

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

Tuesday, April 19, 2005

1. ROLL CALL

Mayor Thalhofer called the meeting to order at 7:02pm.

PRESENT: Mayor Thalhofer, Councilor Gorsek, Councilor Thomas; Councilor Canfield
Councilor Kyle, Councilor Daoust, and Councilor Ripma (7:04pm).

ABSENT: None.

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

GUESTS: See Attached.

2. DISCUSSION: A Discussion of the City's Measure 37 claim process.

Rich Faith, Community Development Director stated this is a follow-up on an issue that Councilor Canfield brought up on March 22nd. You have a copy of the City of Albany's Measure 37 ordinance which has an informal procedure or alternative procedure. At the March 22nd meeting there were some concerns or issues raised about the process outlined in our Measure 37 ordinance as to whether or not it is overly burdensome to applicants and whether or not a less formal process might serve as an incentive for people to use. There were a number of specific questions about legal issues that Marnie Allen has responded to in a memorandum addressed to the Council. In general I don't think that our Measure 37 ordinance is much different than most jurisdictions. I think that we are all trying to understand what Measure 37 is all about. We do have a number of provisions that I think are fairly standard in most of the ordinances that you will see. We feel like those are reasonable requirements simply because of what is at stake. If someone is going to file a claim and they are going to say that they should be entitled to hundreds of thousands of dollars in compensation or waiver of the regulations, I think that we owe it to our citizenry to make sure that it is a valid claim. The only way we can really determine if it is a valid claim is if they provide us with certain information. That is the rationale behind the requirements that we have in our ordinance. The next question is the fee that we are charging. The fee that we adopted is the same fee that we adopted a couple of years ago when we adopted the Measure 7 ordinance. It is really difficult to say what it is going to cost since there have been so few of these that have actually gone through a full process. We established a flat fee of \$2,300. Other jurisdictions are charging as much as \$1,500 for a deposit and then they calculate the actual cost and bill for the additional amount or refund a portion of it if it does

not end up costing that much. We don't have any experience with this yet to know whether our fee is out of line or not. In response to Councilor Canfield's request, which is take a look at incorporating an informal process similar to Albany's, I looked at that as one of several options that we have available to us and I tried to outline some pros and cons to each option. Rich Faith reviewed each of the options as outlined in his staff report (copy contained in the packet).

Councilor Canfield stated my concern with the ordinance that we adopted was that it was based on Measure 7 and it does not really take into account some of the aspects of Measure 37.

Councilor Thomas asked such as?

Councilor Canfield replied Measure 37 says that although the governing body can create a formal claims process and charge a fee, it also says that it does not preclude someone from filing a case in circuit court and not following the procedure that the city establishes. Is that correct Marnie?

Marnie Allen, City Attorney replied yes. The Measure says that cities can establish a procedure but it also says that following the procedure is not a prerequisite to filing in circuit court if you don't have a decision within 180 days.

Councilor Canfield stated and we can't really force them to pay a fee either can we?

Marnie Allen replied I think that is one of the biggest unknown questions about Measure 37, is what does that language mean. If the city has a fee and a process and they don't go through that process, will the court remand it if the process and fee is reasonable and require them to go through that process or will the court go ahead with the claim. Measure 37 doesn't say that we can't charge a fee. It says the city can adopt a process. It is very common for cities to include an application fee for land use applications or other things that the city processes. It is unknown.

Councilor Canfield stated my feeling was that there is a balance between the amount of information that is needed to determine that the claim is valid and making the process so burdensome that a disgruntled claimant could just say the heck with the city and give the city minimal information and take it straight to circuit court. That would not be good for the city because we would be on the hook for attorney fees. I think we should look at this and make it as simple as possible and at the same time encourage people to give us enough information so the city to make a decision. I think we need to find where that line is for Troutdale.

Councilor Gorsek stated that it seemed there was also a concern that if we didn't have some kind of fee that was a little bit imposing that anybody and everybody might come forward, is that true?

