

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

Tuesday, May 9, 2006

1. ROLL CALL and AGENDA UPDATE

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

PRESENT: Mayor Thalhofer, Councilor Gorsek, Councilor Ripma, Councilor Thomas, Councilor Canfield, and Councilor Kyle.

ABSENT: Councilor Daoust (excused).

STAFF: John Anderson, City Administrator; Jim Galloway, Public Works Director; Rich Faith, Community Development Director; Marnie Allen, City Attorney; Debbie Stickney, City Recorder; and Clyde Keebaugh, Parks and Facilities Supervisor.

GUESTS: See Attached.

2. CONSENT AGENDA:

- 2.1 RESOLUTION:** A resolution recognizing the completion of the public improvements associated with the Sturges Waterline and Zone II PRV's Relocation project and accepting them into the City's Fixed Asset System.
- 2.2 RESOLUTION:** A resolution recognizing the completion of the public improvements associated with the Sandy Dell Acres residential subdivision and accepting them into the City's Fixed Asset System.
- 2.3 RESOLUTION:** A resolution consenting to improvements and subletting of space at Reservoir #2 leased to Sprint.
- 2.4 RESOLUTION:** A resolution approving participation in the Lewis and Clark Law School Federal Work Study Program and authorizing the execution of contracts to implement same.

MOTION: Councilor Ripma moved to adopt the consent agenda. Seconded by Councilor Gorsek. Motion Passed Unanimously.

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

None.

4. PRESENTATION: Tree City USA – 2005.

Kristin Cotugno with the Oregon Department of Forestry presented the City with the 2005 Tree City USA award and thanked the City for our efforts in supporting this program.

5. PUBLIC HEARING / RESOLUTIONS:

- 5.1 A resolution adopting the Capital Improvement Plan for Public Works Facilities.
- 5.2 A resolution adjusting the Capital Improvement Plan project listing for Water System Development Charges and rescinding Resolution No. 1758.
- 5.3 A resolution adjusting the Capital Improvement Plan project listing for Sanitary Sewer System Development Charges and rescinding Resolution No. 1759.
- 5.4 A resolution adjusting the Capital Improvement Plan project listing for Transportation System Development Charges and rescinding Resolution No. 1760.
- 5.5 A resolution adjusting the Capital Improvement Plan project listing for Storm Water System Development Charges and rescinding Resolution No. 1761.

Mayor Thalhofer read the resolutions and opened the public hearing at 7:07pm.

Jim Galloway, Public Works Director stated we are bringing forward the annual evaluation and recommendation pertaining to the Capital Improvement Plan and system development charges (SDC). The process we go through is to update the projects on the Capital Improvement Plan, make adjustments to the cost estimates where appropriate, recalculate the rate and recommend an adjustment if one appears necessary. In updating the Capital Improvement Plan for this year we did not propose any significant changes and therefore there is no rate change in either the water or sanitary sewer system development charges. We do recommend several changes in the Transportation SDC which results in a rate increase. The changes in the Capital Improvement Plan for transportation that we recommend are: An increase in the percentage of the City's share of transportation improvements in the former sewage treatment plant (STP) area; add pedestrian projects as contained in the updated Transportation System Plan (TSP); add a portion of the cost of the Frontage and Backage Road projects that came out of the TSP study; delete the SW 21st Street upgrade and extension to comply with the fact that it was deleted from the TSP update; add a traffic signal at Buxton and Columbia as recommended in the TSP; and increase the estimate of future trips to be generated by new development based on past experience. These changes result in a proposed rate increase of \$126.00 in the Transportation SDC, which is about a 21% increase. Looking at the total SDC's for a single-family home it would be an increase of 1.8% for all four SDCs. In the Storm Water SDC Capital Improvement Plan we recommended one additional project which is to address a drainage issue on NW Graham Road. Exhibit A compares the City's proposed rates to the rates of nine other jurisdictions. Looking at the total SDCs for a single-family home we would rank 7th out of the 10 jurisdictions, which means there are six of the jurisdictions with higher SDCs and 3 jurisdictions with lower SDCs. Both the Home Builders Association and the Manufactured Housing Association have asked to be notified whenever we proposed a change to the SDC rates. We did notify both associations and there was an inquiry from the Home Builders Association which I responded to. A notice is also provided at the permit counter at City Hall to respective builders and developers regarding the proposed changes. I did have an inquiry from Neil Handy and Frank Windust regarding their concerns about the project to extend SW 2nd Street. That project was previously higher on the list and showed an execution year of 2007-08, however in rearranging the projects I have moved that project further down on the list. They would like to have that remain as a possible project for execution in the next couple of years. If it is the desire of the Council we can rearrange the order of those projects. The only project that we have an actual commitment for in a

particular time period is the first project on the Transportation Project List which is the money to fund a portion of the cost of the access road in the former STP site.

Councilor Ripma asked can you explain the percent eligible number that is listed in the Capital Improvement Plan project list for Transportation, for the first project, improvements to the former STP site?

Jim Galloway replied that is an effort to try and come up with what seemed like a reasonable funding mechanism. The assumption was that the City, through SDCs, would contribute a portion of the cost and the sale of the STP site land would result in some additional funds. The estimate for that road through there is in the neighborhood of \$1,300,000.

Councilor Ripma stated SDCs need to be spent on infrastructure funded by the growth that occurs. Some of them are listed at 100% and some are less. I know that the transportation projects in the Capital Improvement Plan are expensive. I am trying to understand how 50% of the roads in that area are to be funded by SDCs rather than urban renewal or something else.

