

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

Tuesday, September 23, 2003

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

Mayor Thalhofer called the meeting to order at 7:01pm

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

ABSENT: None

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; and Debbie Stickney, City Recorder.

GUESTS: See Attached List.

Mayor Thalhofer asked are there any agenda updates?

Kvarsten replied we have no updates this evening.

2. CONSENT AGENDA:

2.1 Accept Minutes: May 27, 2003 Regular Council Meeting.

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

3. PROCLAMATION: Proclaiming October as Disability Employment Awareness Month.

Mayor Thalhofer read the proclamation.

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

Robert Bryant stated my property abuts CP Park. There is an overabundance of trees and bushes and a lack of lighting in the park, which is a safety concern for the general public. My car has been broken into eight times since Albertsons has opened and the walkway that

runs through the park to Albertsons was constructed. In the last three years I have probably spent \$6,000 on repairs due to vandalism. I am requesting that some of the bushes and maybe a few trees be removed and that additional lighting be installed along the trail. I have spoken with Clyde in your parks department and he has been trimming the trees but that hasn't alleviated the problem. I have also spoken to the police.

Council directed staff to put this issue on the next City Council Agenda and have the police give a report on the activity in the park and have the parks department provide some cost estimates and possible solutions.

5. MOTION: A Motion to adopt the decision and Findings of Fact and Final Order regarding the appeal of Sandy Dell Acres Subdivision.

Mayor Thalhoffer asked the City Attorney to review the legal process.

Marnie Allen, City Attorney stated this proceeding is a quasi-judicial land use hearing which means that the procedure for adopting a motion and decision is governed by the requirements in state Law and the Troutdale Development Code. On August 26th the City Council held a public hearing to receive testimony from those that were in attendance. The Council closed the public hearing at that meeting. The record was left open for seven days so that the appellants could submit additional written information because they had made that request. You also gave the applicant ten days to submit written rebuttal. Tonight this matter is before you for deliberation and decision only, which means that Ms. McCallum will present the staff report which basically summarizes the information that was presented by the appellant and the rebuttal for the applicant. The Council will be free to ask Ms. McCallum or other staff questions that you have in your deliberations. Because the public hearing has been closed and the record is closed it will not be opened up for additional public testimony. I would also remind the council to declare any ex-parte contacts, bias or conflicts of interest at this time.

Councilor Gorsek stated I have known Brian Scott for a number of years. I know a couple of folks in the audience and I spoke to them very briefly at the last council meeting. I can make a fair decision.

Councilor Ripma stated I was informed that while I was not present at the August meeting, that if I reviewed the tape of that meeting I could participate in the deliberation and decision tonight. I have reviewed the tape.

Councilor Kight stated I also was not present at the August meeting but have reviewed the tape so that I could participate tonight.

Elizabeth McCallum, Senior Planner stated the proposed project is an 11-lot subdivision located in the east part of the city, east of Stark Street. Sandy Dell Road runs on the south side of the proposed subdivision site and on the north side of the Sandy Heights subdivision. I have summarized the issues in my staff report, as I understood them, which were raised by the appellants. Stormwater outfall issues were raised. There were concerns about stormwater that flows through the ditch part of Sandy Dell Road and into a culvert and then

outfalls into property east that is owned by the Dorrroughs. The applicable development code standard for surface drainage and storm sewer systems are: *No partition or subdivision shall be approved which does not make adequate provisions for storm or floodwater runoff. The stormwater drainage system shall be separate and independent of any sanitary sewer system. Inlets shall be provided so surface water is not carried across any intersection. Surface water drainage systems shall be approved by the Director.* The applicant's preliminary plan has been designed by a professional engineer, Lynn Harnisch of Denali Engineering. It has been designed to make adequate provisions for storm runoff. (McCallum showed a drawing of the historic drainage of the site provided by Mr. Harnisch, copy enclosed in the packet) The stormwater drainage system is separate and independent of any sanitary sewer system and meets the standard. Inlets are provided so that the surface water is not carried across any intersection. The City's Chief Engineer has concluded that if a concept is approved, it will still allow latitude for public works staff to guide and refine Denali Engineering's design. This is in keeping with the provision of the standard that states, "surface water drainage systems shall be approved by the Director". Another standard that is applicable to storm water is: *Accommodation of upstream drainage areas. Culverts or other drainage facilities shall be large enough to accommodate potential runoff from the entire upstream drainage area, whether inside or outside of the development. The Director shall determine the necessary size for the facility, based on the provisions of the construction standards and specifications, assuming conditions of maximum potential watershed development permitted by this code. The City will not participate in the cost of oversizing a stormwater system.* The Planning Commission found that the proposed stormwater plan accommodates all upstream drainage areas of the subject site. Denali Engineering's report further establishes that this standard is met and the Chief Engineer believes that it is feasible to meet this standard. Concerns that have been raised will be addressed through compliance the conditions of approval. Also in consideration is the standard: *Effect on downstream drainage. Where additional runoff incidental to the development of the subdivision will overload an existing drainage facility; approval of the subdivision may be withheld until provisions have been made for improvement of said potential condition.* The appellants have stated that the downstream drainage is impacted by the development. There has been much discussion about the stormwater outfall to the Dorrrough's property. The property that they are speaking about is east of the Sandy Heights Subdivision. Vern Cook is one of the appellants and he did respond in writing and his letter includes written comments from Mrs. Dorrrough further explaining their concerns. The stormwater facility can be designed to mitigate for any effect on downstream drainage. Condition of Approval 1(f) and 1(g) were written specifically to address concerns that were raised with respect to drainage off site. *Drainage easements, when topography or other conditions make it impractical to include drainage facilities within street right-of-ways, perpetual unobstructed easements at least 15 feet in width for such drainage facilities shall be provided across property outside the road lines and with satisfactory access to the street. When a proposed drainage system will carry water across private land outside the development, appropriate drainage rights must be secured.* Another issue raised by the appellants was that appropriate drainage rights had not been secured. Within the subdivision itself on Lots 9, 10 and 11 there will be some drainage easements on site but the applicant has stated in their written rebuttal, "the applicants storm drainage plan takes care of all the new water generated by the subdivision and new water from Sandy Dell Acres will run down the south side of Sandy Dell Road. Another issue raised

