Are we pretty good stewards of different land use requests that come through the city with regards to preserving existing Title 13 areas?

Elizabeth McCallum replied I would say generally we don't have non-compliance with our standards.

Councilor Hartmann asked do we have a working effort by staff to preserve and exert concern for all projects that are going on in our city with regards to Title 13?

Elizabeth McCallum replied we haven't adopted Title 13 yet, but our existing Vegetation Corridor and Floodplain Management standards are evaluated every time a property comes in for development whether it is a single-family house that has land with a vegetation corridor, a huge commercial development or a subdivision, the standards are evaluated and applied. If the standards cannot be met the applicant requests variances and they have to meet the variance criteria and then that is evaluated as part of that total development request.

Councilor Hartmann asked and those processes are working good?

Elizabeth McCallum replied yes they are.

Councilor Hartmann asked is Troutdale in any kind of legal risk of any sort with regards to Title 13 and what we must do to adopt Title 13?

Elizabeth McCallum replied Metro did give us a deadline of January 2009, but we have received an extension. Metro Planner Brian Harper is here tonight and may be able to speak more specifically to their desired timeline for us to adopt these amendments.

Councilor Hartmann asked does Troutdale offer equivalent protections that would somehow equate to Title 13 requirements?

Elizabeth McCallum replied as I explained in the staff report there are existing standards for vegetation corridor development and floodplain management. There is an overlap. There is a need to revise some of that language so that it is more specific to Statewide Planning Goal 5 with respect to preservation of significant wildlife habitat.

Councilor Hartmann asked so there are some roughly equivalent standards in place today?

Elizabeth McCallum replied for the most part we have standards that are somewhat equivalent but they have been revised in the amendments before you so that they are substantially in compliance with Title 13. They are not everything that Metro requested in Title 13.

Councilor Hartmann asked do we have an impact study or some understanding of what the potential loss to land owners would be with regards to the restrictions under the proposed changes?

Elizabeth McCallum replied no we don't.

Councilor Wand asked under our existing land use development ordinance, has there been any finding from a court or administrative agency stating that we are not sufficient for meeting Title 13 in our existing form?

Elizabeth McCallum replied there has been no court finding.

Councilor Wand asked has there been any administrative law proceeding with regard to that?

Elizabeth McCallum replied I am not sure I understand your question Councilor Wand.

Councilor Wand asked has it gone before the Land Conservation and Development Commission or Land Use Board of Appeals?

Elizabeth McCallum replied our ordinance has not been challenged. Staff has worked with Metro for about the last ten years to be aware of these pending amendments and standards and worked with prior Metro planning staff to compare our existing standards that relate to Nature in Neighborhoods so the amendments were built upon that comparison chart.

Councilor Wand stated but that was only at the staff level.

Elizabeth McCallum replied yes. There has not been any legal challenge or evaluation of our ordinance.

Councilor Wand stated during our work sessions several of us on the city council asked if any additional areas of privately owned land would be subjected to additional or different requirements as a result of adopting the proposed Title 13. My recollection from that was that the staff communicated to us that the maps were the same and that these were already

environmentally sensitive areas and that we were not expanding them at all. During your presentation today you were showing a map and you said there was a little bit of an expansion but it is not significant. So is there any expansion of any of these zones as a result of what is being proposed here tonight?

Elizabeth McCallum replied in the amendments, on privately held property only the areas that are generally mapped on the Title 3 map are subject to these standards. The amendment includes an applicability statement that HCA, which is the area I was trying to show to you that slightly extends beyond - particularly the Beaver Creek green space parcel – the amendment before you would apply the standards to those areas that are publicly owned parks and open space properties. The applicability to privately held property is only to those areas that are generally currently mapped on the Title 3 map. The way it is written right now for privately owned property, there is not more area that this would apply to. But I do need to footnote that, the maps are reference only, they are not surveys. There is language in the applicability statement that specifies that these are only references and that at the time development would be proposed there has to be a specific survey of those areas.

Councilor Thomas stated one of the concerns I had was in regards to the overlays and how that affected Glenn Otto Park and our ability to continue with our Parks Master Plan with construction of various things such as a new caretakers' house and expanding parking. With that overlay you showed it looks like it would fall into the category where we couldn't do that because it is publicly owned property. The urban renewal site was another area that I am concerned about. How do we get around that?