Jim Galloway stated we are only talking about the main access road that would continue through from 257th Way, through the existing Mall parking area and the Mall building, loop through the former STP and Yoshida property and come out in the Depot Park area and connect to the Historic Columbia River Highway. There would likely be other side roads coming off that road to serve whatever development is there. Those would very likely be funded by the developer. The main access to open up the area, so that it would be accessible for potential developers, we thought was a legitimate responsibility of the city. The funding split of taking 50% SDCs and 50% from some of the land sale proceeds was our best guess on how to split that up.

Councilor Ripma stated when development occurs on empty land the developer usually puts in roads. This isn't quite the same because these are going to be City streets, but that is actually true of development that ends up being turned over to the City. I guess I didn't really expect SDCs to fund so much of those roads. My concern is that then uses funds that could be used for other projects in the City.

Jim Galloway stated that is a change from the current year. It previously had been estimated that the City's contribution would only be about 10% from SDCs.

Councilor Thomas asked on the Transportation Project List you have a project to provide a left turn lane at Frontage Road and 257th. I don't understand what you are going to do there, that is a one-way street.

Jim Galloway replied this project was identified as part of the study in conjunction with the TSP to try and improve the congestion issue on Frontage Road. In addition to the Backage Road project, there was also a suggestion that some improvements could be made if we added an additional left turn lane so that traffic that is heading east bound on the S. Frontage Road that wanted to go north and loop back around to go west on I-84 could do

that. It kind of shifts everything over one lane and the net result would be two dedicated right turn lanes to head south on 257th.

Mayor Thalhofer stated the project for a signal at Buxton and Columbia is scheduled for the year 2012-13 and the extension of SW 2nd Street to 257th Drive is one year before that. Is there any way to advance those projects?

Jim Galloway replied yes. I think the only project that I would caution against moving is the first project because that happens to be the budget amount that is in the approved, yet to be adopted, budget that came out of the Budget Committee to fund a portion of the access road. The other projects are not committed at this time so you have some flexibility. The only issue is that there is no guarantee that the money will come in. It is based on some assumptions such as how development is going to occur and the SDC rate that we charge and so on.

Councilor Canfield stated on the transportation improvements to the former STP site, I share Councilor Ripma's concern about the percentage indicated. The estimated cost of \$1.3 million, what is the basis for that?

Jim Galloway replied that is the number we have been using consistently through the urban renewal and the Riverfront Plan development. It is a consultant's estimate for the southern piece that was done for us a couple of years ago and I extrapolated those numbers for the length of the entire area.

Councilor Canfield asked which consultant provided these numbers?

Jim Galloway replied Site Work Engineering.

Councilor Canfield asked the estimate is three years old?

Jim Galloway replied yes. There was an adjustment added of about 10% for inflation.

Councilor Kyle stated I am not clear on the funding. If urban renewal passes are we still required to use SDC funds on this first project?

Jim Galloway replied you are not required to use the SDC funds regardless. These dollars are available now that could be expended as early as we wanted to start moving forward with the access road as opposed to waiting for the sale of the land or waiting for urban renewal dollars to start coming in if it passes. Using SDC funds allows us to move a little quicker without having to borrow money. There is nothing that says we have to use any of the SDC money to fund any portion of the road. It is simply an effort to try to develop a variety of funding options so we weren't depending on one source.

Councilor Gorsek asked how did you come up with the proposed transportation SDC of \$730, which is an increase of \$126?

Jim Galloway replied we first come up with a proposed set of projects. We then looked at the cost of all of the projects, which is about \$5 million, assuming those are the projects that Council wants funded with SDCs. Then based on the projected land yet to be developed we determined we have so many acres of residential and this many homes are likely to be built, and we have this many acres of commercial and industrial land yet to built. We then took a look at the past ten years of commercial and industrial development and how many trips an acre of commercial/industrial land averages and we assume that what happens in the future will somewhat mirror the past. We came up with a number of trips, which is what you see on Attachment B and then we did the math.

Councilor Gorsek asked moving forward to the options list, when was it decided that we would use SCD money to offset some of the cost for the improvements to the STP site?

Jim Galloway replied the idea of using some SDC money for transportation improvements at the former STP site has been in for some period of time. I know that it goes back more than one year. It is in the current Capital Improvement Plan but it was only in at 10%.

Councilor Gorsek asked on the third project, provide pedestrian crossing on Troutdale Road, where would this be located? Do you have a particular place in mind on Troutdale Road?

Jim Galloway replied no. That is exactly the way it is noted in the TSP. Obviously before something were to occur we would want to take a good look and determine a logical place for that to occur.

Councilor Gorsek stated my other question has to do with industrial lands. It just generally says that the transportation infrastructure is inadequate under the project listed as transportation improvements in north industrial area. Are we talking about curbs, sidewalks and stuff like that?

Jim Galloway replied that assumes that when the City eventually annexes some of the area to the north that there will probably be some transportation improvements that we may want to make.

Councilor Ripma stated the use of SDC's in the former STP area, in all of the discussions that we have had about it I guess that I have never noticed that we are funding so much of the roads with SDC's.

John Anderson, City Administrator stated we have been putting in SDC funding as one of the funding sources for the site all along. We have been planning for the use of both Park SDCs and Transportation SDCs. At the budget committee meetings we created a specific fund for the development of the infrastructure in the STP area. We did that totally independent from any urban renewal projects so that we would be able to fund the minimal plan. We showed this same 50% share to the budget committee and added this new fund that the Finance Director explained to the Budget Committee.

Mayor Thalhoffer stated we have a serious problem on Frontage Road. When Flying J offers gas at a lower price than most other stations we have a giant tie-up down there. I am not sure that an additional right turn lane will help much when you have that kind of traffic jam.

Mayor Thalhoffer asked Jim Galloway to look into the traffic congestion problem on Frontage Road in the area of Flying J.