by the appellants was the opening of Hall Lane to cross over Sandy Dell Road. It was suggested by the appellants that SE Hall Lane does not need to be connected. Neither planning staff nor public works staff supports the closure of SE Hall Lane. This connection implements the land use standard with respect to street connectivity and the Comprehensive Land Use Plan Goal 12 with respect to transportation and street connectivity. Multnomah County Transportation has stated that of the two options to access the subdivision either via 32nd Street from Stark Street to Hall Lane or from Sandy Dell Road, SE 32nd Street to Hall Lane is the more ideal of the two options with respect to access safety and to help mitigate problems at the Sandy Dell Road access. Another subject of the appeal was why is Sandy Dell Road only going to be partially paved. The question was asked, were the easement holders told by public works that they were not allowed to pave the road. The City's Chief Engineer response to that question is that in October 2002 when they asked that question there was still a question about the ownership of this segment of the land. Since that time that has been sorted out and established that this portion of Sandy Dell Road, which is identified as Tract A in the subdivision, is owned by the Zifcaks. With respect to requiring Mr. Zifcak to pave the entire length of Sandy Dell Road within the city limits, the Planning Commission only required him to pave the portion that is on his property because the law does not allow the city to condition an off-site improvement without the appropriate nexus. The nexus has not been established. Public works and planning staff do not oppose the paving of the entire length of Sandy Dell Road within the city limits. In addition to the paving of Tract A within the subdivision, staff has rewritten the condition about the paving requirement to further clarify that it would be the length of Sandy Dell Road within the subdivision from the east property line to the west property line. In addition, this will also serve as a fire access, Condition 8 speaks to signing this as a fire lane and the wording of sentences of Condition 8(a) and 8(b) does need to be revised as follows: from "no less than 25-feet on center" to "no-more than 25-feet on center. The appellants also raised the issue of standing water and the potential of the breeding of mosquitoes in the stormwater trough that has been proposed. Vector control and compliance with the Portland Stormwater Management manual for proper maintenance of the proposed stormwater trough will address this concern. The appellants also question whether the Sandy Dell Road easement is either 30 feet or 40 feet and that possibly the proposed lots wouldn't be in compliance with the minimum lot sizes. The written comments from Mr. Cook state that the back and forth conveyances between the Parks and Hardys and the City of Troutdale may have created an additional ten foot easement for the residents on Sandy Dell Road and it might affect whether or not the applicant has complied with the Troutdale lot size requirement. In response to that the proposed lots are outside of the 1921 easement, which is only 30 feet in width and conform to the dimensional standards of the R-7 Single Family residential zoning district and corrective action is not necessary. In Mr. Cooks letter he mentions a phrase that could possibly be misunderstood. I have summarized that in my staff report to you as that of deeding of Sandy Dell Road from the southeast corner of the Zifcak property to SE Stark Street. The applicant did not suggest that Sandy Dell Road be deeded to the city. This idea is raised only in Mr. Cooks letter. The recommendation to deed Sandy Dell Road is contrary to the 1921 easement language. Approval to pave Sandy Dell Road does not require the deeding of that private road to the city. Another issue on appeal is the engineering concerns about the grade change between Sandy Dell Road and the crossing of SE Hall Lane. Those were raised in the Dorrough's letter that came forward with Mr. Cooks written response. The

public works department reviews all construction for streets for conformance with the City's Construction Standards for Public Works Facilities and standard engineering practices. Staff is confident that the intersection can be designed to meet the standards and not result in a hazard. My staff report attempts to summarize the issues raised. The Council may affirm, reverse or remand the Planning Commission's decision. If the Council decides to reverse the Planning Commission's approval, the Council should give staff direction to prepare modified findings, take a short recess while staff prepares the modified findings and then reconvene the meeting to adopt the modified findings. In considering a remand to the Planning Commission, land use rules require that the City make its decision within 120 days of the application. The 120-days have already been suspended twice by the applicant. Even with the suspensions, this land use application now stands at day 119. A remand of the decision could only occur if the applicant requested another extension of the 120-day rule. The applicant is not obligated to request an extension. Staff is recommending approval of the tentative plat of Sandy Dell Acres, as proposed, subject to compliance with conditions that have been drafted for your consideration. The conditions are written to address concerns raised by the appellants and other interested parties. A new draft Findings of Fact and Final Order and Conditions of Approval are in your packet as Attachment A2.

Councilor Daoust stated the pipe that runs onto the Dorrough's property, that they clear cut below the homes that they are saying is an erosion hazard from the water coming out of the pipe. I want to clarify that none of the stormwater drainage system in the new development hooks into that pipe in any way, is that correct?

