

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

January 28, 2003

1. PLEDGE OF ALLEGIANCE, ROLL CALL, AGENDA UPDATE.

Mayor Thalhofers called the meeting to order at 7:00pm

PRESENT: Mayor Thalhofers, Councilor Gorsek, Councilor Ripma, Councilor Thomas, Councilor Kight, Councilor Kyle, and Councilor Daoust.

ABSENT: None

STAFF: Erik Kvarsten, City Administrator; Rich Faith, Community Development Director, Elizabeth McCallum, Senior Planner; Jim Galloway, Public Works Director; Amy Pepper, Civil Engineer; Kyra Williams, Finance Director; Marnie Allen, City Attorney; and Debbie Stickney, City Recorder.

GUESTS: See Attached List.

Mayor Thalhofers stated that the State of the City Message will be set over until the February 11th meeting?

2. CONSENT AGENDA:

- 2.1 Accept Minutes:** December 10, 2002 Regular meeting.
- 2.2 Resolution:** A Resolution designating the Mayor, City Council President, and staff as signatory/cosignatory for authorized banking transactions of the City of Troutdale, Oregon and rescinding Resolution No. 1573.
- 2.3 Resolution:** A Resolution accepting a Quitclaim Deed from Kenneth and Jean Parks for a tract of land situated in the southeast one-quarter of Section 36, Township 1 North, Range 3 East of the Willamette Meridian in the City of Troutdale, Multnomah County, Oregon.
- 2.4 Resolution:** A Resolution accepting a Quitclaim Deed from Stanley and Debra Hardy for a tract of land situated in the southeast one-quarter of Section 36, Township 1 North, Range 3 East of the Willamette Meridian in the City of Troutdale, Multnomah County, Oregon.
- 2.5 Resolution:** A Resolution granting a Quitclaim Deed to George Zifcak for a tract of land situated in the southeast one-quarter of Section 36, Township 1 North, Range 3 East of the Willamette Meridian in the City of Troutdale, Multnomah County, Oregon.

MOTION: Councilor Kight moved to adopt the consent agenda. Seconded by Councilor Daoust. Motion passed unanimously.

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

Gail Thurber congratulated Barbara Kyle, Norm Thomas and Chris Gorsek for being elected to the Council.

Thurber stated I am here tonight to inform the Council about arbitrary code enforcement by our community development department. The basic premise of our legal system is equal protection under the law. Acting under the code of the law the Municipal Code is being used to harass selected Troutdale residents while encouraging some to trash and degrade our neighborhoods leading to urban blight. The house at 145 SE 4th Street is directly across from us, shown in Exhibit A (copy included in the packet). The roof is caving in and it is a health and fire hazard. However, there appears to be no code enforcement to do anything about this. In recent days the owner of that property had a suite built without permits. Roman York reported the situation to Ms. Jodi Rogers. The conditions and unsupervised work with no permits in this nearly 100-year old building poses hazards to surrounding homes. We are asking the Council to require this lot to be brought to current building code compliance. Conversely there is a Troutdale code that states one cannot park a vehicle on grass. I would invite the Council to observe vehicles, trailers, RV's and boats currently parked in grass or mud when you drive around Troutdale. Frankly, it doesn't bother us that grass areas are used if done so responsibly. However, we were mailed an abatement notice dated January 9th and we received it on January 14th for our boat and for our van. The notices stated that we had until January 19th to correct the code violation. Our boat was parked there for over three years on painted wood boards that rest on grass on our property, shown in Exhibit B (copy included in the packet). We have no problem complying with the code except that it is being administered very unevenly and non-uniformly throughout the city. We were given 3 business days to correct the situation and build a driveway, I don't believe, and I am sure a lot of people would agree, that this isn't a reasonable amount of time to complete this. So instead we moved our boat from our property to avoid any penalties. The notice stated that we could have the boat resting on 2-inch minus or greater rock; this grade of gravel makes no sense by those in the construction business. (Thurber showed the Council a sample of two different rock sizes.) The other choices are asphalt or concrete, so we must replace our environmentally friendly green grass with one of those aforementioned surfaces. Our boat is US Coast Guard certified and we can take our boat into rivers and oceans where fish live and also where water is being used for drinking water, but here it is not safe to leave our boat parked on those boards and concrete blocks because it falls under the health and safety section of the code. We believe the reason we were sent a letter was due to our stand on urban renewal. We have people in positions of power that are Gresham people who are dictating in Troutdale the effect of the quality of life for Troutdale residents. The way the code is being enforced in Troutdale is totally arbitrary and it is not uniformly being applied. This City Council started its meeting with the Pledge of Allegiance, with liberty and justice for all. Where is the justice in this when you look at the lack of code enforcement in Exhibit "A" and the enforcement in Exhibit "B"? I have all kinds of photos of other boats, RV's, cars and

trucks parked on grass around the city. I do believe in justice and fair treatment. I think it is very important that government officials are fair and that they administer our codes in a just way. I am asking you to address the matter of the lack of uniform code enforcement in Troutdale.

Mayor Thalhoffer asked Mr. Faith to check into this.

Paul Rabe stated I have a request of the council. As you may be aware, Charlie Ceicko was terminated from Metro. I have a lot of concern with that personally and professionally. I was wondering whether you would consider drafting a memorandum of concern regarding his termination and the manner of which that termination occurred. Charlie has a long history of service to East Multnomah County. I know that the 4 Cities meeting is later this week and I was hoping that you could mention this at that meeting to see whether or not the other cities would join in and also send a letter.

Mayor Thalhoffer asked if there was agreement by the entire Council to draft a letter asking that Mr. Ceicko be reinstated?

Council agreed.

Mayor Thalhoffer directed staff to draft a letter.

Rabe requested a copy of the letter.

4. STATE OF THE CITY MESSAGE:

This item was set over until the February 11th meeting.

5. PUBLIC HEARING / ORDINANCE (Introduced 1/14/03): An Ordinance repealing Ordinance No. 703. (Regarding Measure 7 being declared unconstitutional by the Oregon Supreme Court)

Mayor Thalhoffer read the ordinance title and opened the public hearing at 7:24pm.

Marnie Allen, City Attorney stated this is the second hearing on a fairly straightforward ordinance. This ordinance repeals a prior ordinance that implemented Measure 7 and established a claim process. Because Measure 7 was declared unconstitutional that ordinance is no longer necessary.

Council had no questions.

Mayor Thalhoffer asked is there anyone who would like to speak to us on this issue.

No public testimony received.

Mayor Thalhoffer closed the public hearing at 7:25pm.

MOTION: Councilor Kight moved to adopt the ordinance repealing Ordinance #703. Seconded by Councilor Thomas.

VOTE: Councilor Kyle – Yes; Councilor Daoust – Yes; Councilor Gorsek – Yes; Councilor Ripma – Yes; Councilor Thomas – Yes; Mayor Thalhofers – Yes; Councilor Kight – Yes.

Motion passed 7-0.

6. PUBLIC HEARING / APPEAL: A de novo hearing on appeal of the Burlingame East Subdivision, a 51-lot residential subdivision. (Planning File #01-090)

Mayor Thalhofers called this item.

Marnie Allen, City Attorney stated State Law mandates these procedures and the Troutdale Development Code and they will govern the way the Council conducts this hearing. A staff report has been made available on this matter seven days before tonight's hearing. That staff report identifies the approval criteria that governs the City Council's decision in this matter. If you would like us to read the approval criteria, please let the Mayor know after the staff presents their report. After the staff presents their report the Mayor will open the public hearing. The applicant will be given the first opportunity to address the City Council. Anyone who wishes to testify in support of the application may testify after the applicant. Then the appellant, and anyone who is opposed to this application, has an opportunity to testify to the City Council. After all of that testimony is given the applicant is given the final opportunity to testify and rebut any information that has been presented to the Council. Once all of the testimony has been presented the Mayor will close the public hearing and the City Council may deliberate and adopt a decision. If you are going to testify tonight, please sign-in and give your name at the beginning of your testimony so that the city will have that in the record. If you are going to file any written documents or photos that you want the City Council to consider, please identify those documents and make sure that we know that you want them included in the record. Your testimony and exhibits tonight should address the approval criteria. If you believe that there are other criteria that have not been address in the staff report you need to identify those criteria for the City Council so they can consider that information as well as the others present at the hearing and can respond to that criteria. If the City Council makes a decision that you disagree with, any issue that you want to raise later on appeal, either before the Land Use Board of Appeals or Circuit Court, has to have been raised tonight with enough specificity that the City Council and all parties here can respond to that issue. Raising issues include any issues such as ex-parte contacts, conflicts of interest or bias as well. That summarizes the procedure. Before you hear the staff report, any member of the Council that has a conflict of interest, bias or ex-parte contacts should disclose them at this time.