Councilor Kyle asked the project listed as, improve Stark Street from 257th to Troutdale Road, is that just the street or does that include sidewalks?

Jim Galloway replied that project does include widening the road, sidewalks, and a bike lane.

Councilor Gorsek asked they are getting ready to fix the culverts now aren't they?

Jim Galloway replied the actual work that you see happening now was to repair a slide that had occurred in the bank.

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

Neil Handy, representing Handy Investment Group stated we own property on both sides of Kendal north of 2nd Street. I am here to find out exactly what the intentions of this Council are as far as building a city hall on the corner of Buxton and 2nd and as it relates to whether or not we want to extend 2nd Street through to 257th. We have been talking about this issue for about 7 or 8 years. We got it on the plan after discussing it with Mr. Galloway and Mr. Faith. It was decided that the city hall/police station would generate traffic in an amount that the 257th extension would make sense. Now we have put this project off until 2012 so I am beginning to wonder what this Council is planning to do. If you are going to build a new city hall then we need to put 2nd Street through, if you are not going to build a new city hall then we need to analyze the situation and find out if we really need to extend 2nd Street. I am wondering if now the 2nd Street extension is coupled with the fact that we are now planning to put a stop light at Buxton and Columbia. I would like some clarification.

Jim Galloway replied I can't address Neil's question as to what the Council's intent is regarding a new city hall other than to my knowledge funding isn't available in the foreseeable future. As far as 2nd Street going through, the original intent when we put this project on the list several years ago was the thought that if we built a new city hall/police station in the area of Buxton and 2nd Street, that it would likely generate enough traffic that putting 2nd Street through to 257th with a right-in/right-out onto 257th would probably make sense. It has been on the list for several years. Because it appears that the city hall project is not going to occur for some time is one of the reasons why the project moved down on the list. If Council feels this is a higher priority project it could be moved up on the list.

Neil Handy stated the question of whether or not 2nd Street is tied to the traffic light at Buxton hasn't been answered.

Jim Galloway replied I don't feel that it is tied. I believe that DKS, the consultant that prepared the TSP, felt that the light at Buxton and Columbia would eliminate the need for 2nd Street to go through and I believe that is why their original recommendation didn't have it going through. I believe that the Council restored that project during the consideration of the TSP update.

Neil Handy asked if the Council decides that they are not going to build city hall, does that mean that 2nd Street will not be able to go through?

Mayor Thalhofer replied no, I don't think that means that. There are no plans to build a new city hall in the City of Troutdale for a long time. There is no money to build a new city hall. In fact we are renovating the existing City Hall to accommodate our staff. We will have to decide what we are going to do with the land that we purchased for a new city hall.

Neil Handy stated if you do not build a city hall on the property at 2nd and Buxton and you turn around and sell the property to a private developer, would the type of development that would go in there require 2nd Street to go through to 257th?

Mayor Thalhofer replied in my opinion 2nd Street should go through if it is needed to accommodate additional traffic.

Councilor Ripma stated just so you understand, this project list can be adjusted every year. Is there something that you are doing on your property that would require the extension of 2nd Street to happen sooner?

Neil Handy replied for planning purposes it is good to know what the City's intentions are. It is listed on this plan and we were operating under the assumption that if someone wanted to make an offer on our property we could tell them with certainty that the extension of 2nd Street is on the 2007 project list. Now all of a sudden it is not there. It is unclear how we should represent what is going to be available to potential developers.

Councilor Ripma asked are you about to sell your property to someone that requires 2nd Street to go through?

Neil Handy replied we've had offers.

Councilor Ripma stated if development occurs, or is proposed, I think we would react in a way that is logical, in other words move it up on the list. But until that happens there is a lot of demand for that money. It seems like a prudent decision at this time to move the project back. Personally, if there was something about to happen that needed that, I think we would all be interested in moving it up.

Neil Handy stated Frank Windust and I have discussed this and we would like to see it remain as it is in the 2007-08 funding year or look at the possibility of vacating it. I am just trying to get some clarification, and I think the Mayor has just clarified that nothing is going to happen on that for years.

Councilor Thomas asked has this project always been listed as being 100% funded by SDCs?

Jim Galloway replied yes.

Councilor Thomas stated normally developers will pay for a good portion of this type of project?

Jim Galloway replied at the time this project was put on the list the thought was that we would be building a city hall and we would probably be the biggest traffic generator and that would probably prompt that need or desire to have the road go through, so the city would be the likely developer to put that road in. That is why it has been on the list as 100% funding with SDCs. If the City does not do anything with that land and other development is the prime motivator or need to put the road through than either 100% or some portion would need to be paid for by the private developer and that is typical of the way it is done elsewhere.

Mayor Thalhoffer stated this Council will have to address that issue probably sooner than later because the property is just sitting there doing nothing.

Councilor Canfield stated if it were up to me I would prefer that the land be sold as soon as possible so that we can get it on the tax rolls.

Councilor Kyle stated we have had some discussion regarding what we should do with that property. What we decide to do with that property really affects Mr. Handy and Mr. Windust. We need to set a time to discuss this issue in the near future.

Councilor Thomas stated in regards to Mr. Handy and Mr. Windust's request, to push this project back 5 years to me really doesn't seem to be that fair. Just as a fairness issue maybe we should move it up on the list.

Frank Windust stated it is our intent to dispose of our property, but without knowing the answers about the extension of 2nd Street we are kind of stuck until some decisions are made. We would appreciate a decision on that and if the street is not going to be built very soon we would like to have the street vacated and get it off of the record.

Councilor Ripma stated both you and Neil mentioned the possibility of vacating. I take it the City owns right-of-way out to 257th?

Frank Windust replied half way from the end of 2nd Street to 257th, 100'. There is a 200' section there and the City has a right-of-way for 100' and the other 100' goes through property I own.

