

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

May 28, 2002

1. PLEDGE OF ALLEGIANCE, ROLL CALL, AGENDA UPDATE

Mayor Thalhofer called the meeting to order at 7:01pm and asked Councilor Daoust to lead the Pledge of Allegiance.

PRESENT: Mayor Thalhofer, Councilor Smith, Councilor Ripma, Councilor Thompson, Councilor Kight and Councilor Daoust.

ABSENT: Councilor Rabe (excused).

STAFF: Erik Kvarsten, Jim Galloway, Rich Faith, Beth McCallum, Tim Sercombe and Debbie Stickney.

GUESTS: See Attached List.

Mayor Thalhofer asked are there any agenda updates?

Kvarsten replied we have no changes Mr. Mayor.

2. CONSENT AGENDA:

- 2.1 Resolution: A Resolution dedicating a portion of City property at Columbia Park as public right-of-way and accepting said property as public right-of-way.**

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

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

Mayor asked is there anyone here that would like to speak to us on a non-agenda item?

Gary Wood stated I believe that in the City of Troutdale we have ordinances for sidewalk clearance as far as shrubs and trees. I believe there is someone that is responsible for taking care of that. In the Beaver Creek area, where I live, there are some areas where the sidewalks are almost completely covered by shrubs. There are also cracked sidewalks that are raised up about four inches. I would like to see if something could be done about that.

Mayor Thalhoffer asked Mr. Kvarsten and Mr. Galloway to look into this.

4. PUBLIC HEARING / ORDINANCE (Introduction): An Ordinance rescinding the conditional vacation of a portion of NW Graham Circle and repealing Ordinance No. 629.

Mayor Thalhoffer opened the Public Hearing at 7:05pm and read the Ordinance title.

Jim Galloway, Public Works Director, stated the ordinance before you this evening is basically of housekeeping nature. In 1995 the Toyo Tanso Company had some expansion plans and as part of that plan they envisioned utilizing some property which would require the termination of a portion of Graham Circle and a vacation of that right-of-way to expedite their expansion plans. They brought that to the Planning Commission and the Planning Commission recommended approval. The issue was then brought to the Council and the Council approved it by enacting ordinance 629, which allowed the vacation of a portion of Graham Circle subject to a number of conditions. Those conditions have not been met and when we contacted Toyo Tanso a few weeks ago to see what their intentions were, we found that their plans had changed and they no longer had plans for the expansion and no longer had the need for the vacation of a portion of the right-of-way. To try and make sure that there was not any confusion by having an ordinance on the books we are recommending that you rescind that ordinance so that the vacation would not occur.

Councilor Kight asked what triggered this?

Galloway replied our Assistant Public Works Director, Jerry Ortega, departed the city a couple of months ago and it was one of the items that he had on his follow-up list.

Councilor Kight asked in the future if they want to expand, do they have the possibility of reversing this again?

Galloway replied if that were to occur they would need to start the process over.

Mayor Thalhoffer asked is there anyone here that would like to speak to us on this agenda item.

No testimony received.

Mayor Thalhoffer closed the Public Hearing at 7:09pm and stated there will be a second public hearing on this item at our June 11th Council meeting.

5. PUBLIC HEARING / APPEAL: An Appeal of the rear yard setback variance on Lot 12 of Sandy Heights Subdivision.

Mayor Thalhoffer opened the Public Hearing at 7:10pm and asked Mr. Sercombe to review the appeal process.

Tim Sercombe, City Attorney, stated item 5 on tonight's agenda is a quasi-judicial land use hearing. A staff report has been prepared and made available seven days before the hearing, which is required by law. This staff report identifies the approval criteria that applied to the applicants proposed variance and analyzes those criteria. You should let the Mayor know if you want us to read the criteria. That criteria is set out in the Troutdale Development Code 6.225, which incorporates the criteria set out in an earlier section. Basically they require that for a variance it be shown that there are special circumstances or conditions; that the variance not be injurious to adjacent properties or the surrounding neighborhood or otherwise detrimental to the public welfare; that the variance would be consistent with the general purpose and intent of the provision from which the variance is sought; and that the variance be the minimum necessary to relieve a practical difficulty and the resulting hardship. The procedure that the city will follow in this hearing tonight is set out in State Law and in the Troutdale Development Code. It is that first the staff will present the staff report. Second, the Mayor will then open the public hearing. The applicant will present the application and respond to the Council's questions. Anyone who wants to testify in support of the application may then testify and respond to the Council's questions. Then the appellant and those who wish to testify in opposition to the application for a variance will get their turn to testify and respond to the Council's questions. If there is testimony in opposition, which there will be here since it is an appeal, the applicant is then given a chance to present rebuttal testimony. After all of the testimony has been submitted, the Mayor will close the public hearing and the Council will deliberate and adopt a decision. It may be that the Council decides to give a tentative decision and ask staff to draw that up for them to adopt at a later meeting. If you are going to testify you need to sign-in and give your name at the beginning of your testimony so that the city has it on the record. The City Recorder is taking notes and recording this meeting and there will be minutes kept of the hearing. If you are going to submit exhibits, please identify them, talk about the exhibit when you speak and confirm that you want it included in the record before you distribute it to the Mayor and Council. Your testimony and exhibits should address the applicable approval criteria, which I discussed earlier. If you believe other criteria apply in addition to those that are addressed in the staff report you should identify and discuss those criteria and explain why you believe they apply to this proceeding. The Mayor is in charge of this hearing and he has the ability to reasonably limit oral presentations in terms of length or content depending upon time constraints. Any party may submit written materials of any length while the public record is open. If a party wants a continuance to keep the record open they must make that request before the Mayor closes the public hearing. If the City Council makes a decision that you disagree with, after it is formalized and reduced to writing, any issue you want to raise on appeal has to have been raised at this hearing for the City Council's consideration. Let me reiterate that. If you want the Council to consider something as part of this hearing, you need to raise it during the hearing before it is closed and if you don't raise an issue during the time of the public hearing you are not going to be able to complain about it on appeal. Failure to raise an issue on the record with statements or evidence that is sufficient to afford the City Council and all parties an opportunity to respond to an issue will preclude an appeal of that issue to the Land Use Board of Appeals as well as an action in Circuit Court for damages. Again, if you are going to raise an issue and you want to argue about it later on, you have to put it into the record of this hearing in order to have the ability to complain about it later on. That summarizes the procedure but before the Mayor begins with the staff presentation, this would be the time for