Rich Faith replied that was one of the cons I listed. That is speculative on my part but I would think that if there was no fee and all you had to do was come in and say that you have been

damaged and want the city to do something about it, then I think we would receive a lot of claims. The fact that we have these requirements puts a burden of proof on the claimant and makes them think it through very carefully and makes them demonstrate that they have a valid claim.

Councilor Gorsek stated although as I understand it a claimant can just turn around and take it to court.

Rich Faith stated they can't go to court until they have first filed with us correct?

Marnie Allen replied correct, they have to file with us and wait 180 days. They could send a letter saying I demand \$30,000 under Measure 37 for the decrease in value and that could be all they file.

Rich Faith stated which apparently has been done in some jurisdictions.

Councilor Gorsek stated what you are saying Councilor Canfield is that the City of Albany is willing to take less information to try and make a decision, is that right?

Councilor Canfield replied and they are waiving the fee as an incentive to get the claimants to the table. If you look at the list of requirements and documentation that our current ordinance requires, it is a massive amount of documentation which is going to cost the claimant a lot of money. It doesn't seem to make sense if the claimant is doing all of the work that we should be charging them a fee. If they are doing all of the work and spending all of that time, most of the work and research that the city would need to do is being handed to them and we should be rewarding them by charging a minimal fee or no fee at all to get them to the table.

Councilor Canfield stated section 2.70.030(J) of our code requires a list of all the land use and building permits that have been issued or sought by the claimant for the property that is the subject of the claim and a summary of the disposition of the land use or building permit application and enforcement actions. That is asking for every single piece of the claimants building permits when all we are really concerned about is the specific code or regulation that affects the property value. Why do we need all of the other building permits, land use applications or things that have been issued when the only one we are interested in is the one that affects the value of the property.

Councilor Ripma stated but they all affect the value of the property. To assess the validity of his claim it seems like absolutely necessary information otherwise he will say I bought the land in 1900 and there were no rules and I can build whatever I want there. It could be that he was granted all kinds of things that raised the value of the property and reduces his claim each time up until the time that one is denied, between that time and the last time he was granted a permit that increased the value, that is where his claim lies.

Councilor Canfield stated it should be tied to a specific point and time of a denial of a land use or the adoption of a restriction that he is going to hang his hat on and say that is why there is a loss of value in the property. That is the burden that should be put on the claimant to say what that is, we shouldn't be guessing what it is.

Councilor Thomas asked without the history how do you verify that?

Councilor Daoust stated I am okay with the way the ordinance was adopted in December. To address Councilor Canfield's issue, how much latitude does staff have to accept or deny a claim? For example if they don't supply all of the information that we require in the ordinance, isn't there still some latitude that staff has to accept it anyway or do we automatically have to deny the claim if they don't submit all the required information? Isn't there some risk we can take even the way it is currently written?

Marnie Allen replied yes.

Councilor Canfield stated I think the Eugene ordinance says that as long as there is enough information to process the claim then they can go ahead with it.

Mayor Thalhoffer asked what is enough information?

Marnie Allen replied I think it is going to vary case by case depending on what they are challenging and what they are claiming the fair market value is or if it is a claim based on family ownership and history. We want enough information to make sure that it is a valid claim under the language of Measure 37 itself. Do we have some information to support what they are claiming is the reduction of the fair market value, their ownership interest, that they are the current owners, that this is the first time that it has been enforced or applied either within two years of when Measure 37 was adopted or two years from when the ordinance was first applied. I am sure that Rich will be consulting with myself and others in the city to evaluate whether we think they've met all of the requirements of Measure 37. He and I may conclude that we think there is enough information to say the application is complete and bring it to the Council. We could bring it before the Council and you could say you need additional information in order to be comfortable in deciding whether we should waive the regulation, pay or deny the claim.