Elizabeth McCallum replied this is your opportunity to revise that. We discussed revising the language at your work sessions. The PC has already adopted the language, but Metro is agreeable to a change of that language. In my staff report I show a revision where that standard that the PC recommended to you would have been totally stricken. In Brian Harper's letter he is saying that Metro is agreeable to a change that says *that these standards apply to all Metro owned parks and green spaces that are designated for natural areas, not intended for future development, and are mapped on the Metro Title 13 Habitat Conservation Area Map*. That is in addition to the vegetation corridor areas.

Councilor Thomas stated in Metro's proposed language it would be my preference to just stop after "future development" and leave out the Metro Title 13 map.

Mayor Kight stated Councilor Hartmann asked if an impact study had been done and of course we know there hasn't been one because we don't have any resources to do a study at this point and time. I would feel more comfortable if you could show us what this proposed change would look like on some specific properties in Troutdale. You could identify the parcel and show what it would be under Title 3 if it came in for development, and then how it would be affected if it was under Title 13, the new regulations. Could we do something like that?

Elizabeth McCallum replied in broad strokes. The way the ordinance currently is written the developer has to provide us with the survey of the steep slopes, the topography survey

showing exactly where the floodplain is on their property, and a survey of the trees that would be within the vegetation corridor. There is a lot of detail needed. There are a lot of broad-brushed pictures we could paint until there is money for an actual survey, and maybe in some instances engineering work. We had a developer who was allowed to do a balanced cut and fill in the floodplain to make a more livable piece of property. That provision is there and it is responsive to the opportunities that still exist for development of their land even though we have regulations that would protect floodplain and vegetation corridors.

Mayor Kight stated Beaver Creek Cottages, a 10-lot subdivision, is being developed under Title 3 regulations. What would it look like under Title 13 regulations?

Elizabeth McCallum replied I would say that it would look virtually the same. There is nothing in the revisions that would have taken away the opportunity for the density that they are building at now, the opportunity for a balanced cut-and-fill, or their opportunity to remove the trees that they did remove because they are replanting them. What we do have under the amendment is a very specific number of trees and shrubs that they would have to plant for each regulated tree that they did remove.

Mayor Kight asked is there any property that you can think of, without having a survey or engineering work done, that would be appreciably changed with these amendments?

Elizabeth McCallum replied it has been our goal, and the instruction from the CAC, that they didn't want to affect more property and so that is how the amendments have been written. I really can't identify, at this time, how any development would be appreciably different.

Mayor Kight asked from your professional opinion, you do not feel that it would be any kind of an economic/financial impact on property owners?

Elizabeth McCallum asked over and above what Title 3 already has?

Mayor Kight replied yes.

Elizabeth McCallum stated their actually may be less cost because some of the amendments allow developers to use the vegetation buffer totally for the storm water, where right now they are restricted. Of course the vegetation buffer would have to be less than 15% slope.

Rich Faith stated Ms. McCallum and I have been working together for the last year on these amendments and they have gone through several iterations. It has been our goal as we have drafted language that we did not want to impose additional burdens on property owners. Our goal was to meet substantial compliance with the requirements of Title 13, and not to impose additional restrictions and burdens on our private property owners. In the course of drafting this language and discussing it, if we found something that meant that someone will be affected differently or it would play out differently on a piece of property, then we would go back and take a different approach. We were always cognizant of not putting additional restrictions over and above what is currently on the books, but merely do the minimum to meet substantial compliance with Title 13 and to improve language where we could to

actually better understand how we are applying the Code currently. That was our overall goal.

Mayor Kight asked to your knowledge, you don't know of any piece of property in Troutdale that would be adversely affected either economically or where they could not use in part or in whole their property as they can now under Title 3?

Rich Faith replied certainly we haven't done an analysis of every piece of property in Troutdale in terms of what could be done under the current standards verses these proposed standards. There are so many variations and variables that could apply in how one wants to develop a piece of property. I can only tell you what our objective was. We tried to always be cognizant of what we were writing and how that would affect, generally speaking, private properties in the city. I cannot say that there wouldn't be one piece of property out there that under a certain circumstance might be adversely affected.

