

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

**Tuesday, August 26, 2003**

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

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

**PRESENT:** Mayor Thalhoffer, Councilor Gorsek, Councilor Thomas, Councilor Kyle, and Councilor Daoust.

**ABSENT:** Councilor Ripma (excused) and Councilor Kight (excused)

**STAFF:** Erik Kvarsten, City Administrator; Jim Galloway, Public Works Director; Rich Faith, Community Development Director; Marnie Allen, City Attorney; Beth McCallum, Senior Planner, Travis Hultin, Chief Engineer; Sarah Greif, Office Support Specialists.

**GUESTS:** See Attached List.

Mayor Thalhoffer asked are there any agenda updates?

Kvarsten replied we have no changes this evening.

**2. CONSENT AGENDA:**

**2.1 Accept Minutes:** July 22, 2003 Regular Meeting.

**2.2 Resolution:** A Resolution approving an Intergovernmental Agreement between Metro Regional Government and the City of Troutdale for funding of the Year Fourteen Annual Waste Reduction Program.

**2.3 Resolution:** A Resolution terminating the Franchise of Western Integrated Networks of Oregon Operating, LLC, and releasing the company from its obligations under the franchise.

**2.4 Motion:** A Motion to approve a contract with Raymond Young to serve as the Municipal Court Judge in the City of Troutdale.

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

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

None.

**4. MOTION:** A Motion authorizing the Mayor to enter into an Intergovernmental Agreement with Gresham for Fire and Emergency Services.

Riley Caton, Gresham Fire Chief stated I would like to thank the Council for your continued support. I would like to report that the feasibility study that all of our regional service entities are engaged in is on track and proceeding as planned. In addition to that the fire department is embarking on its strategic planning process. I am proud to say that we have been aggressively seeking grants and we are at the \$800,000 mark and counting in federal grant money to help support the fire department and its equipment needs. Due to the uncertainty that exists around the feasibility study and things that we need to find out about the regional fire service in the future, we are requesting a one-year contract for fire service.

Mayor Thalhoffer asked does this contract adopt some language from the City of Gresham code?

Caton replied we would like to update the fire prevention code, which is part of your city code that supports our fire code. There is an opportunity or option in the IGA to adopt the code and a resolution that would allow for cost recovery on the fire inspections. Cost recovery in Gresham has been successful and has resulted in a safer community. Again, that is an option and the fire service contract is not contingent upon the adoption of that part of the code.

Mayor Thalhoffer asked if we adopt that portion of the code would a new business have to pay the \$50 business license fee plus \$75 to cover the cost of the fire inspection?

Caton replied in Gresham the business license fee itself covers the inspection for the initial visit to the business.

Mayor Thalhoffer stated our business license fee is \$50 and the way I read this we would have to add \$75 more for that inspection for a new business. Existing businesses wouldn't have to pay any additional fee unless they had a problem, is that correct?

Caton replied I am not sure. That may need to be worked out at the staff level and bring that portion of the program back to you to make sure we are very clear on that.

Erik Kvarsten, City Administrator stated Chief Caton is correct in that the issue before you tonight is authorization to enter into the agreement. The agreement is permissive in that it would allow the city to adopt these portions of the Gresham Fire Code, however that would come back to you as a separate agenda item at a future time. The reason it is included in the packet tonight is to allow Chief Caton to answer any questions you may have about that.

Councilor Daoust asked if we later adopt the Gresham Fire Code and fee structure it would reduce Troutdale's costs. It is good that you are getting this federal grant money, but does that in any way reduce Troutdale's costs?

Caton replied it does from the prospective of the cost of some of the capital items that we are purchasing with that grant money. Some of that grant money is homeland defense money. A lot of the equipment that we purchase has crossover purposes. Homeland defense money means that we might be supporting the region, along with other fire departments throughout the region, in an event that may take place from a homeland defense prospective with that same equipment that we use on a daily basis to provide service to the community. A good example of that is what we call a lifepack, which is a heart monitor and shocking device that restarts your heart. We have to upgrade that equipment, which cost \$19,000 for each device and the grant money is helping pay for that.

Councilor Daoust stated so the grants allow you to increase equipment and programs without charging Troutdale more.

Caton replied it helps defer that cost.

**MOTION: Councilor Daoust moved to authorize the Mayor to enter into an intergovernmental agreement with Gresham for fire and emergency services but at this time we will not include the Gresham revised code. Seconded by Councilor Thomas.**

**Councilor Daoust stated this intergovernmental agreement has served us well for many years and I think we should continue it.**

**Councilor Thomas stated they have done an outstanding job for us.**

**VOTE: Mayor Thalsofer – Yes; Councilor Kyle – Yes; Councilor Daoust – Yes; Councilor Gorsek – Yes; Councilor Thomas – Yes.**

**Motion passed 5-0.**

**5. PUBLIC HEARING / APPEAL: Appeal of Sandy Dell Acres Subdivision (File No. 03-033).**

Marnie Allen, City Attorney stated this is a quasi-judicial land use hearing, which means the procedures that govern tonight's hearing are set forth in State Statute and in the Troutdale Code. A staff report has been prepared and was made available seven days before the hearing. That staff report identifies the approval criteria that governs the Councils decision and will be discussed tonight. When the staff presents their report they will identify all of the approval criteria on this matter. After the staff makes their presentation to the Mayor and City Council, the Mayor will open the public hearing and the applicant will have an opportunity to testify in support of the application. After the applicant testifies in support of the application

the appellants and those that are opposing the application will have a chance to testify. The applicant will have the final rebuttal or the last chance to testify to the Council. After everyone has finished testifying the Mayor will close the hearing and the Council will begin their deliberations. For those of you that are here to testify, please sign-in and begin your testimony by giving your name to the council. If you are going to submit written documents, please make sure you give a copy of the document to the deputy city recorder so she can include it in the record for tonight's meeting. The testimony and the written documents that you present tonight at this hearing should address the approval criteria that staff is going to identify. You should explain why you believe those criteria are met or are not met. If you believe there are other criteria that staff has not identified that apply and that the City Council should consider, you need to identify those criteria and be specific enough that the Mayor, Council and everyone else that is here can respond to that new criteria or issue that you have raised. Any issue that you may want to raise later on appeal, should anyone decide that they want to appeal the Council's decision, has to be raised tonight and it has to be raised with enough specificity that everyone that is here can respond to it. If you fail to raise an issue tonight you will be precluded from raising that issue later on appeal to the Land Use Board of Appeals or in any action for damages in Circuit Court. Before we present the staff report I want to clarify that there was a work session that was held last Tuesday. The items that were discussed at the work session are included in the record and anyone who is here that would like to speak to that information could speak to that information as well. That summarizes the procedure for this hearing. I would like to remind Council to declare any ex-parte contacts, conflicts of interest or bias at this time.

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

Councilor Gorsek stated I know one of the people that are appealing this.

Marnie Allen asked can you make a fair and impartial decision in this matter?

Councilor Gorsek replied yes.

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

Elizabeth McCallum, Senior Planner stated before you is a *de novo* hearing for the Sandy Dell Acres Subdivision. The owner and applicant is George Zifcak and the engineer is Lynn Harnisch of Denali Engineering. The tentative plat is an 11-lot single-family subdivision, which includes an existing single-family house on Lot 6 of the plat.

Elizabeth McCallum showed the Council a power point presentation (a copy of the presentation, which includes the text that Ms. McCallum read to the Council, is included in the packet).

McCallum stated that staff is recommending that the Council uphold the Planning Commission's decision to approve the 11-lot subdivision without change to the planning commission's final order. The planning commission found that the criteria for tentative plats

can be met with conditions and the applicant is amendable to compliance with those conditions. Staff has prepared a draft final order for Council's consideration. To comply with the 120-day rule, staff recommends that the Council adopt an order with the findings and fact at the conclusion of this public hearing.