any Councilors or the Mayor to disclose any ex-parte contacts, conflicts of interest or bias before the staff presentation. The issue of ex-parte contact also includes views of the property. If you have gone out and looked at the property what you need to do is to put on the record what you saw and what you believe is relevant in that property view to the issues before you. That way all of the parties know what you saw and what you considered relevant and they will have the opportunity to present evidence around that as well.

Mayor Thalhofler stated this is a de novo hearing, correct?

Sercombe replied yes. Let me explain that. There has already been one hearing on this before the Planning Commission. The Planning Commission decided to allow for the variance. That decision of the Planning Commission has been appealed to the City Council. There are lots of different ways that an appeal can be processed within a city. Sometimes the Council will just consider what the Planning Commission heard and decide whether or not they agree with what the Planning Commission did. This is a de novo hearing, which means from a new. It means that we are at a point as if nothing happened before, except we can consider the material that was given to the Planning Commission. It is as if the applicant has to make his or her case from scratch. So the applicant needs to make sure that there is sufficient evidence in this hearing to allow for the application and the people opposed will have an opportunity to present evidence as well. The prior proceedings will be considered as part of the record, but any new evidence can come in at this point and be subject of the Council's consideration.

Mayor Thalhofler stated I have to state that I have had an ex-parte contact. I viewed the property in question. At the time of the viewing Mr. Dorrrough was at his house next door. I viewed the deck area that is the subject of this hearing. It appeared to me, as I stood on the deck and looked around, that it would reduce Dr. Dorrrough's privacy to some extent because it goes quite a distance out and you can view the Dorrrough's residence. You can also look down on his backyard, but I am not sure that is much of a factor because you could do that anyway. There is no side yard problem. It is the length of the deck protruding outwards that gives the vision back to the Dorrrough's property, as I view it.

Councilor Kight stated I also had an ex-parte contact and have been at this particular site. This afternoon I went to the Dorrrough's home. Basically I viewed the deck from the Dorrrough's property. Just observing from their house, it was raining quite hard this afternoon so I didn't go very far out on their deck, but you could see that all of their living space is easily visible from this deck. The deck is not finished at this point, just framed in. The interesting part is that both of these homes are backed up into an area that would be very hard to develop. There is no ingress or egress to this property. I can see why these property owners choose this property because there is nobody behind them and I am sure they did that with the idea of having privacy in their backyard. These are quite large homes. I think the Dorrrough's home is 3,500 square feet and I am guessing Hockert's home is of similar size. Both properties are on 7,000 square foot lots. So, I can see why they would want to have their privacy behind their home because the back yards are not that large and they wouldn't want people looking into the living space of their home. That is what I observed.

Sercombe asked did either of you have any conversations with the parties involved?

Councilor Kight stated yes. I had a conversation with Dr. Dorrough and his wife.

Sercombe stated you should explain what you talked about.

Councilor Kight stated they showed me some photographs that they had taken that shows the intrusion into their home. The photos were taken at night. Essentially they talked about the loss of privacy, which they feel is one of the critical reasons that they are appealing the decision that was made by the Planning Commission.

Sercombe asked in both of your cases, despite having the ex-parte contact, do you feel that you are able to judge this tonight with an open mind without having any bias?

Councilor Kight replied yes.

Mayor Thalsofer replied yes.

Councilor Ripma stated I visited the site also. I spoke with the Dorrough's and I was invited into their house. The conversation was similar to what Councilor Kight mentioned. They showed me the photos, which I believe will be introduced tonight so there is nothing that I need to relate about that. After reading the material in our packet I was interested in some of the topography that was presented by Hockert Homes to the Planning Commission. These are my observations. The lot is pie-shaped. One of the arguments was that it was unique because it had a slope. I wanted to see what that looked like and to me the backyard had just a very slight slope. The whole lot from the street through the house to the backyard has a slope. I thought that was an interesting observation. The backyard itself really doesn't have a drop-off; I thought maybe it would. I was interested in the layout of the house, which is partially constructed. The argument was made at the Planning Commission that the house had to be pushed back because of the pie-shaped lot. My observation was that it looked like many pie-shaped lots and the house would have to be built to that shape. I couldn't necessarily see a reason why the house had to be pushed back. I was also interested in the argument made to the Planning Commission that the only property that would have a view of this deck would be this 3-½ acre woods behind his house. I wanted to check that out for myself and my observation was that the vacant lot with the woods is the next-door lot behind the house, but definitely the Dorrough's house next door is also affected. That was by observation. I believe I can make a fair and unbiased decision here.