Councilor Daoust stated we can take certain risks to assist them in filing a claim. Councilor Canfield is worried that we may get lawsuits filed against us if we don't follow step by step with what we require in our ordinance. But there is still some latitude to work with the claimant so I am not concerned enough about it to the point that we need to rewrite our ordinance. I believe the burden of proof is on the person filing the claim. If I was filing a claim I would pull together every piece of paper I could find.

Councilor Canfield stated I would agree with that if we could put specific language in the ordinance that says if they didn't have all of the required information but if it was the opinion of the staff that there was enough information to make a decision that would be satisfactory.

Councilor Daoust stated I understand what you are saying but I don't want that language in the ordinance. I don't want that door opened saying that you should submit this but if you don't it is okay because we will work it out. I wouldn't want that kind of language in the ordinance. To reduce our risk don't you want things to be clear and precise as to what they are supposed to submit?

Rich Faith stated this is really not unlike our current Development Code that is very specific about what needs to be submitted if someone is going to apply for a land use application. It becomes more complicated if you are going to be developing in a resource protection area like a flood plain or vegetation corridor, then we have an entire separate chapter that talks about things that you need to submit so that we can better evaluate the project and its impact on the environment. When you first look at the requirements it is very intimidating and there is a lot of information that you are supposed to provide. Frankly, most applicants fall short. They are overwhelmed and don't submit everything that the code requires but we work with them. We try to be reasonable. I don't require a full hydrology report from every applicant building in a flood plain. I don't require them to submit a vegetation report from a certified arborist or landscape architect, which our code requires. I try to apply some common sense and reasonableness about what I think is the minimum information necessary to adequately evaluate the proposal. We currently do that with the Development Code and I anticipate we will do the same thing with this ordinance as well.

Councilor Canfield stated except there is a risk if someone who has submitted enough information to the city to complete their claim gets denied by the city for submitting an incomplete claim. If we could have taken care of the claim with the information they provided but instead they go to court with it, there is a risk.

Councilor Ripma stated only if we are wrong.

Councilor Canfield stated but if we can take care of something with the information provided it behooves us to do so.

Councilor Ripma stated it sounds like we would be reasonable. The claimant who thinks he gave us enough information and disagrees with us and runs off to court, I am positive that claimant is probably being unreasonable and that claimant would be unreasonable under the Albany ordinance. In other words if they are going to do like the guy in The Dalles and just submit two items and say give me my money or I'm going to court, the city really has no choice but to turn him down until we receive more information.

Councilor Canfield stated the ordinance doesn't say that we promise to be flexible, that is my concern.

John Anderson stated I would like to suggest some potential reviews that might allay some of those concerns. Something coming forward is going to come forward to city council. If it is coming to council you will have an opportunity to decide whether or not staff was being unreasonable. An applicant could back down before it goes to council because they feel it cost too much or whatever. Maybe if we had a reporting mechanism that lists the applications we've received showing the status of the applications.

Councilor Canfield asked when does the 180 days start?

Rich Faith replied our ordinance states that it shall commence on the date a completed claim is filed.

Marnie Allen stated Measure 37 says that compensation is due if the land use regulation continues to be enforced within 180 after the owner makes written demand. So the question will be if they haven't filed a complete and valid claim, have they made written demand.

Councilor Canfield asked is Measure 37 the same as what Rich Faith just described about when the clock starts?

Marnie Allen replied it is, given that interpretation. We would be taking the position that you haven't really made a written demand until you have provided all the information that we need to evaluate the claim. They will probably claim that once they have sent the letter asking for the money that is all they needed to submit, then it would have to be decided by the court or by a legislative change to clear up some of the ambiguities.

Councilor Canfield stated I am still confused whether the language in Measure 37 conflicts with this.

Marnie Allen stated the language in Measure 37 says you are entitled to compensation 180 days after you make written demand for compensation. Making written demand isn't really defined in Measure 37 so we would be arguing to the court, as would all the other jurisdictions that require all of this information and reject the claims if they are incomplete, that you haven't really made a written demand under Measure 37 until you have given us all of this information because we can't determine if it is valid under Measure 37.