Mayor Thalhofer asked on under Tab 2, tree removal, where it states "line of cedars", are those existing cedar trees?

McCallum replied yes.

Mayor Thalhofer asked would those trees remain?

McCallum replied yes.

Mayor Thalhofer asked didn't you say that some trees that are marked for removal might be saved and some that are not marked for removal might be removed depending on how things go, is that correct?

McCallum replied in Lot 7 and 8, staff evaluated two more trees on that frontage that the applicant had not identified for removal. It does not appear that it would be practical to leave those trees and create the curbing in that cul-de-sac, so staff recommended to the planning commission that those additional trees be removed. Within the westerly portion of Lot 10 where Hall Lane is on the western edge of Lot 10, two more trees at the west property line have been marked for removal.

Mayor Thalhofer asked Sandy Heights drainage, has that been corrected now?

McCallum replied this proposed subdivision is now designed to be a separate system from the Sandy Heights system. The Sandy Heights system still drains to the southeast corner of the Sandy Heights subdivision, but Sandy Dell Acres will not interconnect with that system.

Mayor Thalhofer asked that was the original plan?

McCallum replied yes.

Councilor Kyle asked regarding the water runoff, I believe that you said the city will be maintaining something and the homeowners will be maintaining another part of the runoff, could you clarify that for me?

McCallum replied based upon the plan presented the piping inside of SE Hall Lane and the catch basins and infiltration flow control manholes, those are inside the proposed public street. Those will be accepted as a fixed asset by the city once the Public Works Director has approved them and the city will maintain them. Anything along the front yards or within Sandy Dell Road or that crosses Lot 11 and into the backyards of Lot 9 and 11 is a private stormwater system and the homeowners association would be responsible for maintenance on that portion.

Councilor Daoust stated I need some clarification on what the City Council can address in relation to Sandy Dell Road. I see language that says there are concerns regarding damage to private property rights which are outside of the scope of this proceeding and must be addressed by the parties that own the private property interest. Sandy Dell Road is such a core issue to this whole development. I am confused as to how involved the city council can get on Sandy Dell Road itself.

Marnie Allen, City Attorney stated this hearing is simply to decide whether the subdivision approval criteria are met. The question for the council is, does this proposal with a proposed private drive meet the criteria for streets and roads that Ms. McCallum identified. For example, the condition that will require a private road to be paved to a 24' width and the condition that says you can't have any more than six lots fronting on a private road. The Council's role is simply to evaluate whether or not you believe those criteria are met. If they are met it would be appropriate to approve the application. If they are not you could impose a condition. To get into questions about trying to regulate or impose conditions regarding the use of Sandy Dell Road itself would be outside the scope of this hearing. That is really to be decided between the property owners and the easement holders.

Councilor Daoust asked so if the homeowners association and the other easement holders all agreed to gate the road, they could do that without coming to the council for approval?

Marnie Allen replied right.

Councilor Daoust asked how does that work when everyone in the new Sandy Dell subdivision will have an easement to use the Sandy Dell Road? Will the people in Sandy Heights also have an easement to use Sandy Dell Road?

Marnie Allen replied no. They are not successors in interest for that original property that was zoned and subdivided. Individuals buying lots in Sandy Dell Acres would have rights. They would be a party, with every other easement holder, in determining how those rights would be regulated.

Councilor Daoust asked does the conditions of approval for a homeowners association just include the Sandy Dell Acres subdivision, it does not include Sandy Heights?

McCallum replied that is correct.

Councilor Gorsek asked on the backside of Lots 9, 10 and 11, everything that drains onto those lots goes to the concrete trough, is there outflow from the trough?

McCallum replied as I understand the drawings, there is a way for water to flow over the top of the proposed concrete trough but the design is such that the intent is to keep it the same as the historic direction and rate of flow.

Councilor Gorsek asked is it designed to slow down the water and cause less flow to go cascading down the ridge that would occur in a heavy rainstorm if it wasn't there?

McCallum stated it is designed to make sure that there isn't more storm water flowing down the ridge than what there would be normally.

Councilor Gorsek stated would the lots along Sandy Dell Road also feed into this?

McCallum replied yes, in certain storm events.

Councilor Gorsek stated you mentioned that there was some concern about the barrier where SE Hall Lane will cross.

McCallum stated the appellants have said that they don't want that barricade removed. They don't want the street to continue. Their preference is that the people in Sandy Dell Acres come in on Sandy Dell Road.

Councilor Gorsek asked as I understand it there might be some concerns about the safety factors in terms merging onto Stark from Sandy Dell Road, is that true?

McCallum replied Sandy Dell Road, where it intersects with SE Stark Street, was modified when Sandy Heights was constructed at the request of Multnomah County.

Councilor Gorsek stated so it is better than it was, but it may not be ideal.

McCallum stated that would be a fair evaluation.

Councilor Kyle asked can they gate a public street?

McCallum replied I don't believe so.

Marnie Allen stated there is a utility easement running underneath the private easement, so the city would want and need that access and the rights to its utility easement. Having a gate there would both interfere with connectivity as well as the utility easement.

Mayor Thalhoffer opened the public hearing at 8:25pm.

Dorothy Cofield stated I am the attorney representing George and Isabelle Zifcak the owners and applicants for this property. They bought this property back in 1996 thinking that Sandy Dell Road was owned by the City and a public road. He put in a subdivision application that was connected with Sandy Heights in 1999. That was withdrawn because of the issues with the city's ownership of Sandy Dell Road. Sandy Heights was developed separately from Mr. Zifcak's property and now in 2003 Mr. Zifcak put in a new 11-lot subdivision application. He now has ownership of the portion of Sandy Dell Road that abuts the subdivision, which we will call Tract A. The planning commission unanimously approved this subdivision with the conditions of approval. Everything that is in front of you today, except for the traffic report

and supplemental geotechnical and storm drainage report is exactly the same. The planning commission looked at the same storm drainage design, which was the modified design. Nothing has changed since they reviewed and approved it. The opponents have raised three issues that are essentially related to the use and ownership of Sandy Dell Road and the storm drainage plan. I am going to let Lynn Harnisch of Denali Engineering discuss the storm drainage plan. The appellants raised two issues regarding Sandy Dell Road. One is the safety issue, which I think your approval criteria does discuss and talks about the road being appropriate for the vicinity. The second issue has to do with their easement, whether or not it is over burdened. Those are issues that have to do with the easement and the ownership and are not part of the land use proceeding. Under tab B, attached to my memorandum is the traffic report which clearly goes over if there are any safety issues or traffic impacts from this subdivision. Even though the applicant didn't have to submit a traffic report to meet the approval criteria, he did this to rebut the appellants' claim. What he found is there will be 8 more trips in the morning and 10 more trips in the afternoon peak hour. With the opening of SE Hall onto 32<sup>nd</sup>, which goes out to Stark, because this route will be entirely paved and because the approach is safer, most of the traffic will use that route. To date we haven't seen any kind of credible evidence from the appellant about safety or traffic from a civil engineer. I don't know if they brought in one tonight, if they have I would like the opportunity to review that evidence and rebut it. What you have is testimonial that if the barricade is opened on SE Hall there will be a lot more traffic on Sandy Dell Road, but there is no evidence to support that. In the Sandy Heights conditions of approval, and my memorandum under tab B talks about this, it mentions the barricade being temporary and that it would be up to public works when that would be opened. Your Comprehensive Plan, Goal 12 requires connectivity; it requires that this barricade be removed. The traffic report shows that safety is not an issue and in actuality it will be a safer approach to go onto SE Hall and to 32<sup>nd</sup> Avenue then to use Sandy Dell Road to Stark Street. The second issue that I would like to go over is the use of Sandy Dell Road and the way it is going to be used as a private road in conjunction with the public road that crosses it. Mr. Zifcak has title to Tract A, the portion of Sandy Dell Road that abuts his subdivision. There is an exhibit under Tab B of his title insurance policy, which shows he is the owner. The easement holders, on the other hand, have the right to use Sandy Dell Road subject to the underline ownership. At this point Sandy Dell Road is owned by three different entities, one being Multnomah County, one being the city and the other being Mr. Zifcak's ownership of Tract A. The city owns a portion of Sandy Dell Road that was dedicated as a park in 1989 as part of the Sandee Palisades subdivision. I didn't see any opponents challenging that dedication and saying that couldn't be dedicated without their consent, but it was in fact dedicated. So, I think what we have going on here is a strategy to oppose this subdivision and this use of the land for its R-7 zoning purposes by raising issues that really don't meet the approval criterion or have anything to do with the land use proceeding. The road will remain private. To change this from private to public you need a deed and there is no condition of approval in this decision that requires any deed to the City of Troutdale. The Zifcak's ownership of Tract A meets your code definition of an owner and it meets the code definition of a private street, so there is really no relevant argument that somehow this is being converted to a public street. I want to touch on the homeowners association and the maintenance because it was raised as an issue. Mr. Zifcak has told me that these homes that will be built in Sandy Dell Acres will cost about \$300,000. People that own property in that price range generally like to maintain their