Beth McCallum, Senior Planner, stated the Planning Commission did approve a 9-½ foot rear yard setback variance for the subject site, which is owned by Mr. Greg Hockert. The address of the site is 3246 SE Hall Court in the Sandy Heights Subdivision. The appeal is made by Dr. Mark Dorrough, Jill Dorrough and Mr. Steven Yates. The Council must decide during this variance hearing on appeal whether the claims of the appellants have merit based upon the variance criteria and if so whether the Planning Commission decision should be affirmed, reversed or modified in whole or in part. In my staff report to you on pages 1-5, I have responded to the issues raised by the appellants and have provided the background of the

Planning Commission's hearing and decision in this matter. An analysis of the specific criteria for granting a variance begins on page 5 of my staff report and is based upon the Planning Commission's staff report and findings, which is Attachment "B" in your packet. There are four criteria that must be met when considering variances. Criteria "A" - special circumstances or conditions including but not limited to lot size, lot shape, topography or size or shape of the building, apply to the property development, or to the intended use and are not typical of the general conditions in the surrounding area. The Planning Commission's findings were that the lot shape and topography of the lot were not typical. That is on page 3 of Attachment "B" of my report. Criteria "B" - the variance authorized will not be injurious to adjacent properties or the surrounding neighborhood or otherwise detrimental to the public welfare. In the absence of the appellant's statement at the Planning Commission hearing, the Planning Commission's findings were based on the notion that no one had raised an issue of concern. On Page 5 of Attachment "B" is the language of the Planning Commission's finding that there would not be injury to adjacent properties or the surrounding neighborhood. Criteria "C" - the variance authorized will be consistent with the general purpose and intent of the provision from which the variance is sought. The Planning Commission's finding is on pages 5 and 6 of Attachment "B" and they found that the general purpose and intent of the setback is still met even with the setback variance. Criteria "D" - the variance is the minimum necessary to relieve a practical difficulty and resulting hardship. The Planning Commission's finding is on page 6 of Attachment "B" and they accepted Mr. Hockert's argument that decks are normally ten feet deep and based their decision upon that fact. It is my understanding that from the appellant's letter dated May 2nd that they do not believe that criteria B, C and D, which basically pertain to their privacy issues and consistency with the general purpose of the setback and is the minimum necessary. The appellants letter responds to the variance criteria about whether a variance authorized would be injurious to adjacent properties, they state, "it is true that the encroachment does not affect the vacant land to the east of the Hockerts. However, it significantly reduces the privacy of the Lot #11. Any encroachment into the setback negatively affects all of the lots that border the vacant land to the east. This will include future homeowners of Lots 9, 10 and 13 who at this time are unable to offer their comments." The appellants are owners of interest of Lot #11, which is directly north of Mr. Hockert's lot. The appellant's response to criteria C, which is that the variance authorized will be consistent with the general purpose and intent of the provision from which a variance is sought reads, "The Troutdale Development Code establishes required setbacks for neighborhoods in order to create livable neighborhoods with reasonable privacy. Any encroachment into the setback negatively affects all of the lots that border the vacant land to the east." The appellants reply to the fourth criteria that the variance is the minimum necessary to relieve a practical difficulty and the resulting hardship, reads, "We propose a compromise that would allow the Hockerts' a substantial deck, but would also give a little more privacy to the houses on Lots 11 and 13. If the 9 ½-foot encroachment were reduced to 4 ½ feet, the line of sight into the Dorrrough's windows would be substantially decreased." In my staff report on page 7, I mention that the building permit was signed by myself based upon a sketch plan showing an unroofed landing. The Development Code does allow for unroofed landings to encroach within required rear yard setbacks five-feet without a variance. There is no specific definition in the Development Code for unroofed landings. I consulted with the Building Official and he indicated that a landing is a transitional platform to the inside or outside of the house and that neither height

nor stairs are factors considered by the Building Official with respect to what constitutes a landing. A dictionary definition of a landing is, "a platform at the end of a flight of stairs." In consultation with Rich Faith, we determined that was a good definition to work with and that the proposed larger deck clearly wouldn't be considered a landing. In conclusion, I am presenting the Planning Commission's staff report and findings as part of the staff report. This evening the Council may choose to decide that the variance criteria was or was not met by Mr. Hockert. You may decide to uphold the Planning Commission's decision, reverse their decision or modify in whole or in part their decision.

Councilor Daoust asked the 9 ½ -foot variance that was granted, that is all deck right? We are not talking about a landing.

McCallum replied correct.

Councilor Daoust asked if we reversed the Planning Commission's decision tonight, the impact on Mr. Hockert's Deck would be what?

McCallum replied because he has already framed the deck he would have to cut if off if you choose to deny the variance or offer him some other dimension he would have to shorten it.

Councilor Daoust asked when the notice of Planning Commission's hearing was mailed out for this variance hearing, was Ron Johnston the only person associated with Lot 11 that was notified?

McCallum replied on the ownership list that was provided to us, yes.

Councilor Daoust asked and that list was based on the property tax assessment rolls at the time?