Councilor Ripma asked which option do you favor?

Frank Windust replied putting the road through, if you do it now. If it is not going to go through now we don't want to sit around for another 7 to 12 years.

Councilor Ripma stated if development occurs on your property, SDCs would be paid and the project could be moved up the list. Part of the decision, at least my thinking, is based on the number of years with no activity there so it seemed sensible to move some of these other projects up on the list. If there is something about to happen, we could move it up.

Frank Windust stated I don't think anything is going to happen until the decision is made as to what the City is going to do with that property.

Councilor Ripma asked do you want us to build the extension before you sell and develop your land?

Frank Windust replied yes. I think you have a problem there right now in that you don't have adequate access to filter the people off of the hill onto 257th which is our main arterial.

Mayor Thalhofer stated I think this Council needs to make a decision on what we want to do with this property very soon. Once the Council makes a decision on what to do with the property can we then amend this plan and move up the extension of 2nd Street to a higher priority?

Jim Galloway replied yes, you can make that change at any time.

Council agreed that they should address the issue of what the City is going to do with the property at 223 Buxton Avenue (property the City purchased to build a new City Hall).

Councilor Thomas asked what priority is the project to extend 2nd Street currently listed as?

Jim Galloway replied on the current list it is included in the funding year of 2007-08.

Councilor Canfield asked was this project moved down on the priority list because of the improvements to the STP area which is listed as the first priority?

Jim Galloway replied that is part of it because quite a few dollars were attached to the STP project. Incorporating some of the improvements that came out of the TSP was the other reason.

Councilor Kyle asked can we anticipate what the County will think of the idea of putting an access onto 257th with the extension of 2nd Street?

Jim Galloway replied I don't know. A number of years ago, maybe ten, that question was raised and I believe the County at that time indicated that they would be receptive to a right-in/right-out intersection.

Lou Nederhiser stated I have owned the property at SW 2nd and Buxton for 41 years. Years ago when I learned that the City had bought the property across from me and was planning to build a new city hall and possibly a fire and police department I really took my hat off to the City. I thought that would be a tremendous asset to the City of Troutdale. One day

Frank Windust came over and asked me how would you like to have about 200 condos across the street from you. I hit the ceiling. I think that would be a very poor use for that property. I feel that if 2nd Street was extended to 257th now, it would be a tremendous asset.

Councilor Ripma asked so you favor putting the street through to 257th but you are not in favor of developing condos on the city hall site?

Lou Nederhiser replied correct.

Mayor Thalhofer stated city hall is just not going to happen and I want to make that clear. What would you suggest be built on that property?

Lou Nederhiser replied no industrial or apartments, but maybe have shops like we have on the main street. Something that will bring income, taxes and more people into the city.

Mayor Thalhofer closed the public hearing at 8:14pm

MOTION: Councilor Thomas moved to adopt resolutions #5.1 – A Resolution adopting the Capital Improvement Plan for Public Works Facilities, #5.2 - A Resolution adjusting the Capital Improvement Plan Project Listing for Water System Development Charges and rescinding Resolution No. 1758, #5.3 - A Resolution adjusting the Capital Improvement Plan Project Listing for Sanitary Sewer System Development Charges and rescinding Resolution No. 1759 and #5.5 - A Resolution adjusting the Capital Improvement Plan Project Listing for Storm Water System Development Charges and rescinding Resolution No. 1761. Seconded by Councilor Ripma.

Councilor Canfield stated I have to vote no on this because I disagree with the portion of the Capital Improvement Plan having to do with the STP improvements.

Councilor Ripma asked which one is that?

Councilor Canfield stated if I understand Item #5.1 is to approve the Capital Improvement Plan and the other resolutions are to approve the project listings and the SDC rate.

Mayor Thalhofer asked Mr. Galloway if he could clear this up for us.

Jim Galloway stated I believe that what Councilor Canfield is referring to is much of the same information that appears in the individual resolutions for SDC rates are consolidated into the Capital Improvement Plan which is Item #5.1 on the agenda. If you believe that you may be making some changes to Item #5.4 regarding transportation you might want to hold off on adopting Item #5.1, the overall plan, and simultaneously make the changes to both.

MOTION TO WITHDRAW: Councilor Thomas moved to withdraw his motion.
Seconded by Councilor Ripma.

MOTION: Councilor Thomas moved to adopt Item #5.2 - A Resolution adjusting the Capital Improvement Plan Project Listing for Water System Development Charges and rescinding Resolution No. 1758, Item #5.3 - A Resolution adjusting the Capital Improvement Plan Project Listing for Sanitary Sewer System Development Charges and rescinding Resolution No. 1759 and Item #5.5 - A Resolution adjusting the Capital Improvement Plan Project Listing for Storm Water System Development Charges and rescinding Resolution No. 1761. Seconded by Councilor Ripma.

VOTE: Councilor Ripma – Yes; Councilor Thomas – Yes; Mayor Thalhoffer – Yes; Councilor Canfield – Yes; Councilor Kyle – Yes; Councilor Gorsek – Yes.

Motion Passed Unanimously.

MOTION: Councilor Gorsek moved to take Item #9 (on the Transportation SDC Capital Improvement Plan Project List), which is the project to extend SW 2nd Street to 257th Drive, and move it up to #2 on the project list. Seconded by Councilor Thomas.

Councilor Gorsek stated considering the discussion that we have heard from the parties it seems like 2nd Street is an important piece to developing this area and it could probably be done in a more unified way if we could settle this issue of 2nd Street. It also makes sense to give us another transportation option in terms of an access out to 257th.

Councilor Thomas stated this gives the developers and the owners of the property a sense of surety that they had prior to this in following through with what they believed we were going to do in the first place.