Mayor Thalhofers asked the Councilors to declare any conflicts of interest, ex-parte contacts or bias at this time.

Councilor Kyle stated I was a member of the Troutdale Planning Commission when this matter came before them on December 18th. As a member of the planning commission I did vote in favor of the subdivision. Any information that I received about this subdivision was provided to me as a member of the planning commission and that information is in the records that I received as a current member of the city council. I have received no other additional information nor have I had any contact with anyone regarding this subdivision. Based on that I do feel that I can make a fair and impartial decision on this subdivision based on the information of record and any information that may be presented to the council this evening.

Councilor Daoust stated I have a conflict of interest in that my property is located along the eastern boundary of the Burlingame property. I will have to step down and not participate in this decision because of that conflict of interest. I do reserve my right to testify as a citizen of Troutdale providing valuable added information to help the council make a good decision.

Mayor Thalhoffer asked Marnie Allen does Councilor Daoust have to leave the Council Chambers or can he participate as a citizen.

Allen replied Councilor Daoust may remain here and listen and participate in this proceeding. He has made it clear that his participation is only as a citizen of the City of Troutdale. He is not participating in any way as a council member and that is appropriate.

Councilor Daoust stepped down at 7:33pm.

Councilor Thomas stated I was also a member of the Troutdale Planning Commission on December 18 when this matter was brought before us. I am not aware of anything that I know that anyone else has as far as what was on the record. I was the member of the planning commission that recommend, made the motion, that this development go forward. At this time I feel that I can render an honest and just opinion tonight. However, if anyone would like me to step down I would do that.

Mayor Thalhoffer stated I had an ex-parte contact. I made a visit to the site. Doug Daoust called me on, I believe, the 29th of December to see how I was doing because I was recently in an automobile accident. During that conversation he mentioned that his neighbors might appeal the planning commission decision. I mentioned to Doug that I had watched part of that planning commission meeting on cable television. I also mentioned that I would like to take a look at the site if there is a chance that it is going to be appealed. I went to the site and looked at the "cabbage patch" site and Doug pointed out to me the pathway that goes from the stub street to the north all the way to Stark Street, it use to go to Stark Street but now it doesn't because of Home Depot. I asked Doug who uses this pathway? Doug replied that Mr. Burlingame uses it with his tractor when he does his farming and also a lot of people use it, kids going to college and high school students use it. I asked Doug how long has that been going on and Doug replied that he has lived there for 12 ½ years and it has been going on that whole time. I saw the pathway, the cabbage patch property and the row of trees. I

don't think that my site visit or ex-parte contact puts me in a position where I can't treat this case fairly.

No further conflicts, ex-parte contacts or bias were declared.

Mayor Thalhofer asked is there anyone in the audience who would like to challenge anyone of us?

None.

Elizabeth McCallum, Senior Planner stated I prepared my staff report on January 17th and it was made available on January 21st. Following that date we received five (5) letters. I will briefly review those letters. A letter received on January 22nd from Christopher P. Koback, who is the attorney representing the Burlingames. Additional material was received on January 23rd from the appellant Wendy Houston. A letter from Arthur Burns was received on January 23rd. A letter from Patricia Green was received on January 24th and a letter was received on January 27th from Don Bauer. Those letters have been made available to you.

McCallum showed a power point presentation and reviewed her staff report. (A copy of the power point presentation and staff report is included in the packet)

Councilor Kight stated the area I am concerned about is the trees. You indicated that there are trees on the easterly portion of the property. If I understand correctly, there was no condition that those trees be kept on the property?

McCallum replied the Planning Commission's Condition of Approval #1 reads as follows: A tree inventory on Lots 1 through 4 and Tract A shall be done by a certified or licensed arborist and submitted with the building permit applications for Lots 1 through 4. Trees within the right-of-way of SW McGinnis Avenue and the sidewalk connection on SW 28th Street may be removed as part of the infrastructure improvements. Trees over 6-inches in diameter on Lots 1 through 4 shall not be removed until the building permits are evaluated for each house. In determining if any tree may be removed, the applicant for the building permit shall submit a dimensional plot plan of the house, patio, driveway, decks, etc., showing the location and species of trees 6-inches in diameter or greater, and a written response to the criteria of the Troutdale Municipal Code Section 13.10.270 Tree Removal. Tract A shall be landscaped. Instruments creating a homeowners association shall be reviewed and approved by the City pertaining to the landscaping and trees in Tract A.

Councilor Kight stated essentially what you are telling us is that it is up to each individual property owner and their application depending upon what buildings, patios etc. are going to be placed on the property as to whether or not the trees are going to stay there.

McCallum stated it will be evaluated by planning staff.

Councilor Kight asked so it will be done on a case-by-case basis with each individual homeowner, as opposed to a blanket condition like we applied to Home Depot?

McCallum replied correct.

Councilor Kight asked couldn't we apply a similar condition for retaining those trees like we did on the Home Depot property?

McCallum replied the planning commission found that was unnecessary.

Councilor Kight asked did they have the power to do that? Could they have required that kind of restriction?

McCallum replied as I understand our tree ordinance, it is not that specific.

Rich Faith, Community Development Director, stated the planning commission could have if they could make findings to justify that decision. It is important to point out that to do what you are asking or suggesting, would render those four lots as unbuildable. That was the biggest concern that the planning commission had in trying to come up with that sort of condition.

Councilor Kight asked is there a compromise between leaving some of the trees and taking them all out? In other words, could some of the trees be retained and still have the lot remain buildable?

Faith replied it is too early to tell. That is precisely the reason behind the condition that the planning commission imposed. That is that certain trees should be able to remain because they are not within the building envelop on these lots. But that will have to be evaluated depending upon the footprint of the house and how it is oriented on the lot, that will determine precisely which trees will have to be removed.

Councilor Kight asked do we know what type of houses are going to be built as far as square footage?

McCallum replied that is not specified. The backyard setback is 15' and I can only approximate where that would be. The backyards could have trees in them but the trees shouldn't be closer than 10' to the foundations.

Faith stated I think what you are asking at this time is that the developers commit to what the building envelop or footprint of the house will be when I don't even think they are the ones intending to build, they will likely be selling these lots. So they don't know what the footprint will be. We do know what the building envelop is based upon setbacks. The best that we can do is impose a condition that none of the trees outside of the building envelop can be removed but then we run into some potential problems that they are too close to the foundation of the house.

Councilor Kight asked couldn't we make that condition conditional based on this problem where it comes to construction of the home itself?

Faith replied that is what I believe we have.

Councilor Kight stated but I would rather see it as a condition of development at the onset as opposed to leaving it up to each individual developer.

Faith replied I believe either way you do it the outcome will be the same. We will be evaluating these lots at the time building applications are submitted to determine how close they are to the trees on the lot, what can be salvaged and what will have to be removed.

Councilor Kight stated I think we have all seen evidence of what has happened with developers. On these lots where it makes it a lot easier for the developer to come in and mow everything down and then build a home and the trees get lost in the process. If you can provide that level of comfort that we can save those trees, is that what you are telling me?

Faith replied the condition prohibits removal of any of the trees on Lots 1-4 until such time as a building permit application is submitted and we have a full dimensional drawing of the structures.

Councilor Gorsek asked in the end when this is all said and done, it will be up to the planning staff to do all of the evaluations, is that correct?