McCallum replied that was based upon a Title company's list supplied to the planning department by the applicant. That is our general practice, that a Title company list can be accepted to meet that condition.

Councilor Daoust stated one thing that caught my attention, and I am wondering if staff did any research on this, was the timing of the County records. Steve Yates owned the lot since September of 2001 and the County records were updated in December, which is after Steve Yates owned the property. The Title company did their list the following February. Has staff done any research as to why Mr. Yates was not on the County records in February?

McCallum replied we confirmed those dates and Mr. Yates should have been on the list provided by the title company. We can't explain why the Title company's search, which was ran on February 11th, did not have the most recent County information. On page 5 of my staff report I mentioned that only since the appeal was filed has staff learned from Multnomah County that Mr. Yates, an Appellant, has been the owner of Lot 11 since September 28, 2001. The County's records were updated on December 19, 2001. We understand that to mean that it would be available to anyone who would have access to the County's database.

The list of property owners provided by the applicant from the title company has a run date of February 11, 2002 and should have included Mr. Yates' name, based upon the County dates given. Again, we surmise why the Title company has a list that would not have reflected that ownership.

Councilor Daoust asked as far as future homeowners of Lots 9, 10 and 13, I take it those homes are not built yet?

McCallum replied Lot 13 is under construction now. I indicate in my staff report on page 7 that we have notified the parties that are constructing that lot. Ron Johnston does show as the owner of that property. The Schpankyns' are the owners of the vacant lot to the east and they have also been notified. We looked at the ownership list provided by the appellants and to our best understanding, all current owners of the other undeveloped properties are correct.

Councilor Daoust stated so this hearing tonight is the last opportunity for any of the adjacent homeowners to speak up.

McCallum replied that is my understanding of the procedures.

Councilor Ripma asked was Mr. Hockert permitted by the decision made by the Planning Commission to go ahead and put up the deck? Was he notified that he shouldn't and he should wait for the appeal?

McCallum replied Mr. Hockert did receive a letter stating the Planning Commission's decision and that there was a 10-day appeal period. That letter does not specifically say that you may not continue with constructing anything bigger than the landing that was approved.

Councilor Ripma stated so you do it at your own risk.

McCallum stated yes, he proceed without benefit of the proper procedure.

Councilor Ripma asked the City's letter doesn't say don't proceed until the appeal period is over. He had the Planning Commission's approval of the variance. He knew there was an appeal period. I am curious whether we make sure that we inform people who receive variances that there is an appeal period and that they really should wait. I wonder if the letter makes that clear.

McCallum replied the letter specifies that there is a 10-day appeal period from the date of the letter. It does not go into any great detail as to what you may or may not do during that appeal period.

Councilor Ripma asked you mentioned that on the plans there was an approval of some sort for a landing, how big was that?

McCallum replied the landing that was on the plot plan that was submitted with the building permit that I approved and signed off on was approximately 5' deep and 10' wide with stairs to the ground.

Councilor Ripma asked so if we should happen to deny the variance, he would be allowed to do that landing and stairs?

McCallum replied yes.

Councilor Ripma stated the timing of this list by the title company puzzled me, as was Councilor Daoust. There is no reason that I can see why the list from the title company shouldn't have been correct. Was it an unusual title company, do you know which company it was?

McCallum replied it was Fidelity National Title Company.

Mayor Thalhoffer stated in your staff report there was a letter from Mr. Hockert and there was a conversation between Mr. Hockert and Mr. Yates where Mr. Hockert found out from Mr. Yates that the Dorrough's were the owners of the property, is that correct?

McCallum replied there are certain allegations in the appellant's letter of statements made between Mr. Hockert and Mr. Yates that are not in writing in Mr. Hockert's written application to the city. With respect to Mr. Hockert's conversation with Mr. Yates, on page 4 of my staff report it reads, "Construction of Lot 11, the Appellants' lot, was well underway when Mr. Hockert made his variance request. Mr. Hockert does refer to a discussion with Steve Yates about his variance request in the last sentence on page 1 of his variance application. However, staff was not privy to the information that the Dorrough's were buying the house from Mr. Yates". That is in essence what their letter is saying. They go on to say that there was more conversation than what was revealed to staff in the applicants written narrative.

Councilor Kight stated it appears that in the correspondence that we have, that the Appellants in this case have another option should the variance be denied to Mr. Hockert. That is to still have a deck, but a much smaller deck than what is currently there now. I think the deck that is currently framed in is 12' by 44', which is 528 square feet.

McCallum replied correct.

Councilor Kight stated they are proposing a deck which is considerably smaller in order to retain privacy in their home, especially on the backside of their home. What are your comments on that?

McCallum replied with respect to their proposal I had indicated in my staff report that the proposed 12' by 44' foot deck is not the same as an unroofed landing, it would not enjoy that same automatic side yard encroachment.

Councilor Kight asked what would they have as far as encroachment?

McCallum replied there is no encroachment allowed without the variance process.

Councilor Kight asked so if he were to build it according to our regulations, what size deck could he build?

McCallum replied the way that he has configured his house, there is really no way to add a deck to the property without a variance?

Councilor Kight stated so he would have to go through the Planning Commission process again?

McCallum replied depending upon the magnitude of the variance requested. If the encroachment is 10% or less, it would be a staff review.

Councilor Kight asked what size deck would that be?