Councilor Ripma asked is your motion to amend Item 5.4 in that way.

Councilor Gorsek replied yes, I am not talking about any other changes, just moving project #9 up the list to now be project #2.

VOTE: Councilor Ripma – Yes; Councilor Thomas – Yes; Mayor Thalhoffer – Yes; Councilor Canfield – Yes; Councilor Kyle – Yes; Councilor Gorsek – Yes.

Motion Passed Unanimously.

MOTION: Councilor Thomas moved to adopt Item #5.4 - A Resolution adjusting the rate and Capital Improvement Plan Project Listing for Transportation System Development Charges and rescinding Resolution No. 1760. Seconded by Councilor Ripma.

Councilor Thomas stated with the previous motion I am comfortable with this.

Councilor Ripma clarified that the motion was to adopt the resolution as amended in the previous motion.

Councilor Thomas agreed.

Councilor Canfield stated I am going to be against this motion. I feel that this is too much for the City to be investing on the STP site.

Councilor Gorsek stated I like the change that we made. I do share Councilor Canfield's concern about the 50% funding level for the street improvements at the STP site. That will probably cause me to vote against this motion.

Councilor Ripma stated I brought up the issue of the 50% funding. My comfort with that now is partly that it was in the approved budget by the Budget Committee. I think it is prudent to anticipate the possibility of the voters turning down urban renewal and this would be a way of funding the minimal plan but still completing projects. I will favor this motion.

VOTE: Councilor Ripma – Yes; Councilor Thomas – Yes; Mayor Thalhofer – Yes; Councilor Canfield – No; Councilor Kyle – Yes; Councilor Gorsek – No.

Motion Passed 4 – 2.

MOTION: Councilor Thomas moved to adopt #5.1 - A Resolution adopting the Capital Improvement Plan for Public Works Facilities with the same change made to Resolution #5.4. Seconded by Councilor Ripma.

Councilor Canfield stated again I have concerns about the percentage of money. I think the large burden of funding the roads should be from private development not the City.

VOTE: Councilor Ripma – Yes; Councilor Thomas – Yes; Mayor Thalhofer – Yes; Councilor Canfield – No; Councilor Kyle – Yes; Councilor Gorsek – No.

Motion Passed 4 – 2.

6. PUBLIC HEARING / ORDINANCE (Introduction and Adoption): An Ordinance correcting a mistake in the Troutdale Development Code regarding residential uses in the Community Commercial and General Commercial Zoning Districts and declaring an emergency.

Mayor Thalhofer read the ordinance title and opened the public hearing at 8:30pm.

Rich Faith, Community Development Director stated the ordinance adopted on January 24th adopted a number of amendments to the Troutdale Development Code covering a wide range of topics but most of the amendments dealt with changes to those zoning districts

within our Town Center Overlay district. One of the zones that was affected by the amendments is the Neighborhood Commercial (NC) zone. This is one of the zoning districts that actually occurs both inside the Town Center boundary and outside of the Town Center boundary. The amendments to the NC zone, as this packet went to the Planning Commission (PC), were minor in scope. The only change that was being proposed in the NC zone was a proposal to reduce the minimum street side yard setback from 20' to 10' so that it would be consistent with our other commercial zoning districts. There were no changes being proposed in terms of allowed uses in the NC zone. At the PC hearing we received testimony from an affected property owner about this particular district. Mr. Glenn White, whose property is within the Town Center Overlay boundary and is zoned NC, wondered why we needed to have different standards whether you are zoned NC inside or outside the boundary particularly since there are so few properties zoned NC. We have a few properties inside the Town Center Boundary zoned NC and only one property in the entire city that is outside of the Town Center boundary that is zoned NC, which is Tad's Chicken 'N Dumplings. Mr. White argued that because there are so few properties zoned NC why couldn't we just consolidate those standards into just one NC zone and avoid this distinction when you are inside or outside the Town Center boundary. It seemed like a fairly reasonable request and on the spur of the moment I told the PC that I thought it was doable and everyone agreed that we should proceed in that manner. So the PC, at Mr. White's request, directed me to eliminate the distinction between NC inside the Town Center boundary and outside the boundary. Effectively what that did was move all of the uses that were authorized in the NC zone under the Town Center Overlay and just embodied them directly into the NC zone itself. Primarily then the allowed uses were shifted into the NC zone. The Town Center Overlay district did allow for full range of residential uses to occur in the NC zone and therefore those uses were all combined into the NC district. It recently came to my attention that there were other ramifications to that action, things that I had overlooked at that time. Namely that the uses that are allowed in a NC zone are carried over into the Community Commercial (CC) and then into the General Commercial (GC) zones. In having embodied all of these residential uses into the NC zone it inadvertently allowed them to also occur in the CC and the GC zone citywide. Those uses are allowed with the Town Center boundary but they are not allowed outside of the boundary in the CC and GC zoning districts. As a result what we have inadvertently done is we have opened up our two most intensive and protected commercial districts, CC and GC, to the full gamut of residential uses, which clearly was not what the PC had in mind, clearly not what we thought was being adopted on January 24th. We are simply bringing this to you to correct a mistake.

Councilor Ripma asked the ramifications of the change that was made that we are trying to correct is that residential development could take place in these CC and GC zones rather than high value retail type of development?

Rich Faith replied it is more in addition to, not rather than.