Councilor Ripma stated that is a very reasonable interpretation. A court is not going to fault a city for saying that we can't just pay money out based on a letter saying I demand compensation. We are talking about taxpayer's money and we have to have compliance with the ordinance in meeting all of the requirements. We as a city have to operate on the assumption that even a court is going to be reasonable with us and what we are asking for is reasonable. If there is something that we are asking for that is unreasonable we can debate that. If the amount of money we are charging is unreasonable that is fair to discuss. We have to have sufficient information to evaluate the claim.

Councilor Canfield stated my concern is the vagueness of the language that makes is so unclear.

Mayor Thalsofer stated the Legislature is considering amendments to Measure 37 and the League of Oregon Cities is following this very carefully. I don't know why we are engaging in a serious conversation until we find out what the law is going to be.

Councilor Gorsek stated there is a check on this in that it will come before the council.

Councilor Canfield asked doesn't our ordinance say that the Community Development Director can deny a claim?

Rich Faith stated a can determine that the claim is incomplete.

Councilor Canfield stated you can do that without it coming to the council.

Rich Faith replied the way the ordinance is written now is it could end at the point that I make the determination that it is an incomplete application and we are not going to do anything further with it.

Councilor Ripma asked couldn't the applicants come to the council?

Rich Faith stated it is not written that way but they could.

Marnie Allen stated you could also do what John suggested which is have a management policy that if any claim is rejected because it is determined to be incomplete you will get a briefing from the Community Development Director.

Councilor Daoust stated I imagine that we will want a briefing on any Measure 37 claim.

Council agreed.

Council discussed the amount of the application fee. Council decided to make no changes to the fee at this time.

Mayor Thalhoffer asked would you be comfortable leaving the ordinance as it is now and wait until after the Legislature decides what amendments are going to be made to Measure 37 and if they pass amendments we can take another look at the ordinance.

Councilor Daoust stated I am okay with the way it is now.

Councilor Gorsek stated so am I.

Councilor Thomas stated I am sure that if there are amendments made staff will be taking a look at whether or not amendments need to be made to our ordinance.

Councilor Ripma agreed to wait.

Councilor Kyle agreed.

Councilor Canfield agreed to wait if we at least put the alternative informal claims process in place.

Mayor Thalhoffer stated the consensus is to leave the ordinance the way it is for now.

3. DISCUSSION: Proposed Multnomah County transfer of county roads in Gresham to the City of Gresham.

Mayor Thalhoffer stated this has been an issue that has been boiling for years. The City of Gresham has wanted ownership of the roads within the City of Gresham since Portland took ownership of the roads within the City of Portland. The three small cities have objected to that because we think that what is going to happen is that Gresham will not only get the roads

but they will also want the road maintenance money that goes with them. After Multnomah County turned down Gresham's request, Gresham insisted on a vote and put a Measure before the residents of Multnomah County in the early 1990's which failed by a good margin. We have been on the forefront fighting this thing. Finally, I think the County Commission is to the point where it appears they are going to transfer the roads to the City of Gresham. We had a meeting two weeks ago with Commissioner Rojo de Steffey and two other representatives from Multnomah County. We have a draft resolution that Commissioner Rojo de Steffey provided to us and in Section G it states that the transfer of roads to Gresham will not adversely impact the other unincorporated roads and services to the cities of Fairview, Troutdale and Wood Village. I am not convinced that is the way it is going to turn out. On page 2 of the draft resolution it states that the County will join with the City to form a Negotiation Team chaired by Commissioner Maria Rojo de Steffey and a City of Gresham official to negotiate an intergovernmental agreement addressing all road transfer related issues including but not limited to maintenance levels, storm water management, water quality, signal operation, employee transfers, etc. This seems to just make the negotiations between the City of Gresham and Multnomah County but she said that they would include the three small cities in the negotiations. I am not sure what part we would have in it but we are going to try and insist on being a voting member of this negotiating team.