Faith replied correct.

Councilor Gorsek asked so it won't actually be each individual developer getting to decide, it will still be city staff that decides, right?

Faith replied that is correct but they obviously may want to make certain arguments if we are saying a tree within 10' of the foundation can remain and they want to make arguments that because of certain overhangs, or something that we may not be immediately aware of, that they don't feel the tree should remain. I am sure there is going to be some information sharing and negotiating.

Councilor Gorsek asked but in the end the city will decide, right?

Faith replied absolutely.

Mayor Thalhoffer asked having visited the site I can see that row of trees is established and is probably one of the best screening devices that anyone could create. Is it within our power to say, "Leave the trees"? You mentioned that would make those lots unbuildable, is that correct?

McCallum replied yes. It is our determination that it would because the opportunity in this zoning district is to build within 15' of that easterly rear property line. The planning commission would have had to impose a more stringent backyard setback and it would have

forced the houses closer to the public street. It was our determination and the planning commission's determination that those lots would not be as buildable.

Mayor Thalhoffer stated we have faced this issue with other developments, such as Arbor Homes. Arbor Homes volunteered to replace the trees that were removed. Is there some way that these trees can be preserved, at least some of them?

McCallum replied the tree ordinance does not specifically state that a developer cannot cut down a tree. It has very specific criteria that they have to establish when they are presenting their tree removal plan. That is why the planning commission did not make a decision to give them a blanket approval to remove all of the trees but they crafted Condition #1 that Lots 1-4 had to evaluate those criteria in the code and that would be reviewed at the staff level. Also, Arbor Homes was reviewed under a separate set of development standards; it was a planned development. In past subdivision approvals the planning commission has adopted conservation easements, but administratively those have been almost impossible to enforce and the trees go away anyway even with that condition. That is why in my presentation I did mention that the surest protection for these trees is public ownership.

Mayor Thalhoffer asked in the Troutdale Municipal Code Section 13.10.270, Tree Removal, in subsection "D2" it says that if the tree removal will have no significant impact on the environmental quality of the area, including scenic and wildlife habitat. Was that taken into consideration?

McCallum replied yes the planning commission considered that.

Councilor Ripma asked Conditional of Approval #1 that we are discussing says, in determining that the tree may be removed, the applicant of the building permit shall submit a dimensional plot plan. In the end, after the inventory and every thing else, if the applicant asked to take out every tree on the lot, is that what would be done?

McCallum replied the rest of the condition reads, in determining (that is staff determination) if any tree may be removed the applicant for the building permit shall submit a dimensional plot plan and a written response to the criteria of the Troutdale Municipal Code Tree Removal chapter. So at the staff level we will be looking at those very specific criteria and evaluating them. If staff's decision is that you need to retain certain trees and the developer disagrees with that, I believe they would have an appeal right to that staff decision.

Councilor Ripma stated tree removal, I would take it, would be permitted if it would have no significant impact on erosion, soil retention, stability of earth or flow as long as it is flat property.

McCallum replied right.

Councilor Ripma stated I guess I am wondering on flat land that doesn't have a stream nearby or anything else, would you allow all trees to be removed under this ordinance?

McCallum replied my interpretation of this condition is that I would evaluate each lot, if the trees are 10' away from the foundation they should be kept.

Councilor Ripma asked and the city could say those trees should be kept and they cannot be cut down?

McCallum replied that is how I interpret the way this condition is written.

Councilor Kight asked in order to save those trees why couldn't the street move further to the west towards Lucas Avenue?

McCallum replied the alignment of the existing McGinnis Avenue is at a 90° angle. That was predetermined by public works during the development of Home Depot, which created SW 29th. This is something that would need to be discussed with the engineers.

Councilor Kight stated you mentioned in order to ultimately save the trees that the City of Troutdale should take possession of those trees, is that right?

McCallum replied my comment is that the surest way to retain trees is for the city to have ownership.

Councilor Kight asked if we want to retain private property rights, why couldn't we identify the trees and they could be plotted out on the property and then we would have a deed restriction on that property.

Faith replied that could be done.

Councilor Kyle asked do you know if the east side has been surveyed yet so that we know exactly where those trees lie?

McCallum replied the follow-up survey has not been provided.

Mayor Thalhoffer opened the Public Hearing at 8:24pm and asked the applicant to come forward.

Christopher P. Koback, attorney representing the Burlingames' stated I think this is a real good application. It was put together thoughtfully and it was put together with the objective of meeting your code. Your staff also looked at this application and prepared a staff report and they thought it was a well-done application and they recommended approval. Your planning commission looked at it and considered it in the context of all of the public testimony and they approved the application with some conditions. Now there is an appeal and I would like to talk about that. I am here to ask you to affirm the planning commissions decision and approve the development. There isn't a prescriptive easement across the property. There was a road that was established to enable the people that own the property to farm it. It gets periodic use from pedestrians. That does not establish a public easement. The second two items that are mentioned in the appeal are the parkland and the character of the land. As far

as I know this property has never been designated an open space in any comprehensive plan. It has been an agricultural property used actively for agriculture and is now zoned residential. I think that is the designation that ought to dictate how it is used. There hasn't been a parkland overlay or an open space overlay imposed upon it. There was a facilities plan that recommended that the city acquire five acres in this general area at sometime for a park. The city has never identified this property as that five acres. There has been to my knowledge, no action taken to negotiate a purchase of the property or to initiate an involuntary taking for a park. In my opinion there isn't a park designation on the property and that is not a legitimate basis to deny this application. The last item is the issue about the character of the land and one of your code provisions. That code provision, as Ms. McCallum told you, deals with potential hazards on the property. If there are potential hazards you need to design around them or you need to stay off of them. As your staff and planning commission found, there are no characteristics on this land that potentially could be a hazard. I don't think that provision applies. The last thing I want to talk about is the trees. It seems to me that is probably one of the biggest issues. The Burlingames' didn't cut those trees down in all of the years that they owned the property, they could have. They left the trees there because they agree that retaining as many trees as possible is a good thing, it is probably going to help sell those lots. What the Burlingames' want to do is to undertake that in a thoughtful and formalistic manner where people can present an argument for what trees should be retained and what trees have to go. I think that is what your code anticipates in this tree ordinance. One of the criteria in the tree ordinance is that trees can be removed if they are necessary to accommodate a reasonable development of property. In a subdivision I would argue that a house and a garage is a reasonable required improvement. If there is a tree that will impact the construction of those reasonable developments, the tree ordinance allows the property owner to ask the city for permission to cut the tree down. The problem with putting a blanket condition on the trees is at this point and time we don't know what the building envelop is, we don't know where the houses are actually going to be. We will have all of that information when someone purchases the lot and comes in with a building plan and says these are the trees we think have to be removed because they are conflicting with the reasonable development of our property. Your staff will make that decision. If there is a disagreement there is a procedure for the applicant to appeal to a higher body. Regarding a general deed restriction, there are two reasons I don't think you can do that. One is you have a tree ordinance which allows a citizen to remove a tree if certain requirements are met. So you would have a deed which conflicts with the ordinance that allows the citizen to do so. The second and I think bigger problem is it would potentially unreasonably cloud the title; that would be on the property forever. Suppose the tree died and it had to come down for safety reasons. Is there a mechanism where the city is going to remove that from the title? This could also affect the marketability of the property. I think the most reasonable thing to do is to apply the condition as it is written knowing that when someone comes in to remove that tree there is going to be a mechanism where the city can apply the tree ordinance, which has certain requirements that the property owner has to meet and they have to establish that it is necessary to remove that tree and if they can't make that case I think the city has all the power it needs under the tree ordinance to say you can't do it.

Councilor Kight stated you indicated that my concept was flawed about putting a deed restriction on the property for trees because the tree may eventually become diseased.

Couldn't we put that as a condition that if the tree does become diseased and an arborist has examined the tree and recommends that it be removed that removal would be allowed?