Councilor White stated in the Metro letter that we just received, in the second paragraph it says, "As you know, when adopting the Nature in Neighborhoods program, the Metro Council stated it was extremely important that public land be held to a higher standard of protection for natural resources." I think the opposite is kind of true. For example on public land we are allowed to do roads in a VECCO area whereas a private property owner would not be allowed to do that. Shouldn't that be the first thing we do here, remove stuff like that and really restrict our public land if our intent is to really hold it to a higher standard. I don't think it is; I am just making that point. My fear is that the next step will be to apply these standards to private property as well so that the dots will connect on these maps. My expectation on Title 13 was that we were going to submit to Metro our current existing Code, which was recently done on Title 3 which was done with science. It allowed for the proper amount of setbacks and clean water. We are blessed because we have clean water. I think we have done a far greater job than a lot of other cities. My expectation was to provide some stability in the Code to provide some relief to property owners so that they don't have to struggle through these documents and worry that it is going to affect their land or have to hire an attorney to read it to find out if it does or does not affect them. I know that when Title 3 was adopted just the change of one word in the Metro language going from ordinary high water make to bankfull stage, that created a potential of a much greater setback. That is just an example. There is so much language in the proposed amendments that I don't understand that it gives me reason to be concerned. Why fix it if it's not broken. I believe that the PC vote was 3 to 4 on these amendments.

Rich Faith stated the vote was 4 – 3 in favor of forwarding this on to the City Council for adoption.

Councilor White stated on the tree thing where we are now including the floodplain under the same standards as the Vegetation Corridor (VECCO) and I know we weren't doing that prior. You can have a floodplain that extends beyond the VECCO and your trees are treated just like any other tree in a neighborhood yard, but now with this language we are going to say that it is considered part of the VECCO.

Elizabeth McCallum replied under the proposed and existing floodplain standards there are already regulations about removal of trees. Under Agenda Item #5 - Uses Allowed in a Floodplain – existing language prohibited uses includes: excavation, fill or vegetation removal without an approved land use permit. Tree removal has always been included in the vegetation removal. Under the current language you can't just go remove a tree from the floodplain without an approved land use permit. That is not changing. What the current language only allows you to do is to remove dead or dying trees; it didn't allow you to remove a healthy tree that happened to be in the only place you could build a house that would be above the floodplain.

Councilor White stated I have a question on the map where you showed the Title 13 map overlaying a current map. Is that our current Title 3 map?

Elizabeth McCallum replied this is the best that I can do with the tools that I have. These overlays are not the exact Title 3 map. This particular example Title 3 is the blue line, which is Beaver Creek itself. There is a vegetation corridor width associated with that that cannot be represented on here with the tools that I have. It could be wider or narrower than what I show on here; this only gives you a general idea. The dark striped and hashed areas are Title 3 floodplain or wetlands. The red shaded area is the steep slope areas. Again, these are general. That is overlaid on top of the HCA map.

Councilor White asked my question was the Title 3 Maps, are those the Metro maps that you are referring to?

Elizabeth McCallum replied yes.

Councilor White stated I think it is difficult to say that when they overlap that there is very little additional land being affected because those maps haven't been "ground-truthed". I have heard from numerous people that their map is incorrect. In fact Peter's letter says that very same thing. I know that when they go to develop they will be surveyed and that is when the "ground-truthing" occurs. I think it is hard for you to make that assumption that no additional areas are going to be affected.

Elizabeth McCallum stated these amendments do not come before you from the PC to apply to the Title 13 HCA on privately owned property. They are coming to you to apply only to the Title 13 areas, which in the applicability statement say they are generally mapped and they have to be surveyed.

Councilor White stated there was actually one portion that I liked where we talked about lowering density for properties that are limited by either slope districts or riparian zone. I know that since we are not going to apply that I am wondering if that is something we should look at pursuing. I think it was brought up at one of the PC meetings that I attended where the person actually explained that the required density would not fit because they have lost so much land due to the slope district and VECCO that we were going to look at lowering their particular density to accommodate.

Elizabeth McCallum stated as it is drafted that is an option; they are not prevented from building at maximum density albeit they've got smaller units. The standard that is written gives them the option, it does not require them to build at 80% density on the net area if more than 50% of their parent lot is affected by the Vegetation Corridor and Slope District.

Mayor Kight asked is there anyone here that would like to speak to us on this issue?