Councilor Gorsek asked did Commissioner Rojo de Steffey clarify with you that we would be a voting member?

Mayor Thalhofer replied no she didn't.

Councilor Gorsek stated that Mayor Weatherby mentioned that we would only have observer status.

John Anderson stated Commissioner Rojo de Steffey stated we would have someone on the negotiating team, she didn't explain whether they would be a voting member or not.

Mayor Thalhofer stated they say that Gresham won't get the road maintenance money but they are going to get about six positions instead that will be transferred to the City of Gresham and paid for by Multnomah County. Knowing Gresham as I do, over these last 25 years that I have been involved with this issue, once they get the roads they will want the road maintenance money in addition to the positions. If that happens than the issue will be, will Multnomah County have enough critical mass to service the three small cities plus the unincorporated area? There is also the matter of the equipment that might be involved in this which they didn't tell us about.

John Anderson stated they presented their long-term financial projections indicating for maintenance they (the County) couldn't afford to maintain what it has today and for capital improvements they couldn't afford those either. So there is already a gap, I think they were predicting about \$600,000.

Councilor Daoust stated it is all coming together.

Councilor Ripma asked I don't follow how it is all coming together.

Councilor Daoust stated if they transfer employees to Gresham that is a very easy way for Multnomah County to reduce their budget and say since the employees are in Gresham then Gresham can pick them up.

Mayor Thalhoffer stated Multnomah County is paying for them.

Councilor Daoust stated for now.

John Anderson stated the other piece is the way that the road funding formula works. It would be ideal for Multnomah County to give the jurisdiction the responsibility without the money. The money doesn't follow the road miles. The formula for state aid for roads is different than that. Actually it would be to the County's advantage to be able to hand over the road jurisdiction and keep the money. Gresham's advantage is to take the roads and get the money. Most cities don't get the money when the roads are converted. There are some really interesting dynamics that are going to come out of these negotiations.

Councilor Ripma asked how can it be that a city would be given the roads and all the overhead and maintenance costs and the county gets to keep the money. I can't understand that.

John Anderson replied the gas tax and motor vehicle registration fees are collected and they go into one pot. The State gets 50% off the top. Then the counties get 30% based on the motor vehicle registration fees and the remaining 20% is split up amongst the cities based on the population of the cities. None of those three are directly related to how many miles of roads you have before or after you transfer anything. Some counties, if they can transfer a county road to a city will actually pay a little premium on the front end to get rid of it so they don't have it in their inventory to maintain yearly.

Councilor Ripma asked what city would be so stupid as to take roads under those conditions?

John Anderson stated cities sometime like to have complete responsibility and authority of the roads within their jurisdiction rather than relying on a county. Some road segments are little parcels that don't make any sense for the county to maintain so they let them go.

Councilor Canfield asked is that the case with Gresham?

John Anderson stated Gresham wants both.

Councilor Gorsek asked how does the County get to keep money if they transfer the roads?

John Anderson replied because the formula doesn't have anything to do with the road miles.

Councilor Daoust stated regardless of the formula, if they pass this resolution and develop an IGA between Multnomah County and Gresham addressing all road transfer related issues including employee transfers, the wording makes it sound like the IGA is going to change the formula.

John Anderson stated that is the crack in the door in terms of how cities and counties normally handle it.

Councilor Daoust stated they can transfer funds to Gresham after the formula is worked out.

Councilor Ripma stated Gresham took over a bunch of roads from the County ten years ago, what happened with that?

Jim Galloway replied there was an agreement, it was so many dollars per mile of centerline roadway. We picked up three small segments of road and benefited as well. We get a few thousand dollars a year from the County for that same reason. I think it is around \$5,000 or \$6,000 per mile. I think what John and the Mayor have said is it, the formula that the State puts out wouldn't give an additional dime to Gresham. The only reason I think they would be interested in doing this is either now or in the future they would hope to negotiate a deal where they did get something.