McCallum replied that is correct. This has been designed to not connect to the Sandy Heights system or connect to the storm drain culvert in Sandy Dell Road.

Councilor Daoust asked so if there is a problem with that pipe and there is erosion damage, who is responsible to fix it?

McCallum replied I don't have an answer to that question.

Mayor Thalhoffer asked if the City Attorney would respond to that question.

Marnie Allen, City Attorney stated I would like to clarify that we are talking about the pipe that is part of the storm system in the Sandy Heights subdivision that discharges water from that subdivision onto the Dorrough's property.

Councilor Daoust stated either that or it is an old pipe that has been there for years. I am not sure if it was part of the Sandy Heights subdivision. My impression is that it was an old pipe that has been there for years.

Marnie Allen stated it is my understanding that there are two pipes. One under Sandy Dell Road and a separate one for the Sandy Heights subdivision.

Travis Hultin, Chief Engineer stated I believe what Councilor Daoust is asking about is the pipe that runs along Sandy Dell Road that has been there for many years and it outfalls to an existing trench reentrance. (Travis pointed it out on the map)

Councilor Daoust stated yes that is the one I am talking about.

Travis Hultin stated that is not part of the Sandy Heights system. That would be the responsibility of the Sandy Dell Road Association because it drains Sandy Dell Road.

Marnie Allen stated in a simplified way, it would be the responsibility of whoever owned and installed that drainage system to serve their property.

Councilor Daoust stated that answers my question. It is not part of Sandy Heights. Sandy Dell subdivision is not going to connect to it. It is an independent problem not related to this subdivision at all.

Travis Hultin stated well yes and no. It is not connected to any of the collection or conveyance systems in Sandy Dell Acres or Sandy Heights. However, it will be collecting water from the paved portion of Sandy Dell Road that is proposed to be paved as part of this project. So there will be some additional flow.

Councilor Kyle asked is that the pipe that goes onto the Dorrough's property that is broken?

Travis Hultin replied yes. I believe that is the one that they referred to.

Councilor Ripma asked if anyone is going to develop this property they have to have a stormwater system. Some other alternatives to the system that is proposed were discussed. It sounded to me like all of the other alternatives would require permission of at least one of the appellants or some property owner down the hill. Was that ever explored? Obviously we have appellants so they are not going to be very supportive of that, but was that ever proposed by the applicant?

Marnie Allen stated that was the initial proposal. The applicant submitted a storm drainage plan that connected to Sandy Heights and the appellants objected to that and objected to putting more water into that system. That is why an alternate proposal was developed.

Councilor Ripma asked does this alternate proposal meet the criteria?

McCallum replied yes it does.

Mayor Thalhofer asked is there another system going along Sandy Dell Road in addition to the pipe that is broken that drains onto the Dorrough's property?

Travis Hultin replied there is not other system along Sandy Dell Road. There is another system in Sandy Heights that discharges at a separate point on that large parcel that the

Dorrroughs own east of Sandy Heights. There are two discharge points, one is from the pipe on Sandy Dell Road and the other is from the Sandy Heights system. They are separate.

Mayor Thalhofer asked are there flooding problems from pipe number two?

Travis Hultin stated I am not sure which pipe you are referring to.

Mayor Thalhofer stated pipe number one being the pipe that is broken at the end.

Travis Hultin stated I am not aware of any flooding problems from pipe number one, as you just numbered them. Pipe number two, the Dorroughs have raised complaints about the storm drainage from the outfall. That is the Sandy Heights system which discharges further to the south.

Mayor Thalhofer asked the drainage system that is being proposed by the applicant is in addition to either of those drains?

Travis Hultin replied that is correct. They will have a separate discharge point and would be a separate system.

Mayor Thalhofer asked if the drainage system that is being proposed by the applicant doesn't work or causes problems could there be a back-up system that could be implemented immediately? It appears that there are things that can be done but I am asking who would implement the back-up system?

Travis Hultin replied this is kind of a sticky question. The actual discharge portion of the facility is going to be privately owned. The collection portion of the system, a great deal of it would be publicly owned. You will probably hear a few different legal opinions on who is truly legally responsible for that storm drainage. Whether or not the city would respond to that problem would probably be a policy question. Certainly, that is the type of thing that our crews could respond to the way we respond to any other flooding problem in the city that may occur from any other type of detention or disposal facility.

Mayor Thalhofer asked is there a way to get the city crews to respond to flooding if the system doesn't work as planned?

Travis Hultin replied it could be done. Our crews are capable of dealing with those types of situations to the extent that we have the resources and equipment to do so. Whether or not we respond to a flooding problem that is in unincorporated Multnomah County and is a privately owned facility, that is a policy question.

Mayor Thalhofer asked because this system is untested and if it is implemented and doesn't work right, is there somehow we can assure the people in that neighborhood that they are not going to get flooded out? Or if it starts flooding, that we the city can take the initiative and try to implement a back-up plan? I am not sure I am comfortable with just saying that someone needs to respond to this. Maybe the city could take that initiative. Is that a possibility?