property because they don't want their property flooded or damaged. I work all over the state and homeowners associations are used as a standard device for maintenance with so much of the infrastructure becoming privately owned. To answer your question of what happens some day in the future if this homeowners association fails. I don't have a legal remedy for that except to say that with the value of these homes and what I've seen all over the state with private ownership and homeowners associations, is that this device does work. I would like to save the rest of my time for rebuttal. At this time I would like to have Lynn Harnisch talk about the storm drainage plan.

Lynn Harnisch with Denali Engineering stated I am here to discuss stormwater and impact or lack of impact on the adjoining properties. As Ms. McCallum stated, there is no plan to take any of the stormwater from this project and introduce it to any portion of the Sandy Heights subdivision. The closest it would be is the drainage off of the southern half of Sandy Dell Road. Currently Sandy Dell Road is about 14' wide and it tends to drain from the north towards the south. After improving Sandy Dell Road with a crown, 12' will drain to the north and 12' will drain to the south. The decrease of impervious surface of 2' is pretty minor. The drainage on the north side of Sandy Dell Road will flow toward the curb and then easterly to a catch basin located at the intersection of Sandy Dell Road and Hall Lane. That is a filtered catch basin where the drainage water is treated then enters a flow control manhole. This flow control manhole has a restrictor plate in it. This restricts flow to predevelopment rates. The water is not allowed to leave that manhole. It backs up into a detention pipe that is located within Hall Lane to the north. That catch basin is located at the northwest corner of Sandy Dell Road and Hall, which also collects storm water off of the east and west side of Hall Lane as well as flow off of the lawns of lots 1, 2, 3, 4, 5, 7, and 8. Water runoff from the roofs will be taken to the soaking trenches that you see on the driveways. We have everything going in the same direction that it is going today. The surface water runoff is running in the direction that we see today. Impervious surfaces are either staying on the lots or being taken directly to the trough. Public and private street drainage is being collected, treated and detained and then it is released at a predevelopment rate into a pipe that runs along the south edge of Lot 11. From there it enters the concrete trough. What we don't want to do is concentrate flow in one point. When we do that you get erosion and you impact downstream properties. We have spread that across the entire eastern line just as it is being spread today. The big thing is it has to be constructed so that it is level for even distribution across the whole property line. This means that the drainage that you see today is the drainage you will see tomorrow.

Mayor Thalhoffer asked how can you guarantee that it will stay level forever?

Harnisch replied concrete construction. It isn't any different than pouring a foundation for a home except it has a lot less load on it than a house does. Excavation or 12 inches of compacted crushed aggregate below it form to protect it until the concrete is poured. After it is done if we were to find a spot that wasn't level we could touch it up with grout to make it level. This is why I went to a designer concrete trough rather than a pipe because you have a better chance of pure level with the concrete than one does with a pipe plus it is at the surface, you can see it and fix it.

Mayor Thalhofer asked will you have any still water in this concrete trough?

Harnisch replied there would be six inches of standing water in there.

Mayor Thalhofer asked have you heard about the West Nile Virus and standing water.

Harnisch stated we could reduce the standing water from 6 inches to 3 inches. We need to maintain a certain depth where the water reaches a levelness because I don't want spilling out right at the beginning or at the other end.

Mayor Thalhofer asked would this trough be maintained by the homeowners association?

Harnisch replied yes.

Councilor Daoust asked is there any way that the roofs on Lots 9, 10 and 11 can go out to the street?

Harnisch replied only by raising the elevation of the houses.

Councilor Daoust stated I just assumed they would be level with the street or you could design drains to drain that way, was that considered?

Harnisch replied with the natural slope on the ground it would mean higher walls on the back of the house to bring those drains to the front.

Councilor Daoust asked in your opinion was that an alternative?

Harnisch replied I would not want to force a particular redesign on a lot because of the roof drain. There is nothing to preclude it. It could be done.

Councilor Gorsek asked in terms of what Councilor Daoust was asking, is there any way to take the drain from the roof and tie it into the sewer?

Harnisch replied that is not allowed.

Councilor Thomas asked in regards to the roof drain that was eluded to earlier on those three lots. I notice on all of the other lots you said there would be a soaking trench, is that not possible for those three lots?

Harnisch replied it is possible but according to the geotechs report it is not advisable.

Councilor Thomas asked because there is not enough percolation in the ground?

Harnisch replied no, his recommendation was to keep percolation away from the bank.

Mayor Thalhofer called for a break at 8:50pm and reconvened the meeting at 9:01pm.

Mayor Thalhoffer asked is there anyone here that would like to speak on behalf of the applicant?

No testimony received.

Mayor Thalhoffer stated there being none we will now hear from the appellants.

Mark Dorrough stated my wife and our six children live in the Sandy Heights subdivision. We are opposed to the proposed Sandy Dell Acres subdivision. It is our sad observation that the planning commission hastily accepted staff's recommendation without considering and studying essential data and facts relevant to the very complex engineering and legal problems this proposed development presents. We would like a chance to comment on last weeks city council work session. Its purpose, as stated by Rich Faith, was so the council will be informed of the implications of the 1921 easement that governs the use of Sandy Dell Road. At the meeting Marnie Allen stated that the chronological list that you were given was to "help you understand the 1921 easement as it pertains to Sandy Dell Acres". This sheet contained some half truths and irrelevancies about the history of our property. This could be seen to be an effort by the city to insight ill feeling and to give incorrect and irrelevant information in a situation where we were unable to correct and clarify that information before an incorrect conclusion or bias was made. The handout from the City Attorney Marnie Allen states, "November 2002 - Mark and Jill Dorrough, owners and residents of Lot 11 in Sandy Heights Subdivision, complained to the city regarding erosion on adjacent property, outside of the city limits, that they bought from Greg Schpankyn. In 2000, Mr. Schpankyn granted Mr. Johnson a stormwater easement for runoff from Sandy Heights subdivision. In 2002, the Dorroughs purchased Schpankyn's property and clear-cut and stripped the property. In the claim the Dorroughs filed with the City, they claimed that they did not know about the stormwater easement when they bought the property from Mr. Schpankyn. Stormwater runoff from Sandy Heights runs across the property that the Dorroughs clear-cut and stripped." This statement does not seem to coincide with Rich Faith's written goals or Marnie Allen's stated objection for the work session. Since this statement was made some major clarifications need to be produced. In 2002 we purchased the property behind our home from Mr. & Mrs. Schpankyn. The property was covered with aged and dying cottonwood and alder trees. Under the direction and approval of the Oregon Department of Forestry, the cottonwood and alder trees were legally harvested from a portion of our property, 40% to be exact. A silt fence was placed, bio bags were used and 880 seedlings were planted. A couple hundred bales of hay were spread and hundreds of pounds of grass seed was planted. Our efforts superseded the requirements set by Oregon Department of Forestry. After harvesting our trees the stormwater outfall and stormwater were discovered running over our property. Marnie said there is an easement allowing this. To clarify, there is a purported easement. This easement is not valid for these reasons. It was not signed by all owners of the property. It was never recorded as a public document. The boundary of the easement runs uphill perpendicular to the course the water is taking. It also stops in the middle of our property well over one hundred feet short of the waters destination, the Sandy River. In short, this stormwater drain is a clear trespass on our property. Due to an indirect condemnation of our land and the city's unwillingness to force the developer to follow the