Councilor Thomas asked with regards to moving staff to Gresham, how much impact will that have on us?

Mayor Thalhoffer stated the resolution states that it will not adversely impact the other unincorporated roads and services to the cities of Fairview, Troutdale and Wood Village.

Jim Galloway stated I don't know exactly what those positions are. My thought is that probably the impact would not be to great on Troutdale if we knew that's where the line was going to stop. I would be concerned as things change that over a period of time that six becomes something more than six. The greatest benefit that we receive from the County right now are the blue collar workers and if I remember what I read I think the positions are planning and engineering staff.

Councilor Gorsek asked what are our options?

Mayor Thalhoffer stated we could protest this again at their meeting on Thursday. Fairview's draft letter (Exhibit C) is a pretty good approach. We could oppose it and say if you must approve this transfer we want to be part of the negotiating team and ask them to complete the negotiations before they pass their resolution so we know exactly what it is going to be. I will be testifying Thursday morning and anyone else who would like to attend is welcome.

Councilor Daoust asked what are you going to testify? Will it be along the same lines as the Fairview letter?

Mayor Thalhoffer replied we would oppose the transfer of roads but if you are going to go ahead with it there should be a negotiating team with all parties involved on the negotiation team and this resolution shouldn't be passed until after we find out exactly what the conditions are after negotiations.

Mayor Thalhoffer stated if that direction is okay with the Council I will proceed.

Council agreed.

Mayor Thalhofer asked Jim Galloway to assist him in preparing a list of discussion points to take to the hearing on Thursday.

3a. STAFF COMMUNICATIONS:

Jim Galloway stated I wanted to give you an update on the 257th undergrounding project cost figures we have received from PGE. They have a low bid from a contractor of \$780,000. PGE receives a 10% management fee for designing and administering the project which adds about \$78,000 and then \$52,000 in unused value of the wire and vaults for a total of \$920,000. We currently have about \$710,000 available to spend on this project. We could possibly borrow against next year's privilege tax which would be around \$135,000. We could borrow money from another fund that has money appropriated but isn't going to be used this year and I am specifically thinking of the well project in the water fund. If we borrow from the Water Fund that would give us about \$845,000; we would still be about \$75,000 short. I have provided that information to PGE. I had initially suggested to PGE the idea of dropping the management fee, reducing the management fee or give up on the unused value of the wire. Their response was good news and bad news. The bad news is we can't cut back on any of those things that we are going to charge you. The good news is that they would defer payment of some of the costs. Upfront they need to get enough money to cover the construction contract, which we would have if you agreed to borrow money from the Water Fund. They would defer the money that comes back to PGE until we had it. I informed them to keep in mind in order to meet the first obligation we would have to borrow against money that we wouldn't get until April 2006, so if we were to do that they wouldn't be getting their money back until April 2007. I asked them if they would be satisfied waiting that long and their answer was yes. I then asked if that would be an interest free loan or would you be charging interest and they indicated they did not have an answer to that yet, they would have to get back to us. They will need an answer from us no later than May 9th, which is when the bids expire. I realize that this is not a formal meeting and you don't take final action at work sessions. I guess what I am asking you is if what I have outlined is in line with what you previously directed me to do which was to try and work out a deal with PGE. Or is this something you feel needs further debate.

Councilor Thomas asked how much carryover would there be for the second year? We had kind of agreed that one year was okay but if the carryover is only \$70,000 or \$80,000 I would say go for it.

Jim Galloway replied the money we have on hand right now plus the next two years privilege tax, April 2006 and April 2007, should total about \$990,000. The estimated cost right now that we have for the construction, PGE's management fee and the unused value is about \$920,000. I think the answer to your question is that we should end up two years from now with a balance of \$70,000.

Council agreed to go forward.

4. ADJOURNMENT:

Meeting adjourned at 8:29pm

Paul Thalhofer, Mayor

Approved August 23, 2005

ATTEST:

Debbie Stickney, City Recorder