McCallum replied it would be a 2-foot encroachment into the required rear yard setback, so a 2' deep deck would be the maximum he would be allowed under an administrative variance. Then there is a site and design review variance procedure which would allow him to request a variance up to but not exceeding 30% of the 20-foot rear yard setback. The deck could be 6' deep.

Council Kight stated so he could have a deck off the back of his house protruding 6 feet, right?

McCallum replied if the variance were approved by the Site and Design Review Committee.

Councilor Kight asked what about the width?

McCallum replied he is conforming to the side yard setback, so there is no encroachment issue there.

Councilor Kight stated so essentially we are talking 6-foot if he was to go before the Site and Design Review, is that correct?

McCallum replied correct. There is also a public notification process where the committee will respond to and consider written comments from property owners within 250 feet.

Councilor Kight asked are the applicants or appellants aware that through this process they could have a 6-foot deck, were they favorable towards that?

McCallum replied I haven't explained any of that in the staff report or to them personally.

Councilor Kight asked the letter that was sent to Mr. Hockert indicates that it was an appeal process. When I think of appeal, and I would like to have your feedback, doesn't that imply

that there is a period of transition, nothing has been firmed up or nothing is solid at that point that would allow the party to go ahead and start constructing.

McCallum replied that is the implied understanding.

Councilor Kight asked what is Mr. Hockert's background as far as what kind of business is he in?

McCallum replied he is a contractor to my knowledge.

Councilor Kight asked so he would be familiar with this language?

McCallum replied I really don't know what he is familiar with.

Councilor Daoust stated just to get my math correct since I didn't visit the site, we currently have a 12-foot deck and it goes 9 ½ feet into the setback, is that correct?

McCallum replied those are approximate measurements.

Councilor Daoust asked so we have 2½ feet of the deck that is okay, and another 9 ½ feet of the deck that is in the setback area roughly. So we have a compromise brought forward by the Dorroughs' that would allow the deck to be 4½ feet into the setback area. So is it correct to say if we went with the Dorrough's compromise that we would end up with a 7' wide deck, is that correct?

McCallum replied based upon our findings the deck that the Planning Commission approved is a 9½-foot encroachment into the 20-foot rear yard setback. If the deck is 12 feet, there is 2½ feet of the deck that are actually in the building envelope. So 2 ½ plus the 4½ feet, you would have 7 feet deep deck approximately.

Councilor Daoust stated so basically the compromise from the Dorroughs' is to cut 5 feet off the depth of the deck.

McCallum replied that sounds right.

Councilor Ripma stated I am looking at Exhibit B in our packet, which has the drawings of the house with the plan view and elevations. It looks to me like the house is at the setback line. The back yard line is indicated by two short and one long dash, then there is a 10-foot private storm drain easement line and then there is another line 10 feet further back and I believe that is the setback line. There is an area of the house that juts out and that appears to be right at the setback line, is that right?

McCallum replied I would agree that the nook is right at the setback.

Councilor Ripma asked if you take a look at the very next drawing, which is the site elevation it shows an upper deck that sticks out beyond the edge of the house. That upper deck also extends into the setback line. Is that permitted because it is a 10% or less encroachment?

McCallum replied I would have to look at the plot plan that was approved. That balcony could be in compliance with the setback; it may be 20 feet behind the property line.

Mayor Thalhoffer asked the applicant to present his testimony.

Greg Hockert stated I am a contractor with Hockert Homes as well as this house. I hope to give you up-to-date information and hopefully I will be able to answer all of your questions. In the original application process of applying for this variance and trying to meet standards set forth in order to achieve this variance I addressed the issues of the unique nature of this lot, its size, shape and slope. I had some topography of the lot done in order to design the house. It had approximately 25 feet worth of drop from the curb line to the back property line. Being that the lot is in a pie shape rather than in a square shape, the standard width of a home, which this home is, is 53 feet wide. In this same subdivision I have built two homes that are similar width. Being that it is a pie shaped lot it forces you to push that width on the rear property line. If you compared it to a square lot where you can push the house up towards the 20-foot setback at the front. This compared to Mr. Dorrough's house, which is similar in size to mine, he was able to allow his house to come clear to the front setback, which is 20 feet, where I had to push my house back slightly. That makes the deck off the back a lot tighter issue. I also addressed the issue that the standard practice in the building community is to have some sort of street level access or gathering area off of the main level of the home. Meaning whatever comes off curb level whether your home was built on a flat lot where you would have a concrete patio to gather on or if it has a slight slope sometimes they will have a small deck of some sort. In order for me to build a deck and meet standards in the code I would have to have a deck 30 inches or below. My request was to have a deck off of the main level of the home that was going to be functional for the house. The standard depth when I build homes and most builders that I have been around, whether it is a concrete patio or deck, they are usually off of the back entrance of a street level home and have about a 10-foot deep deck. The width is variable depending on the design standards of the home. Being that it is not going to be injurious to any of the adjacent lots, I referenced the lot directly to the east of me. I address that as having the total visual of the entire deck. That would be the property that would be most affected by the deck since they would have the greatest view of the deck. I address some issues with that which are noted in my original letter to the city. The property is zoned R-5, which is one house on every five acres. At this particular time it is not in the urban growth boundary and at this time only one house would be allowed to be built on that property until the boundary is changed or a variance or proposal is made to change that. At the time I submitted this letter, I had asked Multnomah County if there were any pending notice of change of the zoning of that property or anything affecting how many lots could be developed on that property. At that time there was nothing pending or any application in process. In terms of the adjacent lots to the side, I didn't feel that there was any injurious nature because of the design nature of the deck. The only portion of this deck that would be obstructed one hundred percent would be the 12 inches where the floor joists and decking on the surface. The handrails on the deck will be glass. I also submitted that I