Koback stated I think you can probably try to put anything in a deed restriction that you want to try and accomplish. The problem is what will the recording authorities take and how do you implement a deed restriction that is that particular. I would defer to your city attorney to advise you on what you can and cannot put in a deed restriction as a matter of law. What I am pointing out is what I see as some practical problems with doing that and what could potentially arise for a property owner who is trying to sale a property that has that deed restriction. The point that I am trying to make is I think that the condition that has been imposed by the planning commission is a more reasonable condition and accomplishes pretty much the same thing. I would probably give the benefit of the doubt to the property owners when it comes to trees. I believe that people don't cut trees down that are not necessary, particularly when they serve as a buffer.

Councilor Kight stated I don't agree with you and I will give you a good example of what just happened in our community. There is a new development just off of Stark and a property owner purchased a lot behind him and mowed down all of the trees right along the west face of the Sandy River. We do have evidence of people taking down trees just for exactly the purpose you stated and that is to have more open space or a view or maybe they just don't like trees. I think one of the reasons people are drawn to the suburbs is the fact that we have trees. I am wondering if the Burlingames' share in the same type of vision to retain as many trees as possible on those lots and if they would be open to make those lots a little deeper and thereby retain some of those trees.

Koback replied it is unfortunate that someone did cut trees down but I understand that in that situation they wanted to enhance their view of the river. Here, the point I am trying to make is a practical reality; the view that would be obtained from cutting those trees down would be a view of someone's backyard. This is a different situation. On realigning the road, there are principals that I learned that dictate how you can design a road. The road on the south has to meet up on a 90° angel with McGinnis just south of the cul-de-sac. The problem that was explained to me was if you swing it out, not only do you lose three or four lots so that you can meet the requirements for the amount of bending on the road, but you also would be coming in at a skewed angel to McGinnis and that would create an engineering problem and probably not meet the code requirements.

Councilor Kight asked do we have any wiggle room, instead of having a curve could it move further to the west?

Ray Moore, Civil Engineer with All County Surveyors & Planners stated to meet the city design standards for roads we have to come in at this point. Given this existing alignment we are pretty much stuck with this road alignment.

Councilor Kight asked is there anyway to move it ten or fifteen feet?

Moore replied this is laid out as tight as you can get it. As soon as we start moving that road we start losing lots.

Councilor Kight stated so what you are telling me is it could be done. In other words if we wanted to move the road in order to save the trees, irrespective of the lose of lots, it could be accomplished.

Moore replied I am not absolutely certain that you could move this road far enough to fit lots in here to save these trees.

Councilor Kight asked is there some room to move the road to the west?

Moore replied possibly.

Koback stated this is not all about maximizing density. There are other development opportunities for this property that the code permits that would allow more density. A manufactured home development or there could be more attached wall units. My clients developed this with probably as low of density as was permitted by the code in part to stay as consistent as they could with the existing neighborhood, which is a lower density, but still make it economically viable. This is not about squeezing every unit you can get on that property. If that were the case you would see a different development there.

Mayor Thalhofer asked is there anyone here in favor of this development that would like to speak to us?

No further testimony

Mayor Thalhofer called for a 10-minute break at 8:48pm.

Mayor Thalhofer reconvened the meeting at 8:58pm and asked the appellants to come forward.

Wendy Houston stated I am here with my husband Ernie and we are the appellants in this case. Councilor Kight asked if the planning commission could have made a ruling to save these trees. The answer to that is no because they were given instructions that they were not allowed to make a ruling on the trees and that they could only discuss the criteria that was placed before them and the trees were not included in that. Councilor Kight also asked about moving the property line to save the trees you were wondering how much space there was between the property lines and those trees. We have gone out and measured the distance between our back fence and those trees and it is about 15'. According to the planning commission, they can actually put foundations right up to that 15-foot mark, so those trees are all within the building envelop. I don't think there are any that are outside of that building envelope that would be to saved. Even if the owners did have trees that were outside of the building envelop, once they moved in if they didn't like the trees they could cut them down. I did look into the prescriptive easement and I do understand that you are not able to rule on that, however, you should know that we, jointly with some other residents, can meet the

necessary criteria for the prescriptive easement. The prescriptive period is ten years according to the statute of limitations and we can easily meet that criteria. It should be noted that according to the precedent that has already been set in these cases it says that the plaintiff need not prove adversity of use, it will be presumed with showing an open and continuous and uninterrupted use for the prescriptive period. The next point is in the consistency with the Comprehensive Plan, particularly Goal #5 Open Spaces and Natural Resources. It also relates to its polices and to Goal #8, which is Recreation Needs. Thirdly, this is inconsistent with the Facilities Plan, which outlines the park system that is adopted into the comprehensive plan. What Goal #5 of the Comprehensive Plan states is that the city strongly supports preservation of its open spaces. Quite frankly that is one of the reasons that attracted us to Troutdale to begin with. In the comprehensive plan policy section it reads to conserve open space by limiting development that will have adverse impacts. Now it doesn't specify what adverse impacts could be, but if you are a homeowner or a neighborhood resident I think we would have a voice to say what those adverse impacts would be. It would certainly be a lose of a beautiful and natural area that we and our neighbors and interior neighborhoods use as a walkway for our children and dogs. We have a resident owl that comes to those trees; we have woodpeckers and raccoons. Development of Lots 1-4 would certainly take out all of those trees. It would also put pressure on the mini park, which is C.P. Park. That park was never meant to stand-alone but to be used only as a supplement to a neighborhood or community park. I will get back to that later because as part of your parks plan it talks about neighborhood and community parks being available to every residential neighborhood. In policy #6 it does state that they are to prepare a list of properties desirable for public acquisition to ensure long-term natural resource conservation. The property that we are discussing tonight is and has been proposed as Latourell Park and it is on the list of proposed parks. The previous statements that I have made are further underscored by Goal #8, Recreational Needs in the Comprehensive Plan. It states that greenways will be used to link neighborhoods, communities, regional parks, schools and other public facilities with natural corridors, accommodating trails, walkways and bikeways. Greenways are specified in the plan as being important to keep in the Troutdale system. According to the photos we gave to you, even without any of the leaves on the trees, this could easily be considered a greenway. Going back to this property being identified as a proposed neighborhood park in the Troutdale Parks and Recreation Greenways Plan. The introduction of that plan reads as follows: "The City of Troutdale, in response to growth and the desire for standard park and recreation services, has decided to update the city's 1979 Parks Master Plan. Over the past decade Troutdale has nearly doubled from a population of 5,908 in 1980 to a population of over 11,400 in 1995. Upgrading existing parks, acquiring and developing new park and open space sites, expanding recreation services, developing administrative and procedural policies and even acquiring additional staff are all challenges facing the Troutdale Parks and Facilities Division. Making the challenge even more difficult is the demand for more park and recreations services. This, coupled with the fact that the city is growing rapidly, emphasizes the importance of acquiring park and open space land while it is available. All of these issues point to the importance of developing the city's Parks, Recreation and Greenways Plan." Obviously they knew there was going to be a need for this. The City of Troutdale knows that there is very little land left to be developed. Where are you going to come up with all the parks and greenway space? You are almost out of land. That is why we have a parks plan for Troutdale. In the Facilities Plan is where it talks about