Tom Bouillion, Land Use Planner for the Port of Portland, stated the Port has been following the Metro Title 13, Nature in Neighborhoods, adoption process because of the potential impact to future development of the Troutdale Reynolds Industrial Park (TRIP), as well as to the continued safe operation of the Troutdale Airport. Because of the importance of this issue we have worked fairly closely with city staff. Rich and Elizabeth have been great to work with. We have attended two of the PC hearings earlier this summer and had a chance for extensive interaction in that venue. The good news from our perspective was that we were able to resolve most of our issues. One issue that we wanted to bring before you this evening relates to the ability of applicants to mitigate, in this case we are suggesting recommending that applicants be allowed to mitigate up to one mile beyond the city boundaries of the City of Troutdale. On the surface that might seem a little odd, but I think there are probably four or five good reasons for allowing that. I provided a map in your packet which you can find under Tab G. The map shows the city boundaries in a hatched pattern and essentially a one-mile buffer beyond that. One thing that sticks out is there is quite a bit of public open space within that one-mile buffer which we feel would be good locations to provide some city required mitigation plantings. That includes properties such as the US Forest Service property on the east side of the Sandy River, part of Blue Lake Park, and Mt. Hood Community College to name just a few. All of these get a fair amount of use by Troutdale residents. The second reason relates to the Metro model ordinance, which allows for mitigation in a watershed; it is not limited to specific jurisdiction boundaries. The third point is that, although it may not seem like it, we have determined that within the city boundaries of Troutdale there are a limited number of suitable areas on public property. Although the Port is a large land-owner here in Troutdale, a lot of the property, for example north of the levy, is already heavily treed. Other areas within the TRIP property are slated for future development. Other areas on or near the airport we really can't plant because of a potential wildlife hazard issue. Many of the city owned parks are fairly heavily treed already or they are already committed for active use such as ball fields or parking lots. The final point is in the past the planning staff has actually allowed us to provide mitigation plantings on Forest Service property east of the Sandy River. The Port and the US Forest Service has developed a good working relationship so that has been a win-win for both agencies. The Port has been able to provide plantings in the appropriate locations and the Forest Service has found they enhance their property. The residents of Troutdale have probably benefited from those enhanced plantings as well. We would like to continue that established relationship.

Andy Priebe, Aviation Project Manager for the Port of Portland, stated I represent the Airport operations side of this. The Federal Aviation Administration (FAA) owns the airspace and regulates the Troutdale Airport. The Port of Portland works with property owners (private, public, local governments) on behalf of the FAA to make sure that the airspace is protected to

the extent possible from structures, cell towers, and trees. Unfortunately, you can't regulate a tree the way you can a structure or cell tower. There are trees on Airport property that are affecting the airspace of the Troutdale Airport. Some are to the extent that is not alarming in any way, others are encroaching on the approach surface to one of the runway ends. Those are trees that are located on Marine Drive. I am here to support the idea that we have flexibility in a way that when we come to you with a request to remove these, that we will have the opportunity to do mitigation in a less constrained way than the original ordinance had. We have had good success in the past in managing new obstructions by mitigating for their removal on Forest Service land across the Sandy River. That is a helpful strategy and we would appreciate it if you would adopt the ordinance with the ability for us to continue doing that.

Mayor Kight asked under Title 13 is there anything that is particularly restrictive to your operation?

Tom Bouillion replied at the TRIP site we have tried to take a look at what the differences would be under Title 3 versus Title 13. It is a little bit of a mixed bag until you have an actual development. The main difference is that Title 13, by taking the model ordinance approach it is kind of a prescriptive way so that if you impact a certain amount of space in the VECCO buffer you provide this mitigation. I guess the one problem with that is it doesn't necessarily account for a qualitative aspect. There are some areas on the TRIP site where Reynolds built some ditches and those are regulated wetlands and they have a 50' VECCO buffer off of them. Some of those 50' buffer areas really don't have much, if any, vegetation. In some ways we may have had more flexibility under Title 3 to argue that if the quality of the area is really low maybe we wouldn't need to provide as much mitigation. Under Title 13 it is a prescriptive approach that says if you disturb this much square feet you need to provide this number of trees. On the other hand, some people might welcome knowing exactly what their mitigation obligation is. It is more of a mathematical exercise as oppose to going out in the field and saying this is a low quality habitat, maybe we don't need as much mitigation, or on the other hand you could say it is a high quality habitat so you need to provide something additional.