Jim Galloway, Public Works Director stated I think there are a couple of different things Mayor. I think the answer, to a certain extent, is it depends. If that drainage system isn't working too well, but the reason is we are having an extraordinary storm event, there are a couple of things. One, it is not designed to handle the largest storm that ever comes along. Secondly, if we are having an extraordinary storm event, the crews that we have are probably going to be stretched very thin. In that situation I doubt that we would respond unless it was a life or death situation. If you are looking for a guarantee that there will never be a problem or complaint, there is probably no storm system that we have in the city that could meet that test. I think Travis gave you an accurate answer. If it is a situation where debris gets into the system and causes a blockage, if it is a malfunction of a control device where we can go in and adjust the device that lets out the appropriate flow, those are things that we could do and I would anticipate that we would do. I think the answer is, if it is a relatively normal situation or a fairly normal malfunction, I think we would go in and take care of it as we do anywhere else in the city. If it were an extraordinary event, this would quite likely not be the first priority.

Councilor Kight asked when Tract A is paved and we turn a once graveled road into impervious surface, is the stormwater system that handles the runoff going to be upgraded? Is that a condition of the development?

Travis Hultin replied there are no specific conditions that speak to enlarging or upgrading the pipes along Sandy Dell Road. We would look at the storm drainage to ensure that it has enough capacity. If it turns out that the capacity is not there then it would need to be upsized. There is currently runoff from the gravel road. They will also be crowning the road, which it doesn't have now so half of the street will runoff into the ditch.

Councilor Kight asked is that stormwater pipe a closed system?

Travis Hultin replied partially closed and partially open. Basically there is an open ditch that runs for a considerable length down Sandy Dell Road and then it goes into an inlet where it goes underground and is taken from there to the outfall.

Councilor Kight stated lets focus on Tract A. Under Tract A would that be a closed system?

Travis Hultin replied I am not certain where the pipe ends and the ditch begins.

Councilor Kight asked if they are upgrading the street would they automatically have to bury the stormwater pipe?

Travis Hultin replied not necessarily. It depends on the design of the street.

Councilor Kight stated if you have 15,000 square feet of impervious surface you are going to have a considerable amount of runoff.

Travis Hultin stated there will be an increase yes.

Councilor Kight asked does that water all drain into the Dorrough's property?

Travis Hultin replied the south half of the street will.

Councilor Kight asked so there is no condition for upgrading the system even though they are adding impervious surface?

Travis Hultin stated like any part of the stormwater system, we will review their plans and determine where we believe those changes need to be made and we will make that a requirement.

Councilor Kight asked was there ever any thought that there would be a retention pond on this property so that all the water from this subdivision would be captured on this subdivision so it wouldn't outflow to the east?

Travis Hultin replied a retention pond is where the water is not released it is held. The only type of facility where that really works is where you have an infiltration facility. If you are talking about a detention pond, which holds water temporarily and then releases it at predevelopment rates, this project has that built into it.

Councilor Kight asked and that is designed for a 25-year flood event?

Travis Hultin replied up to a 25-year event, which is the standard.

Councilor Daoust stated in Denali Engineering's report where they answered the question of no backup plan, their answer was that there is no backup plan necessary because the system will be tested before it is permitted. How do you go about testing or who will test the system before we permit it? How do you go about that?

Travis Hultin replied that is something that was offered by the applicant, I have not discussed that with their engineer.

Councilor Daoust stated I was under the impression that the troughs behind Lots 9, 10 and 11 were just servicing those three lots. That was clarified tonight that the entire road system above those lots would also be piped down to the detention ditches below Lots 9, 10 and 11. Are you comfortable with that?

Travis Hultin stated let me clarify that. I believe in their initial proposal they proposed to put infiltration trenches, individual trenches one per lot. That is a completely different type of facility with infiltration trenches each dedicated to a house, which would take the roof drainage from the lot only. That is also when they were proposing to connect to the Sandy Heights system. When they changed their system to disconnect from the Sandy Heights system, they replaced those infiltration trenches with one trench along the entire eastern boundary across all three lots that will serve the road drainage and lot drainage for certain lots. There are still a couple of lots that they are proposing infiltration trenches for.

Councilor Daoust asked are you comfortable with those trenches serving all of the road drainage also?

Travis Hultin replied it is one trench along those three lots; yes I am comfortable with that. That trench is really just a dispersal facility. It is not designed to retain.

Councilor Gorsek stated we have quite a bit of impervious surface that is going to add. The engineer states that they are going to keep the same flow patterns, but actually when you start putting a bunch of driveways and houses and paved streets you actually take away a lot of percolation.

Travis Hultin replied that is correct and happens with any development. When you add impervious surface obviously you are going to have greater volumes. That is the purpose of the detention pipe. While you can't do anything with the volume, what you can do is control the flow so that it mimics or flows at the same rate that a predevelopment storm would create.

Councilor Gorsek stated so basically what we are doing is we are taking all of that water and focusing it on the other property?

Travis Hultin stated there is going to be some drainage that would have infiltrated into the ground that will now be discharged.

Councilor Gorsek asked the split between the public and privately owned facilities. The public portion is the paved surfaces on Sandy Dell Road. Is the private part just the part where the dispersion section is?

Travis Hultin replied I believe so.

Councilor Gorsek asked so we are going to collect it all and we are going to hope that system works right and that water is going to go away like it is suppose to, which is contingent upon the private system, is that right?

Travis Hultin replied that is correct.

Councilor Ripma asked the reason that it is okay that they are discharging water to the east is because that mimics the flow that exists before the development?

Travis Hultin replied correct.