directives and with Multnomah County prepared to fine us for the erosion of stormwater we were forced to hire an attorney to resolve these issues. The city was notified of our claim against them on May 27<sup>th</sup> and we are objecting to any further drainage onto our property into the stormwater drainage system. Now that this clarification has been made we would like to state our reasons for appealing the planning commission's decisions regarding Sandy Dell Acres. The first reason for opposing their decision is we oppose the connection between our neighborhood and Sandy Dell Road. The second reason is that the planning commission did not adequately address the stormwater issues that the neighborhood will impose. According to Mr. Zifcak's traffic study done by Lancaster Engineering, which is under Tab B, the houses in the combined neighborhoods, 49 homes, which doesn't include the additional homes that could be in the proposed development, would generate 470 vehicle trips per day. Currently Sandy Heights has 23 homes. Hall Lane is a dead end where there was never a sign posted to inform prospective buyers of the city's intention to extend Hall Lane, nor were we notified of any intention of anything ever being planned or changed. The planning commission is approving a plan that would allow traffic of 26 more homes to drive through our neighborhood, adding 250 additional vehicle trips per day to our neighborhood. It is very clear that there are not any members of the planning commission living in our neighborhood for I can not see anyone consenting to more than doubling the traffic in front of their house. Before meeting with the planning commission I went through our neighborhood to take a survey of those who were for or against Hall Lane being extended to access Sandy Dell Acres. This survey is included in the handout I just gave you (copy is in the packet). It is clear that the majority of the people are against this traffic change. The planning commissions decision to join the two neighborhoods clearly does not make sense and clearly is not what the community wants. The current traffic pattern of Sandy Heights residents is to exit using Sandy Dell Road and it is a great system that is already in place. All homes proposed for Sandy Dell Acres can have access to that neighborhood from Sandy Dell Road without creating an intersection with Hall Lane. Statistically, how can more traffic not cause a greater likelihood of an accident occurring? Since bikes are not allowed to be ridden on sidewalks, children ride in the streets. The Troutdale Municipal Code states that it shall be unlawful for the owner or operator of any bicycle to ride or park upon any sidewalk or path constructed for the use of pedestrians. There are many children in our neighborhood and this proposed 250-vehicle traffic increase and the traffic change would detrimentally affect the safety of our children. An increase of traffic also increases noise pollution and light pollution. Mr. Zifcak's attorney states that it is too late to complain about connectivity issues. She states that when the city approved Sandy Heights it found that future connection could be provided. The facts show that due to complex legal issues regarding Sandy Dell Road, the plan for a combined neighborhood wasn't working. Sandy Heights was approved as a sole project independent of Mr. Zifcak's property. I see that you the city council could approve and provide connectivity but I also see that you, the council, could also not. The plans at the city for the approved Sandy Heights neighborhood do not show a connected road across Sandy Dell Road, nor is their any signage stating that the barricade at SE Hall Lane is temporary and that the road will be expanded with future development. We are opposed to increased traffic joining our neighborhood with Sandy Dell Acres and Sandy Dell Road. Sandy Dell Road residents are also opposed to creating this intersection as it will create more traffic on their road. The only people in favor are the planning commission and the developer. I wholeheartedly say the planning commission absolutely is out of touch with what

is best for the community. They obviously live in a different community and they are not seeking to maintain the quality of life in our community. If the city council, after hearing the issues, still decides to approve the Sandy Dell Acres subdivision, I plea that you revise the plan to ensure that Sandy Heights will continue to be closed at the junction of Sandy Dell Road and SE Hall Lane and ensure that Sandy Dell Acres and Sandy Dell residents will enter and exit using Sandy Dell Road.

Jill Dorrrough stated I would like to talk about the stormwater issue. Stormwater has several physical properties to consider. We heard a lot about the direction of the flow of the water but not a lot was said as far as the overall quantity. The rainfall will remain constant but the impervious surfaces will alter ground infiltration capacity, velocity of water, and rate of release that the water comes out of the pipes. The staff report refers to the City of Portland Storm Water Management Manual and incorporates that into the record by these findings as an official document. Goal 6 addresses stormwater. Number one, it has to provide adequate provisions for stormwater. Number two; accommodate downstream affect to property owners. Number three, when a proposed development will carry water across private land outside the development, appropriate drainage rights must be secured. As stated in the staff report we questioned the adequacy of this design of the stormwater quality facility and alleged that there would be problems with water drainage caused by the approval of the tentative plan. It goes on to say that the applicants stormwater system does not connect to or affect the Sandy Heights subdivision. That is true, but it does affect our Multnomah County property. Twelve feet of the paved road of Sandy Dell Road will drain to the south into a drainage ditch. You can see on the south edge of Sandy Dell Road there is an outfall, which is referred to in the staff report as being someplace east of the Sandy Heights neighborhood, when specifically they know that it is draining into our property. Regarding the half of Sandy Dell Road that will continue to drain our way and outfall onto our property, Denali says the amount of runoff will be decreased because the width of the road sloped towards the south will be reduced from 14' to 12'. The square footage may be reduced but the fact is that those square feet are now impervious surface, which is unable to absorb the few hundred thousand gallons of water, based on Troutdale's average rainfall that will fall on that surface every year. The gravel road has an infiltration capacity; the paved road does not. In addition to the infiltration capacity being gone, as water travels across the paved surface the volume of that water is greatly increased. Troutdale Development Code criterion A2 requires that appropriate rights be secured across downstream private land for runoff. We have not been asked permission for this additional volume and velocity of water to enter our property. Still the planning commission decided that stormwater dispersal would not cause additional storm drainage to be discharged onto the Dorrrough's property. Now to the proposed stormwater system for the north half of Sandy Dell and the neighborhood itself. The supplemental staff report under Tab 1 states, according to the Chief Engineer, the applicant has proposed an unusual method for disposal of surface drainage from the subdivision. None of the City's professional engineer staff have seen a disposal system quite like that proposed. The concept has potential, but is untested based upon what the City's Public Work's staff are familiar with. The Chief Engineer said that the principle of the concept is acceptable, but he cannot vouch for its efficacy. City staff maintains that the stormwater system is valid based on the City of Portland's Stormwater Management Manual presumptive approach rather than the tested approach for approving stormwater facilities. We are to presume that the system