what they need to do to accomplish these things and it talks about looking at what an ideal park system is for Troutdale and it reads, "The ideal park system for a community is one made up of an hierarchy of various park types each offering a certain type of recreation and or open space opportunity. Separately, each park site may only serve one basic function but collectively they serve the entire needs of the community. By recognizing this concept Troutdale can provide services more efficiently and eliminate conflicts between park users in adjacent neighbors. The basic concept of the facilities plan is to make sure that every neighborhood in Troutdale is served by either a neighborhood or community park. These areas will be supplemented by mini parks, open space areas or school facility." So when they pointed out to you that Walt Morey has an available field and track they were saying that counts as the park for you. Well it doesn't because it says that a neighborhood or community park should be supplemented by a mini parks or school facilities. Another thing that was interesting to note about Troutdale is it is the youngest in population in the area. It is interesting to note that there are eleven proposed parks, and that was in 1995. Only one out of those eleven has had anything done to it and that is Beaver Creek. There is a listing in the plan that talks about the existing inventory, the demand needed until 2015 and the additional land needed. You are behind on the additional needed land, neighborhood parks, community parks and others and there is hardly any land left to use. Yes they are within the criteria of building on their land because it is zoned R-5; we are not trying to hold that against them. But, one of the concerns that was raised by many of the neighbors at the planning commission hearing was the issue of traffic and what this residential development is going to do to that neighborhood. Number one, now you are going to lose all the open space you have, where are you going to put all of those kids that will move into there. Number two, 28th Street which connects to 257th and to Stark is a main road that is used constantly by people taking their kids to school and by people who want to avoid the light on 257th and Stark and now you are going to add McGinnis to the mix and all those interior residents that have to wind around to get out are now going to have a straight shot through to 257th or Stark. Also Walt Morey never gave themselves enough parking area and along 28th Street is a long strip of cars because there is no place to park and now you are going to have 13 driveways that open up onto 28th Street, what are you going to do about that? Can you acquire this property as a park, turn five acres into a park and put the other 2 ½ into parking space for the school? I am concerned because there is also a bus stop on 18th. I can certainly appreciate the effort of compromise because I am a person of compromise and I always feel that there is someway to make as many people happy as you can. I really hope there are some funds to make this a park; I realize it is not going to be donated. On the other hand, wouldn't it be nice if you could say lets not build on Lots 1-4 and Tract A. Isn't that a compromise, leave the trees, birds and squirrels and put in a pathway that the residents could use. Maybe that is a compromise.

Councilor Gorsek asked do the children in the neighborhood play in that wooded area on the Burlingame's property?

Houston replied yes.

Councilor Ripma asked one of your comments was that Lots 1-4 would result in the loss of the trees. I think we are all concerned about that. Are you not satisfied with the condition

required for those lots? Are you familiar with that fact that an inventory has to be taken and they have to justify the removal of any tree over six inches? All of the trees wouldn't go, but obviously some will.

Houston replied if you look at the pictures there is a space that is in between the back of our lots and where the trees begin and that is 15' so the building envelop would entail those trees. They do have the right to remove any trees that are within the building envelop without question. It is any tree that might be outside of the building envelop that might have to preserve. The trees that are in the middle of the grove are the largest trees, so they will go for sure and the trees that are the smallest are the ones that are closest to our property line and they could be removed just because they don't meet the criteria of being over six inches in diameter.

Councilor Ripma asked you are saying that there is a gap from the property line, your backyard, to where the trees start of 15'?

Houston replied yes. If you look at the photos I submitted (copies included in the packet) you will see a chain link fence.

Councilor Ripma stated there are two fences.

Houston replied the second fence is a temporary fence, that is not the property line it is actually on the Burlingame's property by about 20' by arrangement between the Burlingames' and the owners of that property. The chain link fence is actually on the property line. If you measure from the chain link fence towards the trees, that is 15'.

Councilor Ripma stated I think we all agree that Troutdale is running out of land. Those four lots are going to be for sale and will cost about \$200,000. The city did try to pass a parks bond and it failed. The city can't just ask the developer to not build on those lots or to somehow take those lots away, we would have to purchase those lots and there just isn't any money for that. Have you and your neighbors considered buying those lots?

Houston replied we definitely did but we are just regular people, we don't have beach houses or anything like that. It cost us \$500.00 just to get here tonight.

Ernie Houston stated realistically if the City of Troutdale doesn't have the money to buy the land, regular residents are not going to have the money either.

Councilor Ripma stated if the trees are 15' from the property line then your argument is that if the setback for the backyard is 15' then any building that is built on those lots would require all the trees to be removed.

Houston replied absolutely.

Councilor Thomas asked when we are looking at these photos are we looking to the north behind your property?

Houston replied northwest.

Mayor Thalhofler asked how many years have you lived there?

Houston replied 4 ½. I actually lived with my grandmother on 24th and I would go back and forth to college using this trail.

Mayor Thalhofler asked about the wildlife in that area.

Houston replied we have squirrels, rabbits, an owl, raccoons, birds and ducks.

Mayor Thalhofler asked so what you are looking for is to have Lots 1-4 and Tract A to be considered open space in lieu of Latourell Park?

Houston replied at the very least that seems like a compromise according to your parks plan.

Councilor Gorsek asked have you talked to Metro and explored any of the potential leftover money from the bond a few years ago to acquire greenspaces?

Houston replied this is the first I have heard that Metro could be involved. I would certainly pursue it if I was given the opportunity to do that.

Bruce Stannard stated on I am a member of the Parks Advisory Committee. I like the previous testimony. I take a lot of ownership in the Parks Master Plan that was done in 1995. It was developed for future growth. The Parks Advisory Committee did not receive any notification from planning and did not get a chance to provide any input regarding what was going to happen on this property that was identified as a park. For future reference I would like to make sure that we are on the list of people to be notified if one of our proposed sites is going to be developed. I received a couple of emails that I would like to read into the record. The first one reads, "Bruce, I am writing in support of the proposed Latourell Park, which is being considered for a 51-lot residential subdivision. We need the park and we do not need another subdivision. The trees on the site are of particular value to our community and would contribute significantly to the proposed park. Please convey my disapproval of this subdivision to the City Council. Bill Herbert, Troutdale resident." The second email read, "Bruce, I just wanted to send you a quick email offering my support to the greenspace or new park listed in the Troutdale Parks Plan. I don't know how this got overlooked but if the Burlingames' want to put in a new subdivision of 51 new homes they should be able to donate a little ground for some greenspace. I was hoping that I would be able to attend the meeting but I am unable. Mike Smith." I agree with the last lady that just testified. I would like to see Lots 1-4 be retained for public use as a trail or greenspace. I think when you add 200 to 300 more people and 51 lots our park plan was never taken into consideration.

Bill Edgett, member of the Parks Advisory Committee stated as the first settler of Stuart Ridge and having been there for ten years I saw what a greenspace area can do for a development. The Stuart Ridge development was set up with a greenway with a water

feature and it gets a lot of use from many people and it is really the heart of that development. I agree with Bruce Stannard and I really think if there is anyway to do it a greenway or small park would be a great thing.

Councilor Ripma asked is there any money left in the 1995 parks bond fund?

Stannard replied no. There may be some SDC money.

Councilor Ripma asked do you plan to have a fundraising drive to purchase these four lots?

Stannard replied no, I think the Burlingame Trail Park would be a nice name for it though.

Councilor Gorsek asked do you have any idea if Metro would have any money to purchase this land?

Stannard replied I don't know.

Councilor Thomas asked there is a commercial piece of property to the south of this development, would that be available for parkland?

Stannard replied I think that is property for commercial development and would be out of our league.

Doug Daoust showed the Council some photos of the grove of trees on the Burlingame property on Lots 1-4 and Tract A. (copies were not provided to include in the record)

Daoust described the sizes and species of the trees.

Councilor Ripma asked how far are those trees from the property line?

Daoust replied there is about a 15' gap all along the north/south boundary where the trees start. The building envelop could leave some of the smaller trees in between the houses, but you would be removing a lot of these trees with each house that is developed on Lots 1-4.

Daoust pointed out the trail that is being referenced. The trees are pretty thick and they provide excellent screening between the neighborhoods. It could be thinned out if it were a park. Lots 1-4 go through the trail and about 20' into the cabbage patch. So the front property line for Lots 1-4 is about 20' into the cabbage patch. The depth of these lots is 70'.

Councilor Gorsek asked if the trees were removed would you have a view of Mt. Hood?

Daoust replied yes.

Councilor Gorsek asked so it is possible that people may want a view of Mt. Hood and the trees would be in the way?

Daoust replied I guess they could.

Councilor Kight asked do you feel comfortable enough to respond to the question of how healthy those trees are?

Daoust replied yes, I am a professional forester by trade and I know the health of trees, I have been inventorying trees my whole life. All of these trees are healthy.