Dalton Williams stated the staff has been very helpful in walking me through some of these changes. One of the specific changes made was a result of my concern about my particular piece of property which a large portion is in a steep slope and VECCO area and because of that less than half of the property is available for development. The changes made allowed us to account for alleviation of the minimum density requirement so that we could put something on the property without having to stack houses four or five tall. I appreciate the help from staff on that. The one thing that I have had difficulty with on that property in the past when I was trying to sell it was with a ditch that I dug in the back against the slope to get rid of the spring water. When I dug that up there was a clay path there. Originally someone had put in a french drain to collect that spring water and get rid of it. It has been referred to as a stream; it is not a stream it is a ditch. I still have a problem with the way the Code would be applied to that property in that there is a 50' setback required for that ditch, which further reduces the usefulness of the property. I don't have a solution for that. I would like to work with the staff further on that and I would like to have an opportunity at the next hearing to

further discuss the issue and address the issue of what impact these changes have on private property owners. Otherwise, I have had a real good experience with staff and the changes that were made to accommodate the density issue.

Mayor Kight closed the public hearing at 8:28pm.

MOTION: Councilor Wand moved to postpone consideration of this indefinitely.

Mayor Kight asked for guidance from the City Attorney.

David Ross, City Attorney, responded a motion to postpone indefinitely is debatable and is not amendable, and may be reconsidered at the same meeting only if it received an affirmative vote. The object of the motion is not to postpone, but to reject the question without risking a direct vote when the maker of the motion is in doubt as to the outcome of the question.

Mayor Kight stated I would like to get clarification. Are you asking to postpone this to a date certain?

Councilor Wand stated the motion is to postpone indefinitely.

Mayor Kight asked Mr. Ross, do we know what the consequences are by doing this?

Councilor Wand called for a point of order. I would like to know if there is a second to my motion.

Motion Seconded by Councilor Thomas.

Councilor White called for the vote. Seconded by Councilor Hartmann.

VOTE ON CALLING FOR THE QUESTION: Councilor Hartmann – Yes; Councilor Wand – Yes; Councilor Thomas – Yes; Mayor Kight – No; Councilor White – Yes; Councilor Kyle – No.

Motion Passed 4 – 2.

VOTE ON THE MAIN MOTION: Councilor Hartmann – Yes; Councilor Wand – Yes; Councilor Thomas – Yes; Mayor Kight – No; Councilor White – Yes; Councilor Kyle – No.

Motion Passed 4 – 2.

Mayor Kight called for a break at 8:37pm; reconvened at 8:46pm.

5. PUBLIC HEARING / ORDINANCE (Introduction): An ordinance amending Chapter 4.600 of the Troutdale Development Code (Text Amendment No. 43) for compliance with the National Flood Insurance Program and with Metro Title 13, Nature in Neighborhoods, and adoption of new digitized Flood Insurance Rate Maps and Flood Insurance Study.

Mayor Kight read the ordinance title and opened the public hearing at 8:47pm.

Dave Nelson, City Administrator, asked if the City Council would consider rescheduling this item to the October 27, 2009 regular meeting (the second hearing would be held on November 10, 2009). Due to the decision just made on Agenda Item #4, some of the issues that are included in Text Amendment #43 are crossed referenced in Text Amendment #42 and Elizabeth McCallum will need to edit this ordinance before it can be presented.

MOTION: Councilor Wand moved to postpone consideration of Agenda Item #5 to the next regularly scheduled City Council meeting. Seconded by Councilor Thomas.

VOTE: Councilor Hartmann – Yes; Councilor Wand – Yes; Councilor Thomas – Yes; Mayor Kight – Yes; Councilor White – Yes; Councilor Kyle – Yes.

Motion Passed 6 – 0.

6. STAFF COMMUNICATIONS

Dave Nelson stated Charlie King, a resident on 2nd and Harlow, met with me today to inform me that the problem with the Tri-Met buses still exists. If you recall we had sent Tri-Met a letter requesting them to be more considerate to our residents. Mr. King would like us to reconsider moving the location of the bus layover to the City Conference Center at 2nd and Kendall. Is there any interest by the Council in revisiting the bus layover location?

City Council briefly discussed and agreed to look at possible options to address this issue.

Dave Nelson stated we are planning a ground breaking ceremony for the Arch project on November 3rd. Does that date work for the Council?

Majority of the Council will be available to attend.