works, although the topography and infiltration capacity of the soil tend to say it won't. If it doesn't work there is no backup plan proposed. Denali Engineering quotes G2 Associates, the engineering report under Tab B, as saying that the soil has an infiltration rate of 0.35 inches per minute. The piece of the puzzle that he left out was that this was tested in July of this year when there hadn't been any significant rainfall for four months. The Portland Stormwater Management Manual requires an infiltration capacity to be measured in saturated soil. I have provided a copy of the test requirements in my handout (copy included in the packet). The soil is to be saturated for four days in a row and then make the percolation measurement. This is not how the test was conducted. They did the first test on the dry soil, they got that number and that is the number submitted in their report. Due to the seasonal high water table, drywells were considered and were not determined to be feasible by G2. Instead the engineer and developer have proposed a soakage trench also known as an infiltration trench to be placed at the front of each lot. Like drywells, these trenches are an underground injection facility device requiring special permits, testing and maintenance, which are regulated by DEQ and other agencies. These proposed soakage trenches will function like a drywell concentrating the lot 3 and 12 and the roof runoff into one small area trusting that it will absorb into the ground. All water that falls on either driveway will drain into the trench in the front yard, along with all of the rainfall and the contaminants from roofs or driveways to soak into the groundwater. There are a lot of unanswered questions. The engineer designing the plan is quoted in the staff report as saying that this type of system has been done more for collection than disbursement of water. In this neighborhood it is being proposed for dispersal of the water. There is probably a reason that it is done for collection and not dispersal. I also wonder why city staff is so eager to approve such an unusual, untested and presumptive approach of stormwater dispersal. Why has no backup plan been required? DEQ Stormwater management guidelines raise potential concerns about these proposed infiltration trenches. (A copy is included in the packet) It states that infiltration trenches are not to be used in soils with low percolation, they are not to be used on slopes, or in areas with a high season water table. They have a failure rate of five years and they tend to clog from sediment slowing the rate of infiltration into the soil over time. They must be located at least 500' from private drinking water systems. There is at least one home with their drinking water well within 500' of at least six of these soakage trenches. These trenches should be used with other treatment systems prior to discharge to the soil or they will pollute the groundwater wells and streams. They are prone to rapid clogging and failure from sediment during operations. They often fail due to inadequate soils, siltation, location on unstable slopes and lack of maintenance. At a minimum semi annual maintenance should be required. These trenches require a comprehensive soils report indicating that the bottom of the trench is at least 3' above the seasonal high water table. It is required that an overflow route should be identified in the event that the infiltration facility's capacity is exceeded or becomes plugged and fails. All overflow systems are to be designed to deal with a 100-year 24-hour flood event. Those are the DEQ guidelines for using these types of trenches. Where is the overflow route? Once again, I hear they are planning to direct overflow into the north ravine on our property. If worse comes to worse and the system entirely doesn't work, we feel that eventually Sandy Dell Acres will have its stormwater go into the current system that is illegally dumping the Sandy Heights stormwater onto on county property. Elizabeth stated that once the city has accepted a stormwater system, they can let other people plug into it. This untested approach should not be considered as adequately meeting the Troutdale

Development Code requirements for stormwater disposal. All street stormwater in the subdivision is to be piped into the trench in addition to the roof drains. The trench will collect the water, allow it to uniformly sheet-flow over the eastern property line of the neighborhood, where the City of Troutdale ends, onto private property that is within Multnomah County. Troutdale Development Code requires appropriate permission from down stream private landowners for overland water flow. Simple physics say that the potential energy of a slope full of saturated soil is enormous. By sending all street runoff overland down the eastern slope and out of the neighborhood, there is a great potential for this hillside to wash into one of the Sandy Dell properties. Denali maintains that there is no reason that this water flow will affect anyone downhill because the water would maintain the natural and current drainage direction. He did not add the fact that the impervious areas will force the entire amount of the rainfall downhill, rather than being able to be absorbed by this land in its current wooded state. The flow will be concentrated, although it will be level and come out of the trench at a rate of release equal to that prior to development, but the duration of that release will greatly be lengthened. This faulty design also does not address the fact that the hillside will already be saturated in a rain event. Yet the rationale and staff report seems to be that since there are no current problems with the drainage on Sandy Dell Road or current issues with their drinking water wells, there will be none in the future because the water is falling in the same direction. But no allowance has been made for all of these other physical properties the water takes on when impervious surfaces are drawn into the equation. Just because there aren't current issues does not mean that this stormwater system will not present issues. It is painfully obvious that although this water will be following the current direction, no allowance has been made or even addressed by city staff, developer or engineer for the increase in volume, concentration, velocity and rate of water dispersal this will have on the hillside. We are concerned about the proposed stormwater system for these reasons. We will not allow Sandy Dell Acres to run any amount of its unimpeded and unfiltered stormwater into the drainage ditch on Sandy Dell Road to be funneled to the outfall on our property. This affects us directly, although we do live in the other neighborhood. The whole presumptive and unusual stormwater proposal concerns us for future homeowners sake and for the direct impact it will have on Dan and Penny Aronson's property and drinking water.

Greg Baurer Sr. stated I am in charge of the Sandy Dell Road Association. We do all the maintenance to Sandy Dell Road. I am here to protect our private road rights. I am not against the building of the new houses. City code says that no subdivision or partition shall be approved unless the development has frontage or approved access to existing or proposed public street. In addition, all proposed streets shall be designed and approved to the City of Troutdale construction standards. The code also states that private drives serving two or more residents shall be fully improved. I am asking that if you go ahead and allow this that the private road be blacktopped. What I have here is a 1989 easement (copy included in the packet) that Parks and Hardy gave to 18 homeowners for a 40' easement. My wife and I are one of those holders of this easement. None of the Sandy Dell property owners conveyed their easement to the City of Troutdale. The City of Troutdale and the applicants acknowledge the existence of these private easements. We also have Sandy Dell Road that runs east and west on the east end of this property. At this point and time we have never had any water off this hillside. My concern is that when this new system flows over it is going to

hit our road and start flooding on down. If we have problems and this system doesn't work we will have to hold the City of Troutdale and the developer responsible.

Greg Baurer Jr. stated I have a letter to read on behalf of Vern Cook (copy of the letter is contained in the packet). The letter read stated that Mr. Cook would be out of town for this hearing and he is requesting that the record be held open after the hearing tonight so that he could respond to any testimony that is offered at the hearing tonight. Mr. Cook's primary objection is to opening up the access from SE Hall onto Sandy Dell Road.

Mark Dorrough stated regarding to the storm water system and having the privately owned soakage trenches and concrete tube. In reviewing DEQ's requirements and the failure rate and the heavy maintenance, realistically having a privately owned system maintained by a homeowners association will not work. Within the homeowners association some may want to maintain it and some will not want to, that could be a real issue. The adjoining property owners will be the ones facing the overflow. It would be my recommendation that the system be publicly owned. Back to the mosquito issue, would it be feasible to request some sort of insect control. Maybe periodically treat the area with an environmentally friendly pesticide.

Jill Dorrough stated in Ms. McCallum's presentation she showed you a photograph of our property downhill from the outfall on our property looking uphill. She mentioned that the photo was taken in March. Now there is an engineered outfall in that location.

Mayor Thalhofer asked your main concern is that you don't want Hall Lane to be connected to your neighborhood?

Jill Dorrough stated yes.

Mayor Thalhofer asked do you want Sandy Dell Road to remain in its present condition or do you want it paved but to still be narrow? How do you see people getting out of Sandy Dell Acres if you block off Hall Lane?

Jill Dorrough replied the proposed plat shows Sandy Dell Road, which is currently 14', must be widened to 24'.

Mayor Thalhofer stated that will be narrow for the traffic that will be on Sandy Dell Road.

Mark Dorrough stated their traffic engineers report says that the traffic would be diverted through our neighborhood. That would be my opinion also.

