

MINUTES
Troutdale City Council – Work Session
Troutdale City Hall – Council Chambers
104 SE Kibling Avenue
Troutdale, OR 97060-2099
Tuesday, October 9, 2007

1. ROLL CALL

Mayor Thalsofer called the meeting to order at 9:14pm.

PRESENT: Mayor Thalsofer, Councilor Kight, Councilor Ripma, Councilor Thomas, Councilor Canfield, and Councilor Kyle.

ABSENT: Councilor Daoust (excused).

STAFF: Jim Galloway, Public Works Director; Rich Faith, Community Development Director; David Ross, City Attorney and Debbie Stickney, City Recorder.

GUESTS: See Attached.

2. Discussion: A discussion regarding storm water at Sweetbriar Creek.

Dave Munson stated the problem arose about two years ago after the Riverbend subdivision development. In approaching staff and the Planning Commission, they were not aware of a study that was done in 1990 or 1991 for the City that recommended that no more storm water go to that creek south of Sweetbriar Road. Staff mentioned that report was no longer valid, however there is no newer study that has been done on that creek. The problem that we have had is that there was seven inches of sediment that went into that creek from the development. The developer was not as diligent as he should have been in retaining the water or making allowance for it. I have basically reached a wall between public works and planning. We have a problem and I am looking for a solution. The problem is we have too much water in the creek and it does not have an opportunity to drain off at all, it just rushes downstream. Phase II of the Riverbend development, West Riverbend, now has the streets, infrastructure and the storm drains in. That is all well and done except the storm water can't reach the storm drain, so currently all of the storm water comes down to Sweetbriar, it doesn't stay at Riverbend at all. That is part of the problem. I have walked this stream with a lady from East Multnomah County Soil and Water Conservation District and with an instructor from Mt. Hood Community College who had her students produce a study and restoration project plan. There are some cures out there. I would like to see the City be a little more pro-active in correcting the problem and work with the folks that live in the area and that are being affected by this. One of the things that could happen is that when new development comes in, or when a street is resurfaced, make it so that the area closest to the curb is the type of asphalt that allows water to drain through. By doing that a lot of the water would not reach the stream immediately. One of the other proposals was to put a pond adjacent to the creek in the Sweetbriar area. A pond would accept the heavy load of runoff and then as the water level drops the water would go back into the creek. There are areas on Johnson Creek where Metro has done something similar. I would like to see some sort of action between the

City and the neighbors to correct some of these problems. Our homeowners association has removed six pickup loads of invasive plants out of the area in an effort to try and clean up the area some. There are rules regarding what you can and can not do to the creek. The City is drawing almost \$3,000 a year from the people that are dumping storm water into that creek. On our water bill there is a fee for storm water, I think there are 125 homes dumping storm water into that creek and yet nothing has been done to correct this problem. Each time another development goes in we are getting more and more water and we need to start being a little more proactive before we do more damage down stream because we have flooded some of the home sites in the Sweetbriar neighborhood and we are approaching that in some of the other neighbors. I would like to correct it before it gets any worse.

Councilor Kyle asked is this a seasonal creek?

Dave Munson replied yes, for the most part.

Councilor Kight asked where does this creek terminate?

Dave Munson replied it drops underneath Stark into the Sandy River just as you go down the hill towards the Stark Street Bridge.

Councilor Kight asked what do you see as the cure?

Dave Munson replied what I would like is for the homeowners to clear out the creek. I would also like to ask East Multnomah County Soil and Water Conservation District to come up with an adequate plan along with the college to oversee it perhaps and to create a pond and have six to eight inch rubble going across the creek.

Councilor Kight asked is that a cost that your homeowners association would pay for?

Dave Munson replied it could, or the City. What I am looking for from the City is basically to pay the way for any permits. Since Sweetbriar School is so close, I would like to see them use this as an outdoor learning experience.

Councilor Kight asked do you have any homes that are flooding that actually have water coming into their homes?

Dave Munson replied into the crawl spaces, but not in the living spaces.

Councilor Kyle asked how often does that happen?

Dave Munson replied I am guessing twice a year.