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

Andrew Stamp stated I am a land use attorney representing MKT Investment who owns a 2.25 acre parcel located at 1550 NW Frontage Road next to Motel 6. What we have here is a post-acknowledgement plan amendment which requires a process. Oregon state law

requires that you send notice to DLCD and other steps. I want to talk to you about some of the technical legal issues tonight. As staff pointed out, your Code as currently written allows residential uses in the CC and GC zones. I think that is typical in a lot of codes with exception of perhaps single-family residential in commercial zones. It seems from staffs discussion that this was unintentional, however, I don't think is legal to just simply change it real quick, in part because people have relied on that zoning right now. People have entered into contracts to sell the property based on the fact that they thought they had residential zoning. In Oregon, over the past 10 years, voters have twice passed laws, Measures 56 and 37, that are intended to tell local governments that it really isn't fair to yank zoning out from under people. My client came in for a pre-application for a residential development and I think, if I am not mistaken, that was probably the moment that the error was discovered by staff. Measure 37 says if you down zone we are going to compensate you or let you vest in what the old zoning was for your development application. I will freely admit that allowing your entire city to have single-family residential zoning in commercial areas is probably not brilliant planning. I am not suggesting that you don't make some changes, however, in cases where people have relied on this zoning over the last few months and have entered into contracts as my client has, you may want to create a little bit of an exit for these people. One of the ways you could do that is to just delay the effectiveness of your change for a week or two and allow someone to submit a development application. I think that would be a way to reasonably accommodate my client who already has architectural plans drawn up showing a residential use on that particular piece of property. That is my idea of how to deal with it. The technical legal stuff is that your Code requires you to have the PC give you a recommendation. Unless I am mistaken that hasn't happened.

Marnie Allen, City Attorney stated this ordinance that is before the Council has not gone before the PC. It is the legal position of the City Attorney that is does not have to go before the PC.

Andrew Stamp stated I don't see anything in the Code that says that. Similarly, a 45-day notice to the DLCD, both of those are substantive errors which means I don't have to show prejudice in order to get LUBA to tell the City to go back and redo this. In a situation like this the longer this goes on the more people that find out about it the worse it is for you. The other thing that I think is required here is a Measure 56 notice. In some cases, taking away residential for commercial may not devalue the land but in other cases it will. Particularly where you have some land that is zoned commercial now that probably would be better if it were residential. The market will say that it is worth more if we could develop it into condos or apartments. When you do a post-acknowledged plan amendment it changes residential to commercial, commercial to industrial or any kind of one zone to another, generally you need to do some follow-up analysis under Goal 9 and Goal 10. Because I think this is being hurried through that analysis hasn't been done. Those are my legal points. Again, I suggest that one way to deal with the problem is to allow people in this situation the opportunity to submit an application even if it is just for a one week period. That would be a good way to do damage control.

Councilor Ripma asked has anything this gentleman said changed your opinion about the recommendation that we go forward with this ordinance?

Marnie Allen replied no. First off, we are not amending the Plan so it is not a post-acknowledgement plan amendment. But perhaps what legal counsel is trying to suggest is that it is an amendment to a land use regulation or adoption of a new regulation. It is the City's position that is not at all what is happening here. It is an ordinance correcting a mistake. If you look through the record, in fact if you look at the findings and try to create a record that would support changing the zoning to allow residential in the commercial district, you won't find that. What you have here is text that doesn't implement the decision that was adopted by the City Council. All this is doing is correcting the text and making it consistent with the decision that you previously adopted. We are not adopting anything new, we are correcting a mistake. I don't believe that the post-acknowledgement amendment procedures in the state law apply. If you read the state law it says it doesn't apply if the land use plan goals don't apply, they don't apply here and in fact if we don't correct the text, the text will be inconsistent with our land use policies. Further, the statute says that you don't have to provide the 45-day notice in an emergency. I disagree that the City Council would be committing some kind of fatal defect procedurally in going forward and adopting the ordinance tonight as proposed. Having said that, if the City Council wants some factual information from Rich about how this issue came up and about the position that Mr. Stamp's client is currently in and wants to take that into account you can do that and if you thought it was appropriate to give some time to allow him to process an application as a matter of policy you could do that, but you are not legally required to do that. There is also another option and process that I believe that Mr. Stamp's client has been advised of that may be underway right now that Mr. Faith could share with the Council.

Councilor Canfield asked when was this matter brought to the attention of staff?

Rich Faith replied I believe it was two weeks ago that it came to my attention. It was because of a discussion with Mr. Stamp's client that we became aware of this mistake.

Councilor Gorsek stated I am puzzled as to why that wasn't part of our discussion.

Rich Faith replied the reason why I hadn't brought that up is because that issue is being dealt with under another process that is outlined in the Development Code. The end result is that it may end up that they still may be able to do what they want to do.

Councilor Gorsek asked what is the proposed development?

Kahlid Husain stated when we bought this property I believe the zoning allowed for residential. We are proposing condos to be built here.

Councilor Kyle asked when did you purchase the property?

Kahlid Husain replied two years ago.

Marnie Allen stated I think that it is important to have a clear record factually about what has occurred. I think that it might be helpful if Rich could explain when he was contacted, what the conversation was and how it was that the error in the Code was discovered.