Mayor Thalhofer asked you want SW Hall to be blocked off at Sandy Dell Road?

Mark Dorrough replied absolutely.

Mayor Thalhofer stated your other main concern is the drainage. When you referred to the Multnomah County property, are you talking about the property that you own that use to be Multnomah County property or is it owned by Multnomah County now?



Jill Dorrrough replied we own the property but it is located in the unincorporated Multnomah County outside of the city limits and abuts our backyard in the Sandy Heights neighborhood.

Mayor Thalhofer asked the end of the drain line would be at the corner of your property, is that correct?

Jill Dorrrough replied from our northwest property corner to the outfall, it is at least 100'.

Mayor Thalhofer asked you are concerned that the water is going to come down on your property?

Jill Dorrrough replied it is being directed into that culvert to add to the flow coming out.

Mark Dorrrough stated the private storm drain that Sandy Dell residents own that runs under Sandy Dell is currently broken and that gets back to the issue that it is not publicly owned. There are multiple sources that come into this private storm drain. When we have a heavy rain there is an incredible velocity of water, which causes erosion and destruction. This will compound that and that is our fear.

Mayor Thalhofer asked Mr. Baurer, are you for Sandy Dell Road to be paved from the east to the subdivision?

Mark Baurer replied from Hall Street down to the property line there is 100' going east that is part of Track A and they are avoiding having to pave that, which the code states the whole thing should be paved.

Councilor Kyle asked is the broken storm drain on your property?

Mark Dorrrough replied yes.

Councilor Daoust stated the road safety issue, you are saying that if Hall Lane were opened up that most of the traffic would divert into the Sandy Heights neighborhood, which is your concern. Safety is one of the issues that you are concerned about and the children playing in the street. I hear Vern Cook say that most of the Zifcak property people would probably use Sandy Dell Road rather than go down into Sandy Heights. Explain to me your viewpoint on this safety issue. Why do you think people would come into Sandy Heights if it were opened up?

Mark Dorrrough replied because it is paved it would be more inviting than the gravel.

Councilor Daoust asked you have cut some trees on your property below the subdivision, but you say it affects "us" directly. How would the Sandy Dell Subdivision affect your property directly?

Jill Dorrrough replied directly because their stormwater will be dumping into a ravine on our property.

Councilor Daoust asked do you feel additional stormwater measures should be taken on the Sandy Dell subdivision and if so, what should they be in addition to the amended plan that we have in front of us? This plan sounds pretty thorough to me. The steps that they are taking to address stormwater drainage on this subdivision actually are more extensive than any other subdivision that I've seen.

Mark Dorrrough replied who wants a swamp in your front yard with a trench down your north forty with alligators in it? This is a goofy system. Who is going to want to live there? I think it should be thrown out and rethought. They need to work out something with the Sandy Dell neighbors to go down Sandy Dell through their easement on the road and come up the normal neighborhood. Do something that is tested and proven to work.

Councilor Daoust stated specifically what you are calling an untested presumptive approach, are you referring mainly to the ditches and concrete trenches in lots 9, 10 and 11?

Jill Dorrrough replied yes and also the soakage trenches or infiltration trenches on each of the lots.

Councilor Gorsek stated one of the big issues for you is the potential failure of these unique approaches and the second issue is that paving part of the road will enhance water going into that storm drain that goes onto your property that is already an erosion problem. Do you know who owns this private outfall that is on your property?

Greg Baurer replied it is a private drainage ditch owned by the people of Sandy Dell. The county uses it also. Before Sandy Heights went in there was no water in that ditch and no water going out that outfall. What happens now when it rains, up on the top close to the front, it fills up with water and has water flowing into it from Sandee Palisades from the north and all the homes along the road from the Sandy Heights subdivision drains into it and it gets a good volume of water running down the trench.

Councilor Thomas stated we have two different opinions, Greg Baurer had said that you want the road finished the whole length of Sandy Dell Road, which potentially could create more stormwater. What I am hearing from Mr. and Mrs. Dorrrough is they really don't want the subdivision to go in at all because of stormwater.

Mark Dorrrough stated we would prefer the stormwater issue on our property to be addressed before more water gets put onto it.

Greg Baurer stated the last 100', we are set up to handle that runoff down below. Up on top where Hall is we are not going to get any more water from the rest of the road on that area. We are only going to get the water from Hall down to the property line.

Councilor Thomas asked is that including the 200' from Hall Road to the west edge of the proposed development?

Greg Baurer replied no that is being picked up by the city's manhole.

Councilor Thomas asked your request is to improve Sandy Dell all the way from Stark Street.

Greg Baurer replied I didn't ask for that, I just wanted that 100'. Mr. Cook is the one that wanted it all the way to Stark Street.

Councilor Thomas stated the more pavement you add the more water there is to deal with.

Greg Baurer stated the upper part of the road has ditches for us to pick that water up.

Councilor Thomas asked and that is currently handled through this pipe that is broken?

Greg Baurer replied right.

Councilor Thomas stated so that part really doesn't change other than gravel does absorb some water before it starts running off.

Greg Baurer stated before the Sandy Heights development came we didn't have any water up there.

Dan Aronson stated our property backs up to Lots 9, 10 and 11. My concern is the trough that they are talking about. If it isn't level it will cause more erosion problems than we already have now. It doesn't show on the map but it is a real steep slope down to Sandy Dell. I want to make sure that is addressed properly and that the open water is addressed properly. We have a well, which is about 150' to 200' from these planned developments, which is a concern of mine. The pavement, I really don't care too much about. I think Mark has a good point, people drive pretty fast down Sandy Dell and I think they would use SW Hall. I know I'd go through there because it is paved. My concerns are erosion and my well.

Brian Scott stated I live on SE Sandy Dell Road on a piece of property that has been in my family since 1952. It is the development of the property generally, of that neighborhood within a mile or so that inspired me as a kid to pursue a career in community development. Since 1983 I have been working statewide on livability and community development issues, very much like this one. I spent a number of years with the Oregon Downtown Development Association and statewide nonprofit called Livable Oregon. I teach urban planning classes at Portland State University and have been working to shape state policy on issues just like this. I have dedicated my career to basically supporting appropriate development and redevelopment inside urban growth boundaries. This development that you are considering tonight is appropriate in Troutdale's zoning code, in Metro's urban growth concept and therefore I support it. I think this is exactly what you've intended for this piece of property and it ought to happen. I am here to address two concerns tonight, which have nothing to do with anything except historic access and protecting the rights of the property owners who have