Councilor Kight asked is there any major erosion as a result of that?

Dave Munson replied not to my knowledge.

Stuart Hugill, homeowner on Sweetbriar Creek, stated as a result of the recent developments and the increasing storm water discharging into Sweetbriar Creek, I have had to put up a

retaining wall behind my house and have had to widen the creek and put in a lot of rock because of the erosion that was eating into my yard. I have contacted the City and Centex Development and they sent people from the City out here with a consultant and that is when they started doing some sort of erosion control on that development. When the second development went in there was additional storm water, that is when I felt that I had to do something myself to protect my own home and property. There is an easement on my property that kind of alluded to the fact that the City would come in and maintain that ditch, but I am not aware of who is responsible for cleaning the sediment out.

Councilor Ripma asked who owns the creek?

Dave Munson replied the City has an easement for the drain pipe...

Stuart Hugill interrupted and stated there is a 5' easement on each side of the creek going through my property.

Councilor Ripma asked bank to bank, is it flowing over peoples property?

Stuart Hugill replied it is flowing over the banks and into the yards.

Councilor Ripma stated I am talking about the stream bed itself, is it just flowing over one private property to the next and so on, or is it going through some sort of greenway or park.

Dave Munson replied it is both. I could probably show you eight properties where it is flowing in between the house and their rear fence. There are other areas where it is perhaps going through our greenway.

Councilor Ripma asked is there a greenway right along the creek?

Dave Munson replied a lot of it yes, but not the entire length.

Councilor Ripma asked is this a Sweetbriar Homeowners Association greenway?

Dave Munson replied that is correct.

Councilor Ripma asked Jim Galloway, does the City deal with situations like this? When subdivisions are built I know that we require them to put in the proper drainage that doesn't do this, but I wonder how does that fit in a situation like this?

Jim Galloway, Public Works Director, stated there are several different things here. Certainly what Mr. Munson indicated as far as a problem with the erosion that occurred during the construction of the first of the Centex subdivision did occur, and I suspect that it probably compounded the situation a little bit. As far as the ownership goes, there is an easement where there is a physical pipe which is north of Althaus Drive. I don't think that the City has an easement over the entire drainage way. I think once the pipe ends the easement ends. However, I think there has been an acknowledgement on the part of the City for quite a number of years. I don't know that there is a legal responsibility, but we have done some things. I think the previous Parks Superintendent would occasionally go out and try to do

some vegetation control to make sure that things flowed well. The Public Works Department approached the homeowners association about three years ago and indicated that we would be interested in at least looking at what might be done to improve things. One of the first steps that we wanted to take was to determine if we did go in and do something would there be a requirement to get a permit from the Division of State Lands. The response from the Division of State Lands was that it depends on whether or not it is a delineated wetlands. We approached the homeowners association about getting permission to bring someone onto the property to do that delineation and I think that was put in the hands of the homeowners association's attorney who recommended that they deny us that permission so we basically dropped it at that point. There have been a number of things that we could spend a lot of time on tonight discussing, but I think the short answer to your question would be that we have gone on the assumption that we probably have some responsibility but haven't been able to pursue it.

Councilor Ripma stated if you put a pond somewhere to regulate the flow into the creek you would need to have the pond in a place where the water that is causing the problem will flow into the pond and not into the creek. Is there such a place?

Jim Galloway replied if the biggest concern is the flows from the Centex Development, they have a detention facility as part of the subdivision which is supposed to regulate flow from the subdivision. Whether there is a place to capture everything that is going into Sweetbriar Creek, I can't think of a particularly good place other than where that pipe comes out.

Councilor Ripma asked the pipe that the City owns, does that have anything to do with the drainage to the creek? Is that a storm water pipe?

Jim Galloway replied I am not sure about the ownership of that pipe, but I do believe it is in an easement that the City has. The pipe brings in virtually all of the drainage that goes into Sweetbriar Creek. I think the only additional drainage would be just what little bit of surface drainage that might occur from the adjacent properties. Mr. Munson, is that correct?

Dave Munson replied not quite. Mr. Munson handed Mr. Galloway a letter.