wasn't going to enclose the space below the deck to make sure that there was a clear visual pathway from all sides of the house. I wanted to make sure that this wasn't going to be something that would block the view. I felt, in submitting this, that given those situations that I had the means and met the requirements in order to get this variance. When applying for this variance I did go to Fidelity National Title. They are a licensed Title company in the Gresham area. The actual copy is a certified copy and they reference Multnomah County Tax Records. Your question to Ms. McCallum as to why those records weren't stating the proper ownership, I don't have an answer to that. I am as surprised as you are that they aren't up-to-date or they weren't current. My purpose in going through this process wasn't to not inform everybody of what was going on. I wasn't going to spend the time and energy in this process to jeopardize that by not informing everyone and going by what was required of me in order to get this variance. Since Fidelity would certify the list of names and addresses within the 250' radius and that the City of Troutdale themselves would review the application in detail and the city sent me a letter saying that they received my application, reviewed it and set a public hearing date, that they had accepted what I had submitted to them. Then there was the notice of the public hearing that the city sent and I had received comments from different builders in that same subdivision, even those adjacent to me on the south side, Mr. Jim Blubaugh and Mr. Ron Haggerty, that they had received the notice and asked me a few questions about it. My concern of people not getting informed of this process was the least of my worries. I felt that since I was getting feedback that the information was getting out there. Beyond that process, I also made a point to contact the builder of Lot 11, Mr. Dorrrough's house. I did not know he was going to be the buyer at that time, but I contacted Mr. Steve Yates. He is a well-respected builder in this community and I have learned in this business that you should take that experience and use it. My intent of calling him was to find out his opinion of the variance and to get a feel of what his buyers might think. He reflected to me that he personally didn't have a problem with the deck but that he wasn't going to be living there and that I would have to contact the buyers. I got the name of the buyers at that time and I had asked him to forward the information on to his buyers. Soon after that I made contact with Mr. Dorrrough himself. In the process of excavating my house he happened to be at his house and I had an opportunity to meet him and talk to him. I had mentioned to him in detail what I was doing, that I was trying to get a variance to extend my deck. From my conversation with Mr. Yates I knew that they had the same similar issues with their house and they had to adjust the size of their deck and they were disappointed about that according to Mr. Yates. I had suggested to Mr. Dorrrough that he may want to hold off building his deck, and if I was able to get approval of my variance that would pave the way for subsequent applications for similar variances in the area. We probably talked for about 40 minutes. Between the two conversations with Mr. Yates and Mr. Dorrrough independently about the variance process, I by no means made any conscious effort to try and misinform anybody of this process. I wouldn't have contacted them if I were trying to withhold or keep information from anybody. For some reason the title company's list of names omitted Mr. Dorrrough or Mr. Yates as being the owners, I have no answer for that. To answer the questions regarding why we starting to build the deck, there is an issue of when I received the letter from the City after the first public hearing saying that the deck had been approved and I had a 10-day grace period for someone to appeal the decision. The letter had a typed date at the top of the 19th of April. The following week my framer asked if he could frame the deck as he built up the house. The deck is far from being finished. It is just framed. I checked my calendar

and counted off the days, going from the 19th, I told him that he could start the deck on the 30th, which he did. On the 3rd of May I received a call from the City and the message indicated that someone had filed an appeal on my deck. I thought that the 10-day appeal period had passed so I went back to my letter and I saw that there was a hand written blue mark and above it was written the 23rd. To my best knowledge I received this letter on the 20th of April. I know this because unfortunately my wife was diagnosed with some cancer and we had surgery on the 19th and I wasn't able to get my mail at our PO Box. I went on Saturday to collect two days of mail and that is when I received the letter from the City. I don't know why the date change was made. It was my fault that I did not register the 23rd when I was talking with my framer, but for some reason the 19th stuck in my head. There was no conscious effort to build the deck early. I wouldn't have gone through the process of designing a deck, paying \$300 and spending the time to go through this process to jeopardize it at the very end. This is going to be my personal home and I wouldn't have done that consciously. I apologize for that. The privacy issues that Mr. Dorrrough discusses in his appeal letter, I think my original application shows that with the glass handrail there will be a clear visual pathway, the floor joists and 12 inches of decking meet the standards. Mr. Dorrrough claims that I can see into the back of his property. I can see particular issues where standing on the edge of the extreme corner where that would be the case. The entire deck as a whole, I don't see that. I have suggestions to solve that and I will get to those in a minute. The whole reason why I think that this was approved is because I went through painstaking extent to try and make sure that this deck wasn't going to be obtrusive to neighbors. The fact that Mr. Dorrrough claims that the deck affects Lots 9, 10 and 13, on the two lots to the north of him and the one lot to the south of him, I can tell you that I have talked to the buyers of lot 13 and they don't have any issues with the deck and they have been informed of the process. Lots 9 and 10, I don't see how in any way that this deck could affect them. Mr. Dorrrough himself has a deck that wraps around and faces Lot 9. If there are any privacy issues in terms of decks, I would think that would have more privacy issues than my deck. I understand Mr. Dorrrough's concerns. I have talked with him after I found out that he had appealed this. I proposed a solution to the problem, which he called me back and he really didn't want to talk about that. It was new information to me that I could get a 6-foot variance into that setback without going through what I went through. My two suggestions were I have a staircase that is going to go off of the north side of that property. On the north side of the deck I am suggesting to put a natural greenway barrier, a wall that you could grow greenery on that would completely block the view of what I would have onto Mr. Dorrrough's open space on his property. I would like to mention that Mr. Dorrrough does have decks on his property and he has a lot of the same views as I do on his property. We both can see into each other's basements, it is the nature of that style of house. This solution would solve the problem permanently. I have suggested to him 5 ½ to 6 feet. He didn't like that idea. Since then I have thought of another possible solution. I feel the most obtrusive nature of any portion of that deck is the extreme corner on the north side. I would propose to cut a 45° angle off of that end of the deck starting at the end of the staircase, which would be 5 feet out from the house. That would be a good permanent solution to the problem. I would not like to have to make this adjustment to the deck, but I understand Mr. Dorrrough's concerns and I am willing to make adjustments and to compromise, but I would much rather not.