Rich Faith stated about the middle of last month we received an inquiry about wanting to build a unique or non-traditional type of hotel on this property. As it was explained to us this was going to be a hotel/condominium. In other words each of the rooms or suites in the hotel would be individually owned and could be leased out on a reservation basis as short or long term. There would be an on-site manager that would be responsible for leasing the units out but each unit would be individually owned and each owner could occupy the unit when it's available. Because it was a little unclear from the phone conversation as to what this was, they were instructed to put it in writing to me so that I could render a decision or interpretation as to whether or not this was an allowed use within the GC zone. Keep in mind that this is the GC zone as I understood the GC zone, which doesn't allow residential uses. It didn't two years ago or five years ago and it certainly didn't before January 24th, in my mind it still doesn't. I received their letter and I did respond to it and I essentially ruled that this development sounded more like residential condominiums than a commercial hotel from the description they provided. Each unit was going to be individually owned, have a full kitchen, laundry facilities, and each unit could function as an independent dwelling unit as far as I could tell. In my best judgment I thought it looked and sounded more like a residential condominium than a commercial hotel and so I basically said that it was not an allowed use in the GC zone. Maybe a week later I received a call from the gentleman that sent me the letter saying that he disagreed with my interpretation stating that it really is a hotel. I told him that if he didn't agree with my decision he could appeal it to the PC and let them render a decision. Apparently after that phone call he called another person in my department and asked them if residential uses were allowed in the GC zone and they answered no. He stated that he had looked it up on your website and it appears that it is permitted. Sure enough because of the mistake that was made in the text amendments we actually did have residential uses listed by virtue of the fact that you are allowed any use under the GC or NC district. That is when we discovered the mistake. I did have a follow-up conversation to the individual and said that there has been a mistake in terms of what he was reading in the Code, and that he was absolutely correct on the surface and technically as you read it it does allow for residential uses, but that was an error and it was not intended that way and that we will be taking measures to correct that. I told him I didn't know exactly what our action would be to make the correction but that I would be talking to the City Attorney. As soon as we knew what our game plan was to correct this error I notified that individual that this matter was going to be coming before the City Council on this date and I was upfront about what we were going to be bringing to you to correct this mistake. Concurrently, I did advise him to submit an appeal of my interpretation of the Code in the event that this error is corrected, he would still have an opportunity for this use to be allowed if the PC agrees with his arguments and rules that what he wants to build is a hotel/motel which is a permitted use and therefore it wouldn't matter what action the Council takes and that we corrected the error. So concurrently they are also going down that path.

Councilor Kyle asked do we have any other of these types of issues going on with this error?

Rich Faith replied no one has contacted me or made inquiries about this. To clarify what Mr. Stamp stated, it was my understanding in those conversations I had with the gentleman representing the developers that they were operating under the assumption that this was GC zoning which allowed commercial uses and the use that they want to build is a commercial hotel. That is why they were looking at this property. They had no knowledge that residential

was an allowed use until I rendered my decision, at least that was my understanding in my conversation. That had nothing to do with the decision to buy this property. Their pursuit of this particular use was on the premise that it was a commercial zone that allowed commercial uses and what they want to build is a commercial use.

Councilor Kyle stated if I understand correctly the property has been owned by this person for two years. I think I am confused about whether or not this was an allowed use, it doesn't look to me like it was an allowed use, it looks like it was error. So we can go ahead and act on this tonight and you can continue to process this comfortably.

Rich Faith replied what we will do is we will continue with the appeal of my interpretation next Wednesday night at the PC meeting and they can determine whether or not what they are proposing is in fact a hotel/motel which is an allowed use in the GC zone.

Councilor Gorsek stated what is going to the PC will be looking at the old rules, or the rules that we are going to go back to in terms of whether they approve or not.

Rich Faith replied actually they don't have to look at any rules. It is looking simply at my interpretation of how to categorize their proposed use.

Councilor Gorsek stated I understand that but if they decide that it is a residential use then they would deny it.

Rich Faith replied if they concur with my interpretation that this development is residential rather than commercial then they would not be able to proceed with it.

Councilor Gorsek asked then do they have another option because that is not really their issue. Their question will not really be answered by the PC so where do they go from there? Assuming that the PC says we think this is a residential development so you can't build it, what would be their next option?

Rich Faith replied they could modify the project to make it fit the category of hotel/motel?

Councilor Gorsek stated even though we made an error we are not going to fess up to the error, is that what we are saying? Technically, legally it is on the books at the time and so we are going to say never mind that it doesn't count because we made a mistake so we are not accountable for our mistake; is that what we are saying?

Marnie Allen replied no. What we are saying is what is in the text of the Code isn't what the City Council adopted and we can't implement language in the Code that isn't consistent with what the City Council agreed the zoning would be. What has happened is that we have a situation where someone owns property and was able to use the mistake that was made to their benefit. They bought the property and approached the City ...

Councilor Gorsek stated I understand that but they didn't sit around waiting for this to happen, it just happened. There is no malice on the part of this party.

Marnie Allen stated I don't think it is necessarily malice, its because there was a mistake made it creates an opportunity that if they don't convince us that the way we believe our Code applies really is the way that it applies, they now have this unique opportunity to argue that the City really intended to allow residential.

Councilor Gorsek stated in other words a citizen when they look at our website may not actually get the right information, is that what we are saying?

Marnie Allen stated the text amendment that is on the City website is not consistent with what the Council and PC recommended.

Andrew Stamp asked would you say that right now we have a development application pending? Are we vested in the standards?

Rich Faith replied no, you do not have a development application. You have a request for a pre-application meeting which is required before you can go forward to the next stage which would be actually submitting a full land use application.

Andrew Stamp stated to me the easiest way to resolve our issue is to simply allow us to submit an application in the next couple of days and let us vest into these criteria.

Councilor Kyle asked if we make this correction tonight, their understanding of the Code was during this error period, so to me one really doesn't reflect on the other. We could go ahead and make the correction because if they are interpreting our Code to be in affect during this period of time when they started this process, we don't need to hold this up pending their application do we?