Jim Galloway replied it would appear that these properties that lie along the creek on either side, probably drain to the creek as well as the pipe that feeds it from the south.

Dave Munson stated actually from Troutdale Road also.

Councilor Thomas stated a four foot flow is a lot of water to contain. Even if you built a pond it wouldn't take long to fill it up and you would still have the same flow problems. Is this problem occurring during our unusual rain events or is this something that just happens all of the time?

Stuart Hugill replied it happens during the major rain events as a result of the development and the additional drainage. They do have storm water detention ponds, but they are not collecting any water and instead it is running down the street and into the storm drains. If they were operating the way that they were designed that would alleviate a lot of the problems.

Councilor Thomas asked you are talking about the newest subdivision on Sweetbriar Road?

Stuart Hugill replied yes. There was a problem before they put the development in but the development is adding to the problem.

Councilor Thomas asked how long has that pipe been there?

Jim Galloway replied it predates my 15 years at the city.

Councilor Thomas asked does anyone know if we had flooding issues prior to that?

Jim Galloway stated I think there were problems, I don't know if I would classify it as flooding. There were some issues that caused the parks folks to previously go in and clear out vegetation. Whether that was a preventative measure or a response to problems, I am not sure.

Councilor Thomas stated I guess it would be my hope that we can find a way to work together and find a solution for this.

Mayor Thalhoffer stated it sounds like to me we have a situation here where the City tried to get a handle on this but was denied by the homeowners association. Until we are allowed to do what Mr. Galloway suggested, I am not sure there is much we can do. Do you think your homeowners association would reconsider allowing the City to come onto the property to do the wetlands delineation?

Dave Munson replied I can ask the Board to consider it. In the meantime could you look into changing the rules in regards to the pavement used in new construction and/or resurfacing existing streets.

Mayor Thalhoffer asked could you send Mr. Galloway a letter requesting that?

Dave Munson replied sure.

Candace Stoughton, East Multnomah County Soil and Water Conservation District, stated there are lots of things that can be done. When Mr. Munson informed me that the old-timers said that this was a continuously running stream that use to support trout, that makes me think that when you paved land the water could no longer infiltrate into the ground so then you didn't have the natural groundwater recharge so the creek dries up and becomes flashy and flooding occurs when it rains. It sounds like we are not mimicking nature any longer. Storm water ponds or detention ponds were an early technology that a lot of communities are depending on that don't actually replicate the natural hydrology. I am not sure that one single pond is actually the best solution.

Mayor Thalhoffer asked would you be willing to work with the City and the homeowners association to try to resolve this?

Candace Stoughton replied yes.

Councilor Canfield stated I think that is the kind of expertise that we need. I think what needs to happen is to have everyone get together and agree on what the issues are and then work to solve the problem.

Mayor Thalhoffer asked Mr. Munson, if the City asks the homeowners association for permission to go onto your land to perform a wetland delineation, will your folks permit the City to do that?

Dave Munson replied I can have an answer to that on Thursday.

Jim Galloway stated I believe that our last letter to their homeowners association was two years ago and the last sentence reads, "The need for improving Sweetbriar Creek remains and we would welcome the opportunity to work with you in the future should the association change its position on this matter". That remains our position.

3. Discussion: A discussion regarding SB645, a private/public partnership on shopping cart retrieval.

Councilor Kight stated Dan Floyd who works for Safeway lobbied for SB645 which addresses the problem of shopping carts.