Mayor Thalhofer asked Mr. Hockert to draw on the board what the 45° cut would look like.

Mr. Hockert drew what his deck would look like as approved through the variance process and then showed what his proposal was with the 45° angle cut. Looking at the back of the house, he showed where the 20-foot setback line is.

Mr. Hockert stated that is the point that I feel, if there is any point at all that has an obtrusive nature into Mr. Dorrrough's home, it would be this point. I would be willing to take that and more off to help this situation out and solve the problem. My first suggestion would be to put a natural greenery wall on this end of the deck so that no view could be transmitted back and forth. Mr. Dorrrough is suggesting moving the whole deck back 5 feet.

Councilor Daoust asked did you see the list of property owners from Fidelity National Title?

Hockert replied I did briefly.

Councilor Daoust asked and did you notice that Steve Yates was not listed on there?

Hockert replied no I did not.

Councilor Daoust asked who did you see listed for Lot #11?

Hockert replied you asked whether I saw a name, I don't recall seeing who was listed. They were going to certify that the information was true and I received the packet the day before I was going to submit it. I thumbed through it to make sure it had all the particular elements required. I didn't pay attention to all of the names that were listed on the list. I figured that since they referenced Multnomah County Tax records that the information was going to be accurate plus they certified it to be true and accurate.

Councilor Daoust stated so your deck is just framed now, there is no flooring on it?

Hockert replied there is no finish flooring on it. It is just four joists, the sheeting material and the post and beam to hold it up.

Councilor Daoust stated your proposal to counter the Dorrrough's proposal would be either the vegetation screen or the 45° angle cut. Is it accurate to say that you do not want to shorten the depth of your deck at all?

Hockert replied that would be my last resort. I don't want to get into an all or none type of thing. These are, what I think, the best solutions to the problem because they resolve it permanently. If the Council found that the only solution that they felt was fair was to move the entire deck back, I would abide by that.

Councilor Daoust asked would you draw where the Dorrrough's deck is located in relation to your house.

Hockert replied their house sits back slightly more than mine because they have a square shaped lot.

Councilor Daoust asked is the back of their deck at the same setback line?

Hockert replied it goes right to the setback. From what I know their original plan had a larger deck and they had to move their deck back finding out that they were having the same code problems as I was.

Councilor Daoust stated from your point of view the end of their deck matches your nook, so your reasoning is they would have to look at an angle they don't look straight at your deck.

Hockert replied correct.

Councilor Daoust asked and by cutting off that corner that would take care of most of what they would look at on your deck?

Hockert replied correct. I think that space is where you would get the most obstruction of looking into their house. Today I was standing at the nook and the only thing I could see was the window. There is no way I could see anything inside of their house. I followed that 45° cut and I have marked it out on the deck and where that cuts back to the end of the deck has the same similar type of view.

Councilor Ripma asked one of the issues that the Planning Commission had to address and one of the reasons given by staff for there being no problem with this was your statement that the only property that would have a full view of the deck is the heavily forested property directly behind the house. Didn't you think the house next door would be affected?

Hockert replied yes, but not a full view of the deck in terms of width and depth.

Councilor Ripma stated so your wording that the only property that would have a full view, and this is the only property that you mention in your letter about adjacent properties. You are saying that only this heavily forested property directly behind you is the only property that would have a full view and there is no problem with them because it is big and zoned so that it can only have one house built on it. Is that what you are saying?

Hockert replied I was thinking in totality of the whole, the full width and depth. That would be the only property that would have a full view.

Councilor Ripma stated I guess I am wondering why the property that is right next-door wouldn't be affected. That is why we are here. The planning commission didn't have any suggestion, at least by you, that there were any other properties that could be affected by this.

Hockert replied to be honest with you, I didn't think that with the design of the deck that the angle portion of the deck on that side would be the most obtrusive nature. I thought that if

there was any potential to have the most objection to it, it would be somebody that would have full view of the deck. I realize that the deck is going to be seen from the sides, but I didn't think that it was the most bearing to be addressed as a whole.

Councilor Ripma stated you did say that you talked to Mr. Yates and you discovered that he was the owner. His suggestion was that you contact the buyer. You said that you did talk to Mr. Dorrrough, correct me if I am wrong, but I understand that the 40-minute conversation where you discussed what you were proposing to do was with Mr. Yates.