been there a long time. The drainage issue is interesting. I don't have anything technical to add. I think the engineer has worked to try and design an innovative solution to a basic problem. The portion that I am most concerned about, as a property owner quite a ways down the hill, is lots 7, 8 and 9 facing down river. This slope takes a big curve around there. What is actually going to happen when this is built and it starts raining all winter? What will happen to our road? I just want to know what are we going to do if it doesn't work. I am not particularly worried about what happens to Sandy Heights subdivision. I respect the Dorrough's concerns but my concerns are of the road that has been there since 1921. We struggle enough to get our act together among the property owners to maintain that road. I hate to make the problem a lot worse. What if it doesn't work? Who is accountable? I am worried about the homeowners association being responsible for an area like maintenance of something that the designer of it says he thinks it is a neat design. I would like to hear that he has done this forty-two times before, that would make me feel a lot better than "it's a neat design". The other part of this is the portion that runs down Sandy Dell Road into this manhole that goes into the city's system. Hopefully it will work. Clearly as a property owner downhill if it doesn't work we are going to hold the city responsible for maintaining runoff at its current level onto our property. The last thing I want to address is Sandy Dell Road itself. Again, I support this development. This piece of property has been zoned this way for a long time and sooner or later there will be this many houses located there. It seems to me that this design pretty much makes sense. The developer seems to be coming forward making a pretty good attempt to make these things happen. But through a series of circumstances we have this bizarre situation and it was entertaining to sit here and watch you figure out what was being proposed here, which is a few hundred feet of gravel and then a few hundred feet of pavement and then back to gravel. If I lived in that subdivision and I was going into town I am going to drive out Sandy Dell Road because the fastest way between two points is a straight line. I have no objection to them using the road. It is dirty and hard to maintain now. It would be better if the whole thing were paved. I would be delighted if the developer paid to pave it. However, the primary issue we have right now as residents downhill is we made a proposal to pave the top part of the road a number of years ago and were told that we were not allowed to pave it by the city who actually owns a piece of road. The piece of land that is between this development and Stark Street, most of it is owned by the city and a small portion is owned by Multnomah County. We were told we were not allowed to pave this because the city as a property owner would not allow us to pave it. So what I am seeing happen now is we are ending up with the city requiring someone to pave a piece of road and the city telling us we can't pave the piece of road between that and Stark Street. It seems to me that we need to make a deal and get this to make sense. As an owner of a portion of the easement I would be willing to pave my share. It seems to me that at some point coming up this road it ought to change from gravel to pavement and it ought to stay pavement out to Stark Street. We do have some runoff issues that need to be dealt with. It will increase the speed of the runoff a little bit, but not remotely as much as this development is going to increase it. I am asking the Council to work with us as one of the parties that owns a piece of this road to get a solution that makes sense. We would like to pave it and we would like you to work with us to come up with a sensible solution.

Penny Aronson stated we just learned about this cement trough and the runoff and no one has approached us to inform us that it will runoff onto our property. I believe that Goal 6 said

that we should be informed of this runoff and we have not been approached about this. My other concern is that when this runoff comes down the hill to our place and into our well. In the middle of the winter we already have a small amount of standing water on the flat portion of our property before it comes down to our house and then out to the river. I am concerned that area will become swampier and that it will run off into our house and basement.

Shelly Fouch stated I live on Hall Lane. I am concerned about the stormwater especially as it relates to the erosion on the Dorrrough's property. I am not opposed to the development. I personally would like to see Sandy Dell paved and have all of the traffic come down Sandy Dell, as long as the Sandy Dell residents approve of that. We have a lot of small children playing in our neighborhood that are often riding their bikes on the road and wondering around the neighborhood. If we have all this additional traffic coming through, it will be a real hazard because we also have a lot of cars parked on the street. I am concerned that with all this additional traffic and with the cars parked along the side of the street, we will have some real safety issues with our children.

David Dyer stated I live on SE 32<sup>nd</sup> Street. My concerns are with the road they are proposing to put in the back and crowning it. Where is the water going to drain from there? It sounds like it is just going to go right into the back of my property. The storm drain runoff is another concern. There is a lot of water there and that ground gets saturated. I am concerned with them having an open trench on the back of the property. You are also creating a utility type of system that is supposed to be maintained by common everyday people. A lot of people don't know how to do that type of maintenance. I think some real thought needs to be put into this instead of trying to do a band-aid type of approach to something this critical to a development.

Rob Phillips stated I live on Hall Court. My concern is that if they don't pave that road all the way down and they open up our street you will have pavement then gravel and people will turn onto Hall. Where is all that gravel going to go? Is it going to get tracked in front of our houses? My vote would be to have the traffic go up Sandy Dell and have that paved and keep Hall closed. Regarding the stormwater drainage, as a homeowner I wouldn't want to be responsible for maintaining that.

Dorothy Cofield stated I am a little bothered by all this new evidence being dumped on us at this hearing. We submitted reports in plenty of time for them to be reviewed to prepare their testimony. Under Oregon Revised Statutes, Chapter 197.763 we have the right to have a continuance to keep the record open to view all of the new evidence. We are coming up against the 120-day rule and I don't know if my client wants to do that. I would like to have a recess to discuss that with him. I would like to rebut some of the issues as well as I can. With the storm drainage I would like you to look at the planning commissions conditions of approval. The conditions of approval require that this system not increase post-development flows past predevelopment flows. That means that all of the evidence that we heard tonight, conjecturing, speculating and talking about this system, it is not going to pass your public works engineer if they can't meet the test and meet the Portland Stormwater Drainage manual requirements. With the DEQ evidence that was brought up, our engineer has not had a chance to look at that but he doesn't think that it applies to the type of system that is

proposed. If you look at the Conditions of Approval 1(i), it says that DEQ has to approve this. So if there is a problem with their wells, guess what, it isn't going to pass DEQ and my client isn't going to be able to record this final plat. This system has been looked at by the planning commission and our engineer has submitted a modified plan and geotechnical evidence. The soils report that they tried to bash, that was done as a Condition of Approval 1(a) because the planning commission wanted drywells to see if they were feasible. We didn't think they were feasible but we had to comply with the conditions of approval and do the soil study and that is why we are using the soakage trenches. If you look at the findings, footnote 3 where we were getting bashed for this system not being tried or untested, this is what the Portland Stormwater Manual says, "The list of accepted stormwater management facilities is continually changing as new products are developed and more is learned about the performance of facilities already in use. The design professionals may propose facilities other than those included in this manual by using the performance approach." They want people to come up with new approaches because the storm drainage technology is a new technology. It is my clients burden to meet these conditions of approval, which are your protections. I would like to talk about the maintenance. Lynn Harnisch has told me that there is very little maintenance required with this trench. Leaves will fall into it and they will float and they will decompose. They will not plug anything up because the trench is designed to hold water and slowly release it just the way the storm flow has been going. In terms of trespass that the Multnomah County appellants raised, right now the water is falling at its historic flow. In the law of trespass if you don't change the flow, and we are showing that we will meet predevelopment rates and we will be able to account for a 25-year storm drainage event, it would never rise to trespass. If it did they would have the right to bring a claim against the homeowners association if they didn't properly maintain it. I would like to move on to the road. In 1999, when my client submitted a joint application with the Sandy Heights subdivision Sandy Dell Road was a public road and it was going to be paved all the way up to Stark. Many of these same land owners and easement holders appeared here and said you can't touch Sandy Dell Road, it can't be public, it can't be owned by the city and it can't be paved. So the city told my client sorry we can't touch Sandy Dell Road. We came back with this revised plan four years later and now it is not being paved except in an area that my client owns, which he can legally do. In terms of not opening up SE Hall, I really think you would run a foul on your own comprehensive plan that requires connectivity. These homeowners are looking at these streets as a playground for their children. They are not a playground, they are a street. Statewide Goal 12 wants connectivity and it wants traffic disbursed through different neighborhoods so that one neighborhood doesn't get the burden of all the traffic. You really have an obligation with your final decision in the Sandy Heights subdivision that says that this is a temporary barricade and it would be opened up when approved by public works and secondly, Statewide Goal 12 requires connectivity. In terms of the users of Sandy Dell Road, our traffic study included the existing users, which are the sixteen households in Multnomah County and the twenty-three lots in Sandy Heights, which already exist. So we are talking about ten new houses, which our traffic engineer says would generate a total of eighteen trips a day compared to the number of trips that these thirty-nine homes are already generating. So it is not looking at this as if our subdivision is putting all this new traffic, it is a small part of the already existing traffic. I would like to request a short recess so I can discuss with my client whether we want to request a continuance because of all the new evidence that we have received tonight. I think our record supports your approval

of the planning commissions decision but we probably do need supplemental findings to address all of the new evidence.

Mayor Thalhoffer called for a 5-minute recess at 10:40pm.

Mayor Thalhoffer reconvened the meeting at 10:50pm.