Dan Floyd stated I am the director of Public Affairs and Government Relations for Safeway. Three months ago I was the Vice-President of Northwest Grocery Association and over the last two years I have worked with all of the grocers to come up with a shopping cart retrieval program. We collected data from the Portland Metropolitan Area all the way down to Salem and what we found out was that just among our own membership (major grocers and smaller independent grocers) we were losing 3,600 carts per week. A lot of those carts come back. Some grocers were contracting with a service, some were sending out store employees and some were returned by neighbors. The one thing that was for sure was that we were not efficient and we weren't solving the problem. You would have an Albertson store sending out an employee, the Safeway store contracting with a service and Fred Meyer store talking with a neighbor and they all ended up at the same spot. What we did is teamed up with local governments and neighborhood associations to come up with SB645 so we had excellent support. What we decided as an association is that we would pay for a contractor for the 24-hour 1-800 number and then we would post that on the carts. On every single cart you would have a general theft statute and the 1-800 number. The general theft statute does not create a new crime. It is a statute that is already in place, it just reminds the person who is pushing the cart away that it is a crime. All carts must identify the retailer on it. The 24-hour 1-800 number gives anybody the ability to report the abandoned shopping cart. Once that cart is reported abandoned, notification immediately goes to the City, to the association's contractor and to that cart retriever. After 72-hours the City would have the ability to fine those retailers for not doing their job and picking up their carts. We (Safeway and the Association) are already piloting the program. We have contracted with one vendor who is going to be servicing the entire Portland Metropolitan area and Salem. We are in the process of working out a few of the glitches. The grocers make up about 50% of the carts that are actually out there. SB645 helps to address all of the retailers. A lot of those retailers are not currently

doing their part. There are retailers that do not want to comply with SB645; SB645 says if you (the City) choose to pass this ordinance then you would have the ability to enforce this.

Councilor Kyle asked does this bill apply to all retailers, not just grocers?

Dan Floyd replied yes. The grocery industry is doing this on our own regardless of whether you decide to pass an ordinance or not.

Councilor Kight stated this is long overdue. If I understand the program correctly there is a volunteer component, but your purpose for coming here tonight is you are asking the City to pass an ordinance based on SB645 that would require all of the retailers in Troutdale to be in compliance. When can we do that?

Dan Floyd replied January 1st.

Councilor Kight asked do you have a sample ordinance?

Dan Floyd replied no. Gresham, Beaverton and Salem are working on one.

Councilor Kight stated I would like to see this enacted by January 1st.

Councilor Ripma stated I am worried about how you establish the 72-hours. Someone could call and report the cart and it could be picked up and before the 72-hours are up another cart appears in the same location.

Dan Floyd replied we are applying a tag number to each cart that is reported, so you would know. We also ask for a specific address. The City would not need to go out to that specific spot, you can log onto the web site and the cart retriever will report whether the cart has been picked up or not.

Councilor Ripma asked is the purpose of this work session to determine if we want to direct staff to draft an ordinance?

Dan Floyd replied yes.

Councilor Ripma stated I will agree to that.

Councilor Thomas stated I think this is a good plan.

Mayor Thalhofer asked is there any financial burden on the City that we would incur while trying to enforce this?

Dan Floyd replied one of the good things about this program is that this may be one of the few times that the private sector has come to you saying that we have an ordinance that will require us to pay for our program. We really do want to pay for the program because there is a value to us of getting our property back. I would think that if there is a retailer that just refuses to do their part and you need to fine them or go out to see where their carts are, there may be a financial burden there.

David Ross, City Attorney, stated if we are going to fine the retailer we have to take possession of the cart.

Mayor Thalhofer asked can you expand on that.

David Ross stated as I read the bill, in order for us to impose a fine on any retailer we have to first send out an enforcement officer to pick up the cart. I spoke to the City Attorney in Gresham last week and she said that Gresham, Salem and Beaverton would pilot the project. They were waiting for Beaverton to draft the ordinance.

Councilor Canfield asked Mr. Ross, can we add language to our nuisance ordinance to make it tough on the retailers who abandoned their carts?

David Ross replied it is not the retailer who is abandoning the cart, it is the retailer's stolen property.

Councilor Canfield asked if we were to choose to make it worth the retailers while to come and pick up their stolen property we could add something other than the \$50 fine.

Councilor Ripma stated the bill says \$50.

Councilor Kyle stated we should probably wait and see what Beaverton puts together.

Mayor Thalhofer agreed.

Council consensus was to wait to see what Beaverton puts together.

4. Adjournment:

MOTION: Councilor Ripma moved to adjourn. Seconded by Mayor Thalhofer. Motion passed unanimously.

Meeting adjourned at 10:31pm.

Paul Thalhofer, Mayor

Approved January 22, 2008

ATTEST:

Debbie Stickney, City Recorder