7. COUNCIL COMMUNICATIONS

Councilor Hartmann stated there is interest by the community to put in additional lighting facilities on the downtown streets. I would like to know if there is support from the Council to at least look for the resources to pay for that.

Mayor Kight stated if we can go forward there is interest in completing this before Christmas this year. In talking to the County they gave us a figure of about \$20,000. Did they indicate how long it would take?

Dave Nelson replied we have had a preliminary conversation with Multnomah County and they would contract that work out. They would use the existing conduit that is underground, run new wire and put outlets into the poles. The estimate was \$20,000. They said they could have it up and ready to go by Christmas, but did not give a specific date. We have some funding challenges because this was not budgeted. Staff has discussed some different ways to fund this, but we are still working on it.

Mayor Kight asked is there a consensus to go forward on this.

Council agreed.

Councilor Hartmann stated with regards to the recent work that the council has been doing regarding due diligence, I want to thank everyone for all the research that was required to look at the proposed ZESC facility. With that in mind we have a work session scheduled for November 3rd where we will have an opportunity to finalize any additional details. In preparation for that, the Clean Renewable Energy Bonds (CREB'S) are something that if they are not used they get returned to the Treasury. I would like to ask for the Council's support to go out and pursue Senator Wyden's support and offer an initial draft letter of intent to the Treasury to show that we are actively pursuing renewable energy.

Mayor Kight stated I talked to Senator Wyden at a neighborhood meeting some time ago and he said he would be committed to supporting Troutdale in receiving our CREB's. I have since found out in talking to folks at other municipalities that applying for CREB's is something that our own finance director can do and there is no need for a middleman or broker.

Councilor Hartmann stated what I was hoping to do was also work with the Treasury to get their support and let them know that we are interested in pursuing this. I would like to work with staff to draft a letter of interest and get that letter of endorsement from Senator Wyden. Do I have support for that?

Councilor Wand stated it sounds like you are asking for a placeholder that can be removed if we decide to go a completely different direction without penalty. Is that what you are talking about?

Councilor Hartmann replied that is correct. I would like to set those relationships in motion.

Mayor Kight stated the city has been in contact with another company who has another sustainable energy product that we are looking at that might actually work better for a city of our size without going through a variety of different layers of government. They have actually been out to the city to look at a specific site. Maybe the work session might incorporate all of that information and at that time we can share the conversation that we have had with that other energy source.

Councilor Hartmann stated this would include wind opportunities, establish those relationships, and send a letter of intent that we are interested in a ZESC facility. To include wind, I am perfectly open to those ideas.

Councilor Thomas asked would you be opposed to having our Finance Director send that request forward and not have a direct involvement with a third party.

Councilor Hartmann replied I would like to work with staff to draft that letter.

Councilor Thomas stated I wouldn't have any opposition to you working with our Finance Director.

Councilor Wand stated for Mr. Mueller or Mr. Nelson's signature. Mayor, do you have any objections to Mr. Mueller or Mr. Nelson working jointly to put that placeholder in place?

Mayor Kight stated no. I wouldn't want to make it specific for any one particular company at this time because I don't think we have enough information.

Councilor Wand asked Councilor Kyle do you have any thoughts on this?

Councilor Kyle replied no.

Councilor Wand stated I want to make sure that there is a very clear understanding on the part of our residents. I spoke at a recent Reynolds School District Board Meeting and I prefaced all of my comments that I was not speaking on behalf of the City Council of Troutdale and also that I was not speaking on behalf of any clients. I wanted to reiterate tonight that the comments that I made at the most recent Reynolds School District Board Meeting were my own as a citizen, taxpayer and parent of children. Secondly, I have a substantial concern about the strategy that we have been pursuing for the undeveloped land that is currently outside of the Urban Growth Boundary to the southeast. We have had a discussion and vote on this regarding strategy at the City Council level. I don't know the best way for us to revisit that issue and discuss some additional/new information that I received. It involves the way that those decisions are made. My understanding is that they are quasi-judicial in nature and not policy making in nature because the policy making goes on in Salem. I sent this information out in an email, but I wanted to get an idea from the Council as to whether this is something that we should have a brief discussion about in a work session, or if this is just something that we just sit back and let it be. What does the Council prefer?