Dorothy Cofield stated the motion that I would like to make to the City Council would be that Vern Cook has asked to keep the record open for 7days. We would ask that he be granted that so there is no procedural error and then we would like 10 days to rebut all the new evidence that was submitted tonight and Vern Cook's submittal. Then we would like to have supplemental findings to address all of the new evidence from tonight and have you come back on September 23<sup>rd</sup> to make the decision and my client will waive the 120-day rule.

Marnie Allen, City Attorney stated legally I think that is the best option procedurally to grant Mr. Cook's request and give him time to submit written evidence. The applicant would then get the final rebuttal. I would recommend that the public hearing be closed and that we be clear that we are just leaving the record open for written information 7-days for Vern Cook or others who are opposed and then 10-days to rebut the information that was presented tonight as well as anything that is submitted in the next 7-days. When the Council comes back on the 23<sup>rd</sup> it will just be to deliberate, having received the public testimony and the written testimony, and adopt a decision and findings.

Mayor Thalhoffer asked Ms. Cofield did you want to give an oral rebuttal?

Cofield replied no, written. Ms. Allen, during the 7-days could the appellants be limited to just rebuttal and no new evidence?

Marnie Allen replied I think Mr. Cook has requested that the record be left open to respond to everything that has been submitted. If new evidence is submitted you will have a chance to rebut.

Cofield asked Mr. Zifcak would like to know if we could limit leaving the record open to Vernon Cook since everyone had ample opportunity to testify tonight?

Marnie Allen replied that is up to the City Council. Mr. Cook is the only person that requested the right to leave the record open. If the Council wants to limit it to Mr. Cook they can do that or if they want to leave it open for everyone to submit written evidence they can also do that.

Mayor Thalhoffer stated Mr. Cook would like to verbally testify, he has already submitted written testimony.

Cofield replied we would be opposed to that. We think that anything that needs to be addressed should be addressed by written testimony, especially since we don't think Mr. Cook's issues are really part of this land use proceeding.

Mayor Thalhofer closed the public hearing at 11:00pm.

**MOTION:** Councilor Daoust moved that the record will remain open for Mr. Cook to submit written rebuttal until September 3<sup>rd</sup> at which time it would be closed to the appellants except it will remain open until September 12<sup>th</sup> for the applicant to submit rebuttal both in terms of rebuttal to the testimony presented tonight as well as rebuttal to what Mr. Cook presents. Staff will prepare supplemental findings and the matter will be continued to September 23<sup>rd</sup> for Council deliberation and decision. Seconded by Councilor Gorsek.

Councilor Daoust asked do we need to include that the 120-day rule has been waived in the motion or is that just an agreement?

Marnie Allen replied by requesting that the record remain open and this continuance, under that statute the applicant has extended the 120-days for the time period of their requested continuance and they have put on the record they are waiving it until September 23<sup>rd</sup>.

**VOTE:** Mayor Thalhofer – Yes; Councilor Kyle – Yes; Councilor Daoust – Yes; Councilor Gorsek – Yes; Councilor Thomas – Yes.

**Motion approved 5-0**

**6. PUBLIC HEARING / ORDINANCE (Introduced 7/22/03):** An Ordinance amending Chapter 2.08 of the Troutdale Municipal Code, Rules of the City Council.

Mayor Thalhofer read the ordinance title and opened the public hearing at 11:12pm.

Mayor Thalhofer stated this is the second hearing on the ordinance amending the council rules regarding reimbursement of council expenses.

Council had no questions.

Mayor Thalhofer asked is there anyone here that would like to speak to this issue?

No testimony received.

Mayor Thalhofer closed the public hearing at 11:15pm.

**MOTION:** Councilor Gorsek moved to adopt the ordinance as written. Seconded by Councilor Thomas.

**VOTE:** Mayor Thalhofer – Yes; Councilor Kyle – Yes; Councilor Daoust – Yes; Councilor Gorsek – Yes; Councilor Thomas – Yes.



**Motion approved 5-0**

**7. PUBLIC HEARING / ORDINANCE (Introduction and Adoption):** An Ordinance amending Chapter 3.08 of the Troutdale Municipal Code regarding Transient Lodging Taxes and declaring an emergency.

Mayor Thalhofler read the ordinance title and opened the public hearing at 11:17pm.

Mayor Thalhofler stated this ordinance eliminates the transient lodging tax that is imposed on any individual who rents space at a recreation vehicle park for more than thirty days. This ordinance contains findings that support adoption at one meeting with an effective date that is retroactive. As I understand it, if all members of the council that are present tonight vote yes, because of the emergency findings we can pass it tonight, is that correct?

Marnie Allen replied yes.

Mayor Thalhofler asked do we have unanimous support for this ordinance?

Councilor Thomas replied at this point I am not in support of this ordinance.

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

Agnes Firchan stated I don't know what the reason would be for not approving this ordinance. It is important that we don't discriminate against the people that reside at the RV Park. I was hurt by the fact that someone said we were freeloading. That is not true. This is a good way to utilize the land and environment. There are only 3 or 4 children there so we aren't exploiting the schools. We maintain our own roads. This is land that is in the red zone for an earthquake so you can't put houses there. This is a good use of the land.

Mayor Thalhofler closed the public hearing at 11:26pm and stated we will hold a second public hearing on this ordinance at the September 9<sup>th</sup> Council meeting.

**8. PUBLIC HEARING / ORDINANCE (Introduction and Adoption):** An Ordinance modifying the procedures for public contracting, amending Section 2.24.100 of the Troutdale Municipal Code and declaring an emergency.

Mayor Thalhofler read the ordinance title and opened the public hearing at 11:28pm.

Jim Galloway, Public Works Director stated this proposed ordinance is basically a housekeeping measure. As you know in chapter 2.24 of the Municipal Code we incorporate our public contracts laws and we try to have those mirror state laws so that we are in compliance. The current session of the legislature adopted HB3422 signed by the Governor and enacted into law which made some minor changes to the states public contracting laws. The bill contained an emergency clause that made the state law effective on August 1<sup>st</sup> of this year. We are coming forward with proposed changes, primarily in the area of opening of bids and subcontractor disclosure requirements to mirror the new changes in the state law. To try

and make our changes effective as close to the August 1<sup>st</sup> date we are asking for two things. The first is we are asking that this ordinance be adopted at one meeting versus two. It would also have an emergency clause that would make this ordinance effective immediately as opposed to our normal 30-day waiting period.

Mayor Thalhofer asked is there any objection by the Council to passing this ordinance at one meeting?

None stated.

Council had no questions.

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

No testimony received.

Mayor Thalhofer closed the public hearing at 11:29pm.

**MOTION: Councilor Daoust moved to adopt the ordinance modifying the procedures for public contracting, amending Section 2.24.100 of the Troutdale Municipal Code and declaring an emergency. Seconded by Councilor Kyle.**

**VOTE: Mayor Thalhofer – Yes; Councilor Kyle – Yes; Councilor Daoust – Yes; Councilor Gorsek – Yes; Councilor Thomas – Yes.**

**Motion approved 5-0**

## **9. COUNCIL CONCERNS AND INITIATIVES:**

Mayor Thalhofer stated it looks like we could have big league baseball in our area at least the legislature approved the bill.

Councilor Gorsek stated tonight there were a lot of people that were kind of critical of the laws and the legal system. I just want to say that we sometimes have to jump through silly hoops. I think that the Council, our City Attorney and the attorney representing the applicant all did a great job.

## **10. ADJOURNMENT:**

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

**Meeting adjourned at 11:31pm.**

**Paul Thalhofer, Mayor**

**Approved October 14, 2003**

**ATTEST:**

**Debbie Stickney, City Recorder**