Councilor Kight stated what you are telling us is the flow rate is going to be the same but the volume is going to increase. Is there a legal question as far as dumping that water to the properties immediately to the east?

Travis Hultin replied my understanding of Oregon drainage laws is as long as you discharge essentially at the same point and flow rate that you are permitted to do so.

Councilor Kight stated I am concerned about the volume. I understand the theory of the flow rate but I worry about the volume of water that is going to be dumped on those properties to the east and I don't hear any comfort measures. Could this be mitigated by disconnecting the water that is draining off of the roofs from the system?

Travis Hultin replied first of all your concern about volume; the only way to decrease volume is through infiltration by having a separate system that sends the water out to different places. As far as the disconnection of the downspouts and draining onto the lot, that is not allowed in the Uniform Building Code, as I understand it. As far as using infiltration trenches for these lots, if you look at Lots 9, 10 and 11 where they originally proposed infiltration trenches, the soils analysis has determined that would not be an appropriate location for infiltration facilities.

Councilor Kight asked is there a way to run a closed pipe down to the Sandy River?

Travis Hultin replied theoretically that could be done.

Councilor Kight asked or instead of going all the way to the Sandy River can we tie it into another system, so you don't have all this water running to the east?

Travis Hultin replied the closest thing to a ditch like you are referring to, if I understand you correctly, would be the existing gully that is on the north end of the Dorrough property where the Sandy Dell Road culvert currently lets out. Other than that the only ditches in that area is the one on Sandy Dell Road.

Councilor Kight stated and that disperses onto the Dorrough's property.

Travis Hultin replied that is correct.

Councilor Kight asked the City Attorney, do you find comfort in the fact that according to our engineers that these eleven lots that are going to be developed are going to drain onto the lots just to the east?

Marnie Allen, City Attorney replied yes. Travis explained the legal standard to you and as long as you are releasing water at pre-development flow rates in accordance with the natural drainage pattern that historically existed on the property, the receiving property basically has an obligation to receive and accept that storm water even if you are increasing the volume. The reason for that is there could basically be no development on any land that can't accept the water that is trying to be infiltrated and retained on the property.

Councilor Kight asked so what you are telling me is that the properties immediately to the east, they are going to have to capture the water that is coming off of the eleven lots in this subdivision and put it into the closed system?

Marnie Allen replied no, what I am saying is that this system, as I understand it, is designed to mimic what is happening now only the volume of water will increase so it will be released

over a greater time period. They will have water running over their property, or absorbed in different ways with some of it going to the ditch, some of it being taken up by plants, some of it going into the ground, the same as the water theoretically is going across their property now only there will be more. Instead of having water going across the property for one hour it will be one and one-half hours.

Mayor Thalhoffer called for a 10-minute break at 8:34pm and reconvened the meeting at 8:45pm.

Mayor Thalhoffer stated the matter is before the council for discussion and a decision.

Councilor Kyle stated the drainage system is an unproven alternative but I believe that Travis Hultin said it is the up and coming thing of the future and the direction the drainage systems may be heading.

Councilor Daoust stated I do have a lot of concerns about the stormwater drainage but not enough to not approve this the way the planning commission approved it. The stormwater issue, we have been provided a lot of credible and substantive evidence in the record we all have in front of us that I think demonstrates that the proposed stormwater system can adequately handle the stormwater. I have seen some good arguments from Jill Dorrrough but not enough evidence to demonstrate that the system won't work. We have to rely on our engineers that work at the city to review the work that other engineers are hired to look at. Even though there is a level of discomfort about the stormwater system, I am comfortable enough to approve it knowing that we will review the final plan. It stills needs our engineering staff's approval and I am confident that any new information or any hesitation of what they see in front of them will be dealt with by our own staff if it is not dealt with by the developer. As far as the street connection, I guess traffic from ten additional houses going down Hall to 32nd, or even less than that if a lot of the new subdivision owners decide to go out Sandy Dell Road, that minimal amount of traffic is not adequate reason for the council to deny a street going through. I think the street should go through for the very reasons that we have held other developments to, mainly connectivity. I don't agree that we are trouncing on any existing private property rights for the Sandy Dell Road by making that connection. I don't have any objection at all to paving Sandy Dell Road should the funding by all or some of the easement holders come through. I think the city should approve the paving if it comes before us as a question. The access off of Stark Street, I feel more comfortable that the 32nd Avenue access, for safety reasons, is a better entrance and exit for the whole area. That is another reason why I would okay the street connection between the north and south subdivisions. The existing drainage pipe, that we referred to as pipe number one, on the Dorrrough's property has been flowing runoff since before they bought the property and as such is the product of owning that land. I am not convinced that there is going to be that much more runoff from the paved road that will be crowned then there currently is. I have been shown no convincing evidence that would show me that there is going to be that much more runoff from that portion of the paved road. The road will be crowned and half of the runoff is going into the Sandy Dell Subdivision system. To wrap up where I am at is I am comfortable, based on the information that I have in front of me and the oral testimony that I

have heard and the additional written testimony that we received after the last meeting, upholding the findings that we have in front of us in tonight's packet.