Daoust stated I just wanted to show you these pictures to give you a better feel of the site. My first point that I want to make is I think Latourell Park should have been brought to the attention of the planning commission and it wasn't. If the planning commission would have had that information combined with the public testimony that was presented before the planning commission on the greenspace, it would have established a greater public need for that open space. As the planning commission meeting went, establishing the public need for that open space really wasn't established and that is why we are bringing it before the council. The Parks Comprehensive Plan identified Latourell Park in the middle of this subdivision. I guess where a lot of folks are coming from is it would be an easy logical switch to say Lots 1-4 and Tract A should be Latourell Park, it only makes sense. The second point I would like to make is that according to Troutdale Development Code 7.180K where it talks about preservation of natural features and amenities, it says, "existing features which would add value to residential developments or to the city as a whole, such as trees and similar irreplaceable aspects shall be preserved." It uses the word "shall" as if we thought about this when we put together the development code. The planning commission's focus was on the requested variances before them. That is really what they spent almost all of their time on. There wasn't that much time spent on the discussion of the Troutdale Development Code relating to preserving natural areas. It was touched on and brought up briefly. The planning commission did not get to see the pictures I am showing you. They did not get to see an overhead photo of the full length of trees going all the way to Stark Street. So the planning commission was at a disadvantage to even consider the ramifications and consequences of saving these trees. We are asking the city council to do that. My third point is the planning commission's conditions of approval, I think, at the time were pretty good. Given the information they had they talked about inventorying the trees and making sure that none of them could be taken out if they were not in the building envelop, that is all fine and good but the fact is that a lot of these trees are less than six inches in diameter. The conditions of approval only talk about trees greater than six inches. A lot of the protection of these trees is not covered within the conditions of approval. When it comes right down to it, this is kind of tough. I respect the Burlingames' and their development. But, I would have to agree that we have an opportunity sitting right here in front us and I am just asking you to consider Lots 1-4 and Tract A as a park. The way that could happen is to negotiate with the Burlingames' on the sale of that property and find the money to do it.

Councilor Ripma asked you mentioned the sale of this property and to purchase these lots, they are going to be for sale, we wouldn't have to change a thing. What I was hearing is to buy the lots when they come up for sale. Everything else you said up until that point sounded like you wanted us to change the conditions of approval to require the trees to be preserved. I am wondering which you are asking us for.

Daoust replied I struggled with that. I struggled with moving the road to the west and according to my calculations in order to save the trees you would have to move that road about 35' in order to save all of the trees. Making it a condition of approval that the city desires to keep that as greenspace and therefore we are making a condition of approval that the Burlingames' can't develop Lots 1-4, I don't know if the city council would be willing or able to do that. So that is why I am reluctantly, but with hope, ending up with purchasing the property.

Councilor Ripma stated then your proposal is not to alter the conditions of approval or the decision of the planning commission. Your request is for the city to look for money to buy those lots.

Daoust stated when all is said and done I guess that is what it boils down to.

Mayor Thalhofer asked is it required by the developer to donate a certain amount of land for a park area?

Daoust replied it is on a voluntary basis I guess. We do have some excellent examples of developers working with the city to provide greenspace. If you look at Hampton Point, Don Oakley developed that property and he volunteered to save that grove of Douglas Fir trees along 257th and not put houses there. He also agreed to have an overlook site built on the far side so people could go walk on a trail and look out towards Mt. Hood. There are other examples of developments that included conservation easements included in the staff report.

Randy Dodgeson stated I am a resident on McGinnis Avenue. This is my second home in Troutdale. I love this city; I have lived here since 1992. We can't avoid change; it is going to happen. I would just like to say that it is kind of nice when we can do something a little extra for our neighborhood to make it more livable. I probably have the most trees on my property within about five blocks. I really love trees and the wildlife they attract. Maybe the Burlingames could not sale the property for Lots 1-4 and Tract A to the developers and make a deal with the city and let you purchase a little at a time.

Mayor Thalhofer asked is there anyone else here that would like to testify?

No further testimony received.

Councilor Ripma asked can I ask a question for staff?

Mayor Thalhofer replied yes.

Councilor Ripma asked my question was concerning the point made by the Houstons' about this appeal procedure was the only way they could bring up the issue of the location of the trees. Do you have a comment or answer to that point they made? They also brought up something that was not clear to me and after reading the packet material I didn't notice it until they mentioned it and that was this 15' space between the property line and the start of the

trees. That truly takes away a lot of what Condition of Approval #1 does for saving trees because almost all of the trees fall within the building envelop of the houses. Is there some reason why that point couldn't have been brought up at the planning commission hearing?

McCallum replied in the staff report to the planning commission on page 5, which is under Exhibit D in your packet, under Goal 5, Open Spaces, Scenic and Historic Areas and Natural Resources there is a lengthy discussion about trees. The planning commission did consider the trees. They were not instructed that they could not consider the trees.

Councilor Ripma asked do you have a comment on the 15' space between the trees and the property line? If the backyard setback is 15' from the rear property line, almost all of these trees are going to go because they will fall right where the houses are going to be, or am I misunderstanding this?

McCallum replied that dimensional information was not available. The applicant's tree inventory was very general and that is why the planning commission has the condition to have more inventory done.

Councilor Ripma asked am I missing something? It looks like most of the trees are going to fall within the footprint of the house.

Faith stated given the information that we were given tonight that looks correct. I believe that the reference to what occurred at the planning commission, I may be off base from what the appellants were referring to, but if I recall the dialog that took place I believe there was at one point during the planning commissions deliberations a question was asked about whether they could require the trees to be set aside. In essence could we require those trees to be preserved as open space and I believe the response that was given was that there is nothing in the development code that requires the developer to dedicate land as public park or open space and that the planning commission could not go to a standard in the development code that would authorize them to require that to be set aside. I believe that was the instruction that was given. It was not to suggest that they couldn't consider the trees in the context of amenities that they provide or in terms of trying to protect as many as possible.

Councilor Ripma asked what about the section of the code that Doug Daoust mentioned, Section 7.180K. That provision reads, no trees shall be removed from any development nor any change of grade of the land effected until approval of the final plat or map. All trees on the site, which have been designated to be retained shall be preserved and all trees, where required, shall be welled and protected against change of grade. That seems to give the city the power to require the preservation of trees, doesn't it?

McCallum replied we considered the possibility of recommending draft conditions pertaining to tree conservation easements. At staff level we have found those ineffective. The bottom line is with a conservation easement, the future property owners can disregard that and no matter what sort of legal issue that is, once they have cut down the tree it is gone. That is why in my presentation to you this evening I made a strong statement that the best way to preserve these trees is for the city to purchase the land.

Councilor Ripma stated I wasn't thinking of a conservation easement, I was thinking more like you can develop but you can't touch the trees because they are significant. It just seems like that one provision does permit that. A conservation easement is where the property owner has to keep the trees on his or her property, and I understand that.

Faith stated I think I would agree to some extent. We did not focus on that, it was not incorporated into the staff report. To my knowledge we have never used that provision of the code to require trees to be set aside or preserved. It is a provision of the code that we haven't zeroed in on to get that level of authority.

McCallum stated if I could follow-up on that, with respect to the examples I gave in my staff report to you about trees that have been preserved through planning commission decisions. Most of those trees were in what we now call a vegetation corridor of Beaver Creek or Sandy River or on steep slopes or in planned developments, which have a whole different set of criteria when it comes to setting aside park space.

Mayor Thalhoffer stated asked if the applicant had any rebuttal testimony.

Koback stated I want to start by answering the question regarding Section 7.180K of the Development Code. My interpretation of that is if there have been trees on the site that have been designated to be retained in the plan, they have to be retained. What missing in the development code is a provision that authorizes the approval body to unilaterally designate trees. All this says is if they have been designated they have to be preserved.

Councilor Ripma stated if you read the sentence before that which reads, no trees shall be removed from any development until approval of the final plat or map has been granted. All trees on the site which have been designated, at that point, to be retained shall be preserved. We are at the point it doesn't need to be designated by some other body before us, it seems like this is something that would come later or could be done here.