Mayor Kight stated tomorrow the Reserve Steering Committee will be holding what I believe to be their final meeting. After that the Core 4 (representatives from Washington, Multnomah, and Clackamas counties and Metro) will make a collective decision. Each of the counties has to vote on the recommendation made by the Core 4, and then there will be an MOU that has to be signed by each county and the Metro Council. If one county does not sign the MOU then the wheels start falling off. I am going to be appearing tomorrow and reiterating what I have said before. The questions that they brought up before were how many people are

going to be employed at FedEx, what is their income level, etc. The other question was about transportation. We don't have public transportation to that area because there is no density of population. Just because you bring property into urban reserves doesn't mean the next morning you start developing it.

Councilor Wand stated the question I have about our strategy is that even if we convince the policy makers to designate this as urban reserves, we have not made a sufficient evidentiary record to support that at LUBA if it gets appealed. We haven't gone out and done the studies to prove what you and I believe to be true, which is that we need that land. I brought this up because I don't know that this is a winning argument for us and we have other options that are more important to our citizens that we can pursue for a benefit. Maybe our strategy should be that this land remains undesignated, status quo or something that is not a change that requires evidentiary support. Simply leaving it status quo allows us in ten or fifteen years to do the leg work to prove that this needs to be included. The other thing that I didn't know is that the statewide Metro housing rule is not something that is elastic, so half of this land coming in has to be designated multi-family. We can't increase the zoning in our Town Center to match the 50/50 rule. That was a surprise to me. I don't know that this particular area of land is appropriate for multi-family, but I know that we don't have the information that I would want to have to make that decision.

Mayor Kight stated Multnomah County's Planning Commission and Citizens Advisory Committee have made a recommendation that Troutdale not have any additional land added to our urban reserves. To the positive side, right now the Core 4 made a recommendation to take a further look at the property, so it is still under consideration. It remains to be seen what is going to happen tomorrow and how they will respond to my testimony. Rich Faith, do we have enough evidentiary evidence or material/data to present at the State level to support adding urban reserves to Troutdale?

Rich Faith replied if the evidentiary information that you are talking about is our ability to serve, we know that we have adequate capacity in our current waste water treatment plant and in our amount of water that we generate. But we have not done any analysis based on topography as to what the hurdles are to get lines in the ground to serve that area, nor have we looked at what would be involved in terms of where roads will go and the costs related to constructing roads in that area.

Councilor Wand asked have we done any studies into whether the finding in 2002 that we had inadequate jobs in Troutdale and sufficient housing has reversed and that decision should be overturned and we should be considered housing poor but jobs rich?

Rich Faith replied no, we haven't done an analysis like that. What we have stated in information that has been provided to Multnomah County and now the Urban Reserve Steering Committee is based upon the economic opportunity analysis that was done for the Cascade Columbia River District there is a potential for over 32,000 new jobs to be created in that area and if that were to occur we would need adequate lands to provide housing for those people so they wouldn't have to commute across the region.

Councilor Wand stated we don't have time. We have our strategy and our policy; I don't see that we have any time to make any changes to that despite my concerns that it may not be successful. Maybe we could learn more as a council if we hold a shakedown session after the fact and look at our performance – what we did, what we didn't do and what we could have done. I think that would be very beneficial for the elected officials and for staff.

Councilor Thomas stated I don't think the current plan is to market that property as rural reserves.

Councilor Wand stated that is the recommendation of Multnomah County.

Councilor Thomas asked what is the possibility if we aren't able to add it to at least not have a designation assigned to that property so that it will be available to us later? Once you lock it down as rural reserves it is difficult to get it back. My concern is not so much having the property right now as it is to have the ability to have it later. If we can keep it out of the rural reserves then it is at least still available to us and we would have the time to do the due diligence that is necessary to quantify why we need the property. There are a couple of pieces to the puzzle that we don't have to adequately justify how we can handle what goes in there, for example transportation.

Councilor Kyle stated we have discussed this topic in the last two months and I think what we talked about was needing to sit down and determine what we want to look like when we grow up and what do we need to do to bring business here. We said no several years ago to Troutdale Road ever being any more than what it is right now. The neighbors were up in arms because they thought they were going to lose their front yards. I think that we talked about asking Mr. Eatwell what his views were on this.

8. ADJOURNMENT:

MOTION: Councilor Thomas moved to adjourn. Seconded by Councilor White. Motion passed unanimously.

Meeting adjourned at 9:25pm.

Jim Kight, Mayor

Approved January 12, 2010

ATTEST:

Debbie Stickney, City Recorder