Councilor Gorsek stated it is amazing to me that such a small project can be such a mess. One of the things that I really do worry about is we have this system that is untried, there is nothing wrong with untried systems, we have to start somewhere. I respect our engineers and I think that city staff and the engineers for Mr. Zifcak have all tried to the best job possible. I am disturbed that we are making a decision without knowing what the climate data is for the recent past. You can have a 100-year flood two to three years apart. It is not that hard to have a 25-year event two or three years apart. I am somewhat concerned about overwhelming the system. I am very concerned about public versus private. I know we are supposed to say we like public versus private where we are both working together, but not in this particular situation where it is "that is not mine". It is kind of like the Dorrrough's pipe, who is responsible for the pipe? I think that the pipe flowing onto the Dorrrough's property, while it probably won't have that much more flow, it exemplifies the problem with public versus private. Part of the system is ours and part of it is private. Maybe we will respond to it if it is serious enough, and I understand that because we have our own priorities. We are also looking at a situation where it is somewhat easier to dump water to the east because that person is not a voter in our district. One of the things that I keep hearing is that is the county and that is the city. I sense a little frustration myself in terms of who is responsible for all of these things. The question of flow versus volume, yes the flow may be the same but the volume may be more. Anyone who has ever looked at slope issues, when you put more water on a slope you have potential for more movement of that slope. I would vote against this.

Councilor Ripma stated these quasi-judicial hearings are always hard. We are trying to balance the facts and make a decision. The appellants don't really want further change in the area and I don't blame them. I didn't like it when they developed the property next to me, so I sympathize. However, you also have the property owner who is allowed to develop his land. I am most concerned about the stormwater. The other issues are easier to affirm the planning commission's decision. The stormwater worries me but I guess I agree with Councilor Daoust's analysis in the end. I would feel more comfortable if a more traditional stormwater system was possible but that requires rights to be granted by adjacent property owners who don't want to grant them and that is their right. On the other hand it is the right of the owner of the property to be able to develop his property. So that owner has to come up with some system that meets all of the requirements and this proposal that allows the same historic flows to the east apparently meets the letter of the law in this state. I am sure our staff will make sure that it is constructed to work the way that it is proposed. It is not a traditional system but I don't think we have the grounds to deny this development based on what we have heard. If there was a way to obtain an easement or pipe down to the Sandy or permission to use the ditch that is there, I would be more comfortable but the property owners don't have to grant that and they have chosen not to. I think this proposed system meets the legal requirements. This is not an easy choice. I really sympathize when I see more greenspace covered with developments but it is allowed and it is what keeps this city vibrant and it is the right of the property owner. For that reason I am prepared to affirm the planning commissions decision.

Councilor Thomas stated I don't have much more to add to what Councilor Daoust and Councilor Ripma have already said. I agree that the crossover road is necessary, one for public safety and also for access in case of emergencies.

Mayor Thalhofer stated SE Hall Road should go through for connectivity and provide access to Sandy Dell Acres and to Sandy Dell Heights. That would also provide better access to Stark and for emergency response vehicles. I think that Sandy Dell Road should be paved. That is not part of what we are considering tonight but I would hope that the homeowners and the people that live in that area would all get together and pave the remaining portions of Sandy Dell Road both to the east and west of the Zifcak development. The city cannot pay for that because it is privately owned. The drainage system is an unproven system and as far as I know this is the first time anyone has tried this system. Anything that new and innovative I think is wonderful and I hope it works, but if it doesn't work I have a real problem with what happens then. If it doesn't work we could have a pretty big problem out there. In a 25-year flood event perhaps we can't do much about that but I want the City of Troutdale to be the first responder in case it isn't working and come forward and immediately put together a Plan B to prevent flooding to the neighbors downstream. To rely on the homeowners association or the developer to take action in this kind of situation doesn't seem to be realistic to me. I am concerned that neither the homeowners association or developer will take action. The city should then step in and take the initial action to make sure that something is done to stop any unnecessary flooding downstream. I would be in favor of that but that would be an amendment to what we approve. I think ideally it would be a big pipe that would go all the way down to the Sandy River to handle all of the runoff.

Councilor Daoust asked could you clarify what you mean by an amendment, in other words a Plan B?

Mayor Thalhofer stated you have the untried drainage system and I am not comfortable with a first time system and not having a backup system in case that doesn't work the way it is suppose to. Often times these innovative first time systems don't work the way they are suppose to and sometimes they just need some tweaking and other times they need more than that. But in any event have a Plan B be part of this where the City of Troutdale would be the first responder to problems in case the unproven drainage system doesn't work right.

Councilor Daoust stated so you are suggesting that in emergency situations we would respond but you are not saying that we would pay for a new system, or are you?

Mayor Thalhofer replied no. I am just saying that if Plan A doesn't work right then the City of Troutdale would be the first responder to the emergency. I think the city needs to step up and help protect the people in that area.

Councilor Ripma stated what you are describing I support and would be what would happen. If there was an emergency the city would step in and help.

Mayor Thalhofer stated I don't think that is what would happen the way this is setup.

Councilor Ripma stated if you are saying you favor requiring the developer to have a Plan B as part of their application, it is my understanding that is not legally required.

Councilor Kyle stated I am looking at the letter to us from our city engineer, on page two the third paragraph. It looks to me like this is the concept and the city engineer is going to be working with this and changing it as required to make it work.

Mayor Thalhoffer stated they are going to test it if they can before they implement it but after it is implement then we basically step out of the picture. The memo from Travis Hultin states that in case of a flooding situation the developer or the homeowners association's response action would be to reroute floodwaters using diversion trenches, sand bags and/or bypass pumping. Again that is referring to the developer or homeowner. I am saying that the City of Troutdale ought to take a leadership role in implementing a Plan B. I just want to make the city the first responder instead of the developer or homeowners association. The city could bring in the homeowners association and/or developer and provide them with some leadership and direction on what needs to be done.