Koback stated I think it can be done but it can't be done under the code. You have a comprehensive plan that says you should preserve trees, that is a policy statement. What I was looking for in the code and didn't find, was a provision which says in a subdivision approval you have to keep 20% of all of the trees on the lot that are a certain size or larger. If you propose to cut those down you have to get a variance or exception to that requirement. Policies say we want streets that make sense and there is a development code that says here is how you lay out the streets in Troutdale. There is a policy that says we should preserve trees and natural features. There has to be criteria in the development code that the applicant can look at and have fair warning of that says if you propose a development in Troutdale here is the percentage of trees on each lot that you are going to have to maintain unless you get a variance. If, in this process, the developer and the city agree that certain trees are going to be preserved, nothing can happen to those trees, or any trees, until the final plat is approved. I think this says if they are designated they have to stay but it doesn't require, as part of the subdivision process, a developer to maintain any percentage of trees on the lot. I want to comment on Mr. Daoust's comments. First, regarding Latourell Park, it

wasn't discussed at the planning commission to my knowledge. Mr. Daoust testified before the planning commission and he didn't raise that issue. He didn't raise any issues about parks or greenspace. He raised one issue in his testimony. He said, "Our neighbors and I would like to see the trees remain as a buffer to our existing neighborhood. Realistically this is up to the Burlingames. As an option to keeping all of the trees, then we request the following be added as a condition of approval: Trees that are over 6-inches in diameter, healthy and not detrimental to the foundations and that are outside of the building envelopes on Lots 1-4 and Tract A shall be preserved." That is basically what my clients have agreed to do. The park was designated in a facilities plan that is shown on the map. The park was proposed before Walt Morey School was built. The school is another recreational facility in the area. This facility plan doesn't take into account subsequent activity that was done that provides recreational activities for the members of that community. If the city really felt that a park was necessary and had the money to do it they could have purchased those five acres. Now is not the time to say to the developer that we don't want you to develop because we are still thinking about buying the property. I don't think it is appropriate to say that you are going to deny an application because you might, someday in the future, want to buy that property. That is equivalent to taking property from the Burlingames. With respect to the Houston's comments, they made one profound statement which was a question, "why not keep this greenspace between our property and the Burlingame's development?" The answer is very simple and it is going to be very blunt, because they don't own it, someone else does and they have rights to develop it as long as they propose a development that meets the development criteria in the development code. My clients proposed just such a development. The Houstons made a lot of other comments about how they don't like density and people may speed in the development. Those are legitimate issues of concern and all neighbors have them, but they are issues that have to be dealt with as property develops. The density is something that we have stepped down from. We are proposing a development that is more dense than the surrounding areas because that is the zoning that the city placed on that property. I think if Lots 1-4 are that important and valuable that people can buy them. I do not think that it is an appropriate use of this process to deny an application to urge my clients to sale property. I think they are entitled to have this application approved because they have met the criteria.

Councilor Gorsek asked I am looking at the map (Exhibit A) and it seems to me in some ways that perhaps we haven't been fully informed as to where those trees begin. A lot of the supposition about those lots and your testimony about the trees is based on the idea that those trees are far enough back that we can do something with them. Based upon the testimony that we have heard and the photographs, there is a tad bit of disingenuousness in terms of telling us where the trees are. If you were on the planning commission you will come to believe that those trees really are back far enough to do some mitigation but that doesn't seem to be true. In some ways I think it is a little premature for anyone to have made decisions without having a full inventory of the trees. Why wasn't there a better tree inventory done? I am not convinced that it was done in such a way to fully reveal the facts.

Koback replied the development code doesn't require a full tree inventory. The second to last page of the application contains the engineer's work at locating the biggest trees. It looks like

some of the largest trees are going to be pretty close to the property line. This was the attempt to do what was required and to show where the most significant trees are.

Councilor Gorsek stated that 15' gap makes a huge difference.

Ray Moore stated if you refer back to the original pre-application notes when we first sat down with the city, they were well aware of the bank of trees long the property line. If you look at the pre-application comments, at that point they had us show all trees that are six inches in diameter and show which trees will be kept and which are being proposed to be removed. I personally went out there and identified the trees that were six inches or greater and mapped them. I take some offense that you say we are being deceptive.

Councilor Gorsek stated I am not saying that. I am saying that there is a look as if. Things don't match up. I am not saying you are intentionally doing anything.

Moore stated the massive trees that you see there are six inches in diameter or less. I tried to map the trees that are six inches or larger, which are in my opinion adequately shown in this map.

Councilor Ripma asked what would your clients feel about a Burlingame Park on Lots 1-4?

Koback replied I don't no.

Councilor Kight asked what is it going to take to have those four lots set aside? Maybe you can't answer that until you talk to your client. I think that is the bottom-line when it is all said and done. I think the neighbors would be satisfied if that happened and your development could go forward. Maybe you could confer with your client and see what it would take to make that happen.

Mayor Thalsofer called for a 10-minute break at 10:50pm.

Mayor Thalsofer reconvened the meeting at 11:00pm.

Koback stated my clients are willing to dedicate Tract A. They are willing to give an option on the other lots and let whoever wants to buy them to buy them over time, but they are not willing to dedicate all of that land.

Marnie Allen stated I would like to give you some information to consider in making your decision. I wanted to clarify something that is obvious. It is really up to you, the city council, to interpret the criteria in the development code and determine how those criteria apply and whether or not they have been met. Certainly one interpretation, and a reasonable interpretation of criteria has been proposed by the applicants attorney. Another interpretation is that the City of Troutdale, instead of requiring a specific percentage of trees to be set aside, could look at this more on a case-by-case basis and require trees to be set aside within the language of that criteria if they add value to the residential developments. So you are not requiring a percentage of the whole subdivision, you are requiring those trees that

add value to be set aside. That is another interpretation. I think the question before you is whether or not that criteria and others have been met in this case or not and if not are there conditions that you can and want to impose to help meet those criteria. One other thing to consider in terms of the discussion that is going on now of having Tract A and Lots 1-4 set aside as open spaces is if the city wants to pursue negotiations and options for acquiring that property and having it developed as a park I would recommend adding a condition of approval that indicated if the parties reach an agreement on the conveyance of that property to the city, that the subdivision plat would be amended accordingly. What we don't want to have happen is to have Tract A and Lots 1-4 approved in the tentative plat and have a final plat come in with five lots, we would want that to come in as that being dedicated to the city assuming terms can be reached between the parties. One last thing, it would be difficult and inappropriate to try and negotiate the terms of that kind of agreement at this meeting.

Councilor Ripma asked if we were to pursue that option, we could approve the subdivision tonight and attach a condition. Could you work on some language for that?

Allen replied yes. I think you need two conditions. The council will need to decide and give me some input on how you want to address the trees and compliance with the code criteria for Tract A and Lots 1-4 assuming that no agreement can be reached. So one condition would be in there to address the council's direction in that regard. The other condition would assume an agreement can be reached.

Councilor Kight asked to clarify we would have plan "A" where as a condition of development we would have set aside of Tract "A" and Lots 1-4, if the city wishes to can negotiate the purchase. Then plan "B" is if plan "A" doesn't work then a condition of development of that property would be that Tract "A" and Lots 1-4 would have to be a set aside for that development to go forward.

Allen replied no.

Councilor Ripma stated it would say that the trees could not be removed.

Councilor Kight stated that would ultimately make that property undevelopable.

Allen replied I don't know that we have enough information to reach that conclusion. They may be able to be creative in figuring a way to put houses on those lots.

Councilor Kight asked does that preclude them from providing an inventory of all of the trees; can we make that a condition?

Allen replied yes. I would like some clarification from the council. Is it the council's desire to not have any trees removed or is it just trees over 6-inches in diameter.

Mayor Thalhoffer replied any trees.

Mayor Thalhoffer asked is there anyone else who would like to speak to us regarding this matter?

No further testimony received.

Mayor Thalhoffer closed the public hearing at 11:07pm.