Marnie Allen replied if the Council does not amend this ordinance tonight or if it doesn't take affect immediately and they submit an application under this text, now that the City is aware of the mistake and it has been brought to your attention you have an opportunity to make the text match the decision you adopted and if you elect not to do that then a reasonable conclusion is that you intended to allow some kind of residential use on that property. So the process that they are going through and the question of whether this use is residential or commercial is the question that is pending right now. That becomes irrelevant if they are allowed to develop residential on this property. If you go forward and adopt the ordinance tonight, the only option they would have is to argue that this is a commercial use and if they don't prevail on that then they don't get to submit an application that proposes the use as they have outlined it now. They would either have to change it, ask for an amendment to the Code, file a Measure 37 claim or pursue some other remedy. If you do as is being proposed as a compromise position, which is adopt the ordinance correcting the mistake delaying the effective date allowing them to submit an application under the criteria that currently exists, it will be processed and residential will be allowed. But it would also be allowed to any other commercial property if a completed application is submitted in that time period.

Councilor Thomas stated Marnie Allen, you had mentioned earlier that the existing zone plans don't match which creates part of the problem that we have.

Marnie Allen stated right, our current land use plans assumes a certain amount of commercial and employment based land and development opportunities in the City in the GC and CC zoning and you don't convert those to residential use without some analysis.

Councilor Gorsek stated so there is no way to step outside all of this legal ease and just help this one person who was misled by us. We are going to play this legal game and cost them money, we can't just resolve this.

Mayor Thalhoffer stated I disagree.

Andrew Stamp stated you could simply delay the effective date of this for a few days and allow us to submit an application. Unlike anyone else we have already requested a pre-application meeting. The Director could even agree to waive that pre-application meeting to save us time and clear the way for us to submit an application as early as tomorrow morning.

Mayor Thalhoffer closed the public hearing at 9:20pm.

MOTION: Councilor Ripma moved to adopt the ordinance correcting a mistake in the Troutdale Development Code regarding residential uses in the Community Commercial and General Commercial Zoning Districts and declaring an emergency. Seconded by Councilor Kyle.

Councilor Ripma stated Mr. Stamp has thrown out to us tonight all kinds of reasons why this is unfair and not in conformance with Oregon land use law, all of which is completely without merit in my opinion. Our staff and our attorney has said a mistake was made and Oregon law does permit the City to stand by the findings and the recommendations and the intent that were part of adopting an ordinance and to correct a mistake. This is very important for the citizens of Troutdale that we do not allow residential or residential uses in these commercial zones. It is these commercial zones that pay the taxes that pay for the schools, police and everything else. Residential uses drain those resources. There will be no loss of value to the land in correcting this mistake. The arguments we have heard are without merit I think.

Mayor Thalhoffer stated I support the motion based on the reasoning by Councilor Ripma.

Councilor Canfield stated I support the motion. It is unfortunate what happened. However, even if we were to allow an exception that would still be admitting we wanted residential and we definitely did not want residential; that was not our intent. I agree with Councilor Ripma that the arguments made were without merit.

Councilor Gorsek stated I can't see at all where it matters what our intent was. I can't see why this Council can't have a little compassion for somebody and try to work with people instead of getting lost in the law books.

VOTE: Councilor Ripma – Yes; Councilor Thomas – Yes; Mayor Thalhoffer – Yes; Councilor Canfield – Yes; Councilor Kyle – Yes; Councilor Gorsek – No.

Motion Passed 5 – 1 in order for an emergency ordinance to be adopted at one meeting it must have a unanimous vote of the Council. Because one Councilor voted no, this ordinance can not be adopted tonight, it would need to come back in two weeks for adoption.

Marnie Allen, City Attorney stated if Councilor Gorsek's primary interest and concern is to accommodate the interest of these individuals, they have indicated if they could have two weeks they could submit a complete application. If the ordinance were amended so that the effective date was not immediately but would become effective in two weeks and the ordinance as amended receives unanimous support, you could adopt the ordinance tonight with the delayed two week effective date, which would reduce the amount of time and opportunity for others who own commercial property to submit an application for residential development.

Andrew Stamp, Attorney, stated I think we could submit an application but whether it could be complete in two weeks may be difficult. The Planning Director would either have to waive the pre-application meeting or schedule it immediately.

MOTION: Councilor Ripma moved to adopt the ordinance correcting a mistake in the Troutdale Development Code regarding residential uses in the Community Commercial and General Commercial Zoning Districts and declaring an emergency with the ordinance taking effect on May 23, 2006.

Andrew Stamp asked would that involve a waiver of the pre-application or would we still need to have a pre-application meeting?

Rich Faith replied two weeks is not enough time to go through the pre-application process, so we will have to skip the pre-application and sort through the issues as they arise.

Motion seconded by Councilor Gorsek.

Mayor Thalhoffer stated I think this is an unfortunate compromise.

Councilor Canfield stated I think this is a terrible compromise. It leaves the Pandora box open and is not in the City's best interest.

Councilor Ripma stated I think it is a good compromise because the alternative is 30 days for the effective date. This gives them a chance and it shortens the period of danger.

VOTE: Councilor Ripma – Yes; Councilor Thomas – Yes; Mayor Thalhoffer – Yes; Councilor Canfield – Yes; Councilor Kyle – Yes; Councilor Gorsek – Yes.

Motion Passed Unanimously.

7. STAFF COMMUNICATIONS

None.

8. COUNCIL COMMUNICATIONS

Mayor Thalhofer urged the voters to vote for Ballot Measure 26-77 in the May 16th Election.

Councilor Canfield expressed disappointment that this issue was not brought to the City Councils attention at a much earlier time.

Councilor Kyle reminded everyone to vote.

Councilor Gorsek agreed with Councilor Canfield. When we are going to vote on an issue we need to know all of the details. Unlike the Mayor, I hope people don't vote for urban renewal.

9. ADJOURNMENT:

**MOTION: Councilor Ripma moved to adjourn. Seconded by Councilor Gorsek.
Motion passed unanimously.**

Meeting adjourned at 9:33pm.

Paul Thalhofer, Mayor

Approved August 22, 2006

ATTEST:

Debbie Stickney, City Recorder