Councilor Thomas stated I need a little more clarification. It sounds like the city policy already takes care of that in that the city already responds to emergency situation anyways so I am not sure that needs to be added as a condition.

Councilor Gorsek stated I don't think that is what Mr. Galloway said. I think he said it would be prioritized depending upon what was going on in the city.

Jim Galloway, Public Works Director stated Councilor Gorsek summed up what I mentioned earlier as far as prioritizing. If we have a multitude of problems likely to occur if we have an unusual storm event we would probably prioritize forces where the greatest danger was and this probably would not be it. The downstream property that could be suffering the effects, primarily undeveloped properties would probably not be the first priority that we would have. As far as the comments that are made in Mr. Hultin's memo to the Council, he was responding to a situation that we were asked to comment on. I think we were trying to advance a position that put the city at the least potential exposure. Certainly if it is the desire of the council that we take the lead we can certainly do that.

Councilor Kight stated everyone is concerned about the stormwater runoff. Looking back at the 1992 and 1996 flood events they are very destructive for a variety of reasons. Water can do a lot of damage very quickly. If we were to have another event similar to the 1996 event, even with the best intentions of our engineers to mitigate those problems, I am sure they would be so overwhelmed with projects throughout the city that it would be the proverbial finger in the dike. I think I am going to propose a more pro-active approach which is that a certain percentage of the water would be retained within that subdivision and not percolate down to the properties immediately to the east. I was thinking today about the amount of energy, time, money and resources that have been spent on an 11-lot subdivision. There are several issues here and there are so many different people that are involved in this. I like to get to the bottom line and find out how we can make this subdivision work. We move into

Troutdale away from the City of Portland and we like our trees and the openspace and you always hope that the property next to you doesn't develop, but here we are today. I understand exactly how you feel but it is going to happen. So how do we make it all work? I was thinking that if we took a more positive approach, knowing that he is going to develop the property and we all came together to figure out how to make this work. The one issue that I want to focus on is the stormwater. If we go ahead and do this, what is going to happen if the system fails? Who pays for it? It has been my experience that when there is a problem they come to us. I wonder if there isn't some way that the property owners to the east couldn't work together with this developer and see if there is a way to put the system into a closed pipe and everyone would benefit.

MOTION: Councilor Ripma moved to affirm the Planning Commission's decision and adopt the Findings of Fact and Final Order as set forth in our packet. Seconded by Councilor Daoust.

FRIENDLY AMENDMENT: Councilor Kight moved for a Friendly Amendment that yet to be determined a certain percentage of the water from this 11-lot subdivision be captured within the subdivision and not enter into the stormwater system.

Councilor Ripma stated I don't think we can do that. I think a certain percentage of the stormwater is caught on the property. Some of it is not. I do not accept the friendly amendment because it is captured in here. Also we need to make a decision whether this is legally sufficient or not.

Councilor Kight stated can I amend the friendly amendment to capture a portion of the stormwater runoff yet to be determined, the percentage of the water that runs off from the impervious surface. Can we do that?

Marnie Allen replied we would need to craft a condition that is not so vague that no one could understand what was required of the condition. We would also need to make sure that if we are imposing a condition it is feasible to comply with it. I don't know if we know if the soil conditions anywhere on that site are suitable for accepting water on site.

Travis Hultin, Chief Engineer stated I think the applicant's proposal is already doing what you are asking. They have infiltration trenches for the roof drainage for a majority of the lots.

Councilor Ripma did not accept the Friendly Amendment.

AMENDED MOTION: Councilor Ripma moved to amend his motion to include the following change to Condition of Approval 8(a) and 8(b) from "no less than 25-feet on center" to "no-more than 25-feet on center". Seconded by Councilor Daoust.

Councilor Ripma stated I think we dealt with the issue that Councilor Kight brought up. Mr. Mayor as far as your issue, which I think is an important one, I think the city would be the first responder in an emergency. I don't favor explicitly relieving the homeowners association or the developer from responsibility and putting it on the city. I think that is where it will go in the end if the homeowners don't step forward and I agree with you that could be a problem. But I am not convinced that there is a need to make it explicit and actually relieve them of their primary responsibility. For that reason I don't favor altering this. I think our staff is going to do the very best they can to make this work. I personally don't think we have any grounds for denying the developer permission to go forward with this based on the evidence that has come forward.

Councilor Daoust stated when I look at the stormwater plan that is presented here I don't see a brand new plan. When you look at the components of the plan, the only thing that is brand new that is untested is the concrete trough on Lots 9, 10 and 11. The soakage trenches on the rest of the lots is not new, that is similar to what we have done on other developments. The catch basins at the low end of the road intersection, that is not new. The drainage pipe in the road is not new. We keep talking like this is this big untested stormwater system that has never been tried before, that is true about the trench on lots 9, 10 and 11. In regards to that trench on lots 9, 10 and 11, what if it fails? What is to the east of that? Granted it is other private property but it is mostly a tree and brush landscape. It is quite a distance from that trough even down to Sandy Dell Road. The distance between the road and the trough is native vegetation that has not been cut and the infiltration rate, I would think, would be tremendous if the system failed. If the system fails, I agree with the Mayor and Councilor Ripma that the city will step forward and address any problem that comes up. If that ditch system fails there are no homes immediately to the east of that anyway. Sure it would be a problem we would have to take care of and I feel confident that the city would.