Allen stated I have drafted some amendments to Condition of Approval #1, Trees and Landscaping that would read as follows: **Paragraph "A"** requiring an inventory would remain as written. **Paragraph "B"** would also remain as written. **Paragraph "C"** would be amended as follows: Trees on Tract A and Lots 1-4 shall not be removed. **Paragraph "D"** shall be amended as follows: Tract A shall be landscaped. Submit a landscaping plan to Planning with the final plat drawings. Underground irrigation is required. Landscaping should include a combination of ground-cover and shrubs. **Paragraph "E"** would remain as written.

Allen stated I would also recommend an additional new Condition #24 which would read as follows: If the City and Burlingame negotiate an agreement under which Tract A and Lots 1-4 are conveyed to the City as park or open space, the final plat shall be amended accordingly.

MOTION: Councilor Ripma moved approval of the Findings and tentative plat of the Burlingame East Subdivision with the amendments to the Conditions of Approval as just outlined by our City Attorney. Seconded by Councilor Kight.

Councilor Thomas asked on the condition where it talks about the homeowners association, if the city takes that over would that be necessary?

Allen replied all of the tree and landscape requirements for Tract A and Lots 1-4, if the property is going to be dedicated to the city, are probably not necessary. Maybe an amendment to that language is in order.

Councilor Kyle asked if we don't reach an agreement to buy the property or to set it aside for city use, what happens to the property then? We do need to do an inventory of the trees. I want to make sure that we are not making those lots undevelopable.

Mayor Thalhoffer stated it requires that all trees shall be preserved.

Councilor Kyle stated I have a problem with that. To me that seems like we are taking the property away by making it undevelopable.

Mayor Thalhoffer stated I am hoping we can negotiate with them. They are willing to give us Tract A and if we can have an option to purchase Lots 1-4, I think that is the way we are headed.

Councilor Kyle stated if that doesn't happen I don't think they should be penalized and unable to develop those lots.

Councilor Thomas stated I would concur with Councilor Kyle. If we can't reach an agreement, I don't want to see the trees go but then again I don't want the property owners to not be able to develop the property because we weren't able to purchase it.

Marnie Allen stated I would like to offer some additional language to the new condition #24, so it would read: If the City and Burlingames negotiate an agreement under which Tract A and Lots 1-4 are conveyed to the City as park or open space, the final plat shall be amended accordingly and Condition #1 shall be satisfied. That way we are not requiring an inventory and things could occur for that property that is conveyed to the city. One other thing to throw out is if the majority of the Council does not like the condition that says, no trees shall be removed on Tract A or Lots 1-4 an alternative could be, houses that are built on Lots 1-4 shall be located on the lots in a manner that preserves as many trees as is reasonably possible.

Councilor Kyle stated I could live with that.

Mayor Thalhoffer stated I think the majority of us want to save the trees.

Councilor Kight stated the Burlingames have been long-time residents of Troutdale. I am hoping that they will do the right thing and work with city. I think the bottom line is we want to save the trees.

Councilor Gorsek stated I am having some of the same problems as Councilor Kyle and Councilor Thomas. I would like to save the trees but I am very concerned about people's property rights.

Councilor Thomas stated I think saving the trees is important. I also agree that the owners have property rights to develop their property. I really don't want to be in the position where we are telling someone that they can't develop a piece of property. That concerns me.

Mayor Thalhoffer stated the whole focus of most of the Council is to save the trees. Those of us that want to save the trees are going to vote for the motion. In my opinion we are also going to take the Burlingames up on their offer to give us Tract A and negotiate an option to purchase Lots 1-4. I think we can accomplish that.

Councilor Kyle stated I love trees; I do want to make that clear.

Councilor Kight stated we have some new councilors and I want to make it clear for them that Troutdale has a history of buying property. Sometimes we have done it in a very creative fashion. In spite of the tight economy there are a variety of different ways for funding and buying this property. We have talked about system development charges, there could be grant money, and there is still some money left from the bond

measure from Metro for greenspace. I think this motion provides staff with direction that we can negotiate with the Burlingames.

Mayor Thalhofer called for the vote.

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

Motion fails by vote of 3-3.

MOTION: Councilor Ripma moved accept the Findings and Fact of the Tentative Plat approval for Burlingame East Subdivision including the amended Condition of Approval #1 language that the City Attorney read us the second time and the new Condition #24.

Allen stated I would like to offer one other option that may help in resolving this. Perhaps another condition of approval could be, and it would require a finding by the City Council, to grant a 50% variance from the front yard setback, which would enable houses, if they are built on those lots, to be moved closer to the front which would put more trees outside the building envelop.

Councilor Ripma stated I prefer the other language.

Mayor Thalhofer asked the City Attorney to read the language of the conditions that were included in this motion.

Allen stated I will read the new language. The additional condition would say, houses that are built on Lots 1-4 shall be located on the lots in a manner that preserves as many trees as is reasonably possible. The language in paragraph C, would also have to be amended to read, trees on Tract A and Lots 1-4 shall not be removed if they are outside the building envelop and do not compromise the building foundation.

Mayor Thalhofer stated we are back to where we started; we have accomplished nothing except we are going to try to negotiate to purchase Lots 1-4.

Mayor Thalhofer asked is there a second to this motion?

Councilor Gorsek seconded the motion.

Councilor Ripma stated I think the Burlingame's offer of Tract A and to negotiate with us on an option for Lots 1-4 is a very generous offer, which we need to pursue. I respect the Councilors that voted no on the last motion believing that it was too restrictive on those lots. This motion is quite a bit less restrictive but it does emphasize the removal of as few trees as possible, the other language didn't say that.

Mayor Thalsofer stated if I had the power I would move to amend that motion. I would amend it to take everything out except to just negotiate a deal.

Councilor Kight stated I think we are on the same track.

Councilor Gorsek stated we are small but we represent what those flags stand for. Yes it is just some trees and four lots. One of the things that I tell my students all of the time in my criminal justice class is you cannot allow government to step on peoples personal rights. As much as I want to save every tree out there I can't vote for that particular amendment. I understand the passions of the Council, but we have rules and laws and I think we would be violating those.

FRIENDLY AMENDMENT: Councilor Kight moved to make a friendly amendment that instead of having a back-up plan the City would negotiate with the Burlingames for purchase of the property.

Councilor Ripma stated the reason we have the revision to Condition of Approval #1 is in case we can't come to an agreement. Are you saying leave it the way it is and don't change it at all?

Councilor Kight stated what I am saying is can we just try to negotiate the purchase of Lots 1-4 with the Burlingames.

Councilor Ripma asked are you intending to leave Condition #1 the way that it was approved by the Planning Commission and you are just adding Condition #24?

Councilor Kight replied correct.

WITHDRAWAL OF MOTION: Councilor Ripma withdrew his motion. Councilor Gorsek agreed.

MOTION: Councilor Ripma moved to accept the Tentative Plat approval for Burlingame East as approved by the Planning Commission with the addition of a new Condition of Approval #24 as outlined by the City Attorney which read, the City and the Burlingames negotiate an agreement under which Tract A and Lots 1-4 are conveyed to the City as park or open space and the final plat shall be amended accordingly and Condition #1 shall be satisfied. Seconded by Councilor Gorsek.

VOTE: Councilor Kyle – Yes; Councilor Gorsek – Yes; Councilor Ripma – Yes; Councilor Thomas – Yes; Mayor Thalsofer – Yes; Councilor Kight – Yes.

Motion Passed 6-0.

Allen stated there is no proposed final order with findings that support this decision. That will be brought before the Council at the next meeting as a consent agenda item.

7. COUNCIL CONCERNS AND INITIATIVES:

Mayor Thalhofer stated there is a 4-Cities meeting on Thursday, January 30th at Fairview City Hall at 6pm.

8. ADJOURNMENT:

**MOTION: Councilor Ripma moved to adjourn. Seconded by Councilor Kight.
Motion approved unanimously.**

Meeting adjourned at 11:37pm.

Paul Thalhofer, Mayor

Approved March 11, 2003

ATTEST:

Debbie Stickney, City Recorder