Councilor Kyle stated I don't have any comment.

Councilor Gorsek stated I think we have heard testimony that says there is property and a house and a well east of all of the trench area. Secondly, it is not just the water from those three lots because everything ties into that system. I have seen slopes with a lot of water in them with trees on them that will slide. I think the issue of increasing volume is extremely important.

Councilor Thomas stated I have no additional comments.

Mayor Thalsofer stated some of the councilors are convinced that the city is going to step in and take care of the flooding problem and that is not what I am getting out of this. Maybe I am reading a different memo from the Chief Engineer than they are reading. The trough system is unproven. It is something that hasn't been used anywhere else that they can look to and say that works well. I hope it does work. My caution is, what if it doesn't? Then who is going to take care of this situation? According to Mr. Hultin it is going to be the developer or the homeowners association.

All I am saying is I am not relieving them of their responsibility, I am just saying that the city should take the leadership in getting Plan B implemented to stop the flooding and get the homeowners association and developer together and let them know what the problem is and if they need further help from the city we would be glad to help out. We want people in our area to be safe and not have these kinds of problems especially where we have an untested system.

Councilor Kight stated there has been a lot of work done on the part of the developer. When I think of this material that we have before us I have to keep in mind that this only represents eleven lots. This gentleman has done a lot of work and he has tried to meet many of the concerns of the neighbors only to find out that he can't make everybody happy. This certainly would have gone smoother if we had cooperation from all parties concerned but it did not work out that way. I am not sure that we can require a homeowners association to take on that kind of liability. If we have a flood event similar to 1996, a lot of people were affected. We don't require any other subdivision in the city to have a redundancy program for water and storm runoff. It would great to have a closed system and have it collectively going to a collection point other than draining onto another piece of property. Having said that I have a certain amount of comfort in the fact that we are going to retain some of the stormwater runoff. We normally don't require that in other subdivisions. There are going to be improvements to the street, there will be a minimal impact as far as the traffic count on Hall Avenue. Given the size of this subdivision all the neighbors could work together to have a mutual benefit. I think this could be a very nice asset to the city.

Mayor Thalhofer called for the vote on the motion as amended.

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

Motion passed 5-2 (Councilor Gorsek and Mayor Thalhofer)

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| <p>6. PUBLIC HEARING / ORDINANCES (Introduced 9/9/03): A public hearing to consider the following:</p> <ul style="list-style-type: none">6.1 An Ordinance naming a public street NW Graham Circle.6.2 An Ordinance naming a public street NW Rogers Circle. |
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Mayor Thalhofer read the title of the ordinances and opened the public hearing at 9:45pm.

Jim Galloway, Public Works Director stated this is primarily a housekeeping measure. These two roads when they were constructed they were named and the names were put on city maps and street signs and we did all the work except for public documentation to the county to be put on the tax assessors maps. This action is being taken to correct that oversight and to get those on the map so that the city maps and the county maps are the same. We have notified the property owners that have property along the streets. We have notified the

emergency services folks and the post office. We have had no adverse reaction from any of those folks.

Council had no questions.

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

No testimony received.

Mayor Thalhoffer closed the public hearing at 9:47pm.

MOTION: Councilor Thomas moved to adopt the ordinance naming a public street NW Graham Circle and also the ordinance naming NW Rogers Circle. Seconded by Councilor Gorsek.

There was no discussion on the motion.

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

Motion passed 7-0.

7. COUNCIL CONCERNS AND INITIATIVES:

Councilor Daoust stated the surface of the walking trail at Sunrise Park is comprised of crushed gravel. There are reports of runners twisting their ankles. I would like to suggest that the Parks Advisory Committee look into different types of material that could be used on this trail.

Mayor Thalhoffer stated that is already being looked into by Clyde Keebaugh. We will be receiving a report from Mr. Keebaugh and then we can decide if we would like to refer it to the Parks Advisory Committee for further study.

Councilor Gorsek stated October is Domestic Violence Awareness Month. This is a national program. There will be a press release in the Outlook outlining a number of things that Mt. Hood Community College will be doing during the month of October. There is information on domestic violence at most police agencies.

Councilor Thomas stated many of you have received the recent privacy notice from Comcast. The Mt. Hood Cable Regulatory Commission addressed this issue last night. Comcast has requested to rewrite the privacy policy and reissue it with input from the Cable Commission. We are looking at the possibility of having the cities adopt ordinances that would tighten up the privacy requirements in Multnomah County.

Mayor Thalsofer stated we will be holding a work session on October 21st. The Port of Portland will be present to discuss their possible purchase of the ALCOA property and what they intend to do with the property. The second issue on that agenda will be the redevelopment of the former sewer treatment plant property. This meeting will begin at 6:30pm.

Councilor Kight stated Councilor Ripma brought to my attention the paving work that is being done on Troutdale Road by the County. It appears that they are just replacing the worn areas. Are they planning on resurfacing the entire street at some point soon?

Jim Galloway, Public Works Director replied I will contact the county and report back to the Council.

8. ADJOURNMENT:

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

Meeting adjourned at 10:01pm.

Paul Thalsofer, Mayor

Approved November 18, 2003

ATTEST:

Debbie Stickney, City Recorder