Hockert replied I discussed with both Mr. Yates and Mr. Dorrrough exactly what I was in the process of doing. When I talked to Mr. Yates I had just filed the application. When I talked to Mr. Dorrrough the process was under way.

Councilor Ripma asked this was before the Planning Commission's public hearing?

Hockert replied correct.

Mayor Thalhofer stated I am interested in the conversation that you had with Mr. Dorrrough, when was that?

Hockert replied I don't recall the day. I think it was a couple of weeks prior to the Planning Commission hearing.

Mayor Thalhofer asked did you discuss your proposal in depth?

Hockert replied what I discussed with him was that I was in the application process to have my deck extended into the rear yard setback. I told him I had submitted that to the city and basically the rest of the conversation explained that in terms of size issues that I was planning on having a full width deck. I don't think I specified the exact dimensions that I requested. The rest of the conversation turned toward his decks. I knew he had some disappointment in the size of his deck. I suggested to him that he wait and build his deck after this process was complete and maybe he could get a larger deck.

Mayor Thalhofer stated so he was aware that there was a process and that there was going to be a public hearing.

Hockert replied I don't remember suggesting that there was a public hearing. I just told him that we were going through the application process. I assumed that he was aware and had received information by that time.

Mayor Thalhofer asked isn't it true that the depth of your deck would allow more people to be on the deck that could look down into his backyard?

Hockert replied potentially, yes.

Mayor Thalhofer stated your two solutions are interesting.

Councilor Kight stated you have indicated a couple of examples of areas where you feel you can compromise on and try to come up with a solution to resolve your neighbor's concern. When it is all said and done it comes down to the issue of privacy. To that end you have offered the compromise of the 45° cut, which I think is a good one. The landscaping proposal, it could be a while before the landscaping gets up high enough and it is based on the weather and the types of plants and so on. Going back to the privacy issue, I don't know where that line is, you indicated that you have walked the edge of your deck. Lets say that it is not where it is currently, lets say that it is 1 ½ feet back to reach that level of comfort so when you have people on your deck they are not looking into the neighbors yard. Would you be adverse to do the following: besides the 45° cut maybe include the landscaping barrier where ever that point is that when you are on your deck that you can not look into the windows of Mr. Dorrrough's home. What I am concerned about is that you are going to have to live next door to each other and you are going to have to get along. Would you be adverse to that, if it were necessary to pull the deck back to the point so that people on your deck could not look into the Dorrrough's home?

Hockert replied I wouldn't be adverse to that. I think the only adversity I would have would be the whole deck.

Councilor Kight stated I don't think they are asking for that.

Hockert replied that he was suggesting moving the deck back 5 feet all the way across.

Councilor Kight stated isn't the issue really the line of sight?

Hockert replied correct, line of sight and open space.

Councilor Kight stated whatever correction is necessary to address that...

Hockert replied I would not object to that.

Councilor Daoust stated could you draw that line of sight on the board so that we know what you are talking about?

Hockert replied I feel that the 45° cut takes care of that.

Councilor Smith stated since I haven't seen the property, you were talking about planting a barrier along the deck. Would that interfere with the view of other neighbors?

Hockert stated the barrier that I am suggesting would be a wood barrier that during the fall and winter time would obstruct that area and then have greenery during the spring and summer and late fall that would cover it and make it look more natural. That would obstruct the view of the Dorrrough's onto my deck and from me onto theirs.

Councilor Smith asked is the slope steep from where the house is sitting to the rear property line?

Hockert replied yes. From the curb line to the back of the property there is about 20-foot difference.

Councilor Smith asked is the backyard usable with the slope?

Hockert replied with the process of building these homes and actually after Mr. Dorrrough finished grading the lower portion was raised from the end of the house to the property line to have a flatter area. That grade has been established and moved across my property. So actually from the back of my house to the property line now with the grade change, it is fairly flat.

Mayor Thalhofer asked is there anyone here that would like to speak in support of Mr. Hockert's application.

No testimony received.

Mayor Thalhofer called for a 10-minute break.

Mayor Thalhofer reconvened the meeting at 9:00pm and asked the appellant to come forward.

Dr. Dorrrough stated my wife and I are opposing the deck variance granted to the Hockert's. I would like to show you some photos that should help you get a better picture for those who were not able to view the site. The first picture shows you a side view from the north side. You can see basically the whole back yard from there. In our case it is 26 feet from the back of the house to the property line. We have a 6-foot deck, so there is 20 feet from the back of the deck to the back of the property line. I tried to take the picture straight down so that you could see where the code requires the 20-foot setback, which is the edge of our deck and the difference with the 9-½ feet. We both have a daylight basement and a main level where the decks are. In this case, as far as usable back yard we have 10 feet of yard where this deck does not protrude over. If we are out in the backyard and you want to look south you would have to go to the last 10 feet of the back yard. The next picture was taken from Mr. Hockert's deck and looks over our backyard and the view into our windows. The next photo is the same shot but was taken at night to illustrate the other concern and what the code should prevent as far as creating an even line. This is the illustration as why codes are created. It is true that if you go to the far corner of your backyard I am sure you can see into anybody's back yard. But when people come home they don't go to the far corner of their backyards. They hang out on the deck. You shouldn't be at a social gathering at an angle where you can be peering into people's backyards.

Councilor Daoust asked in the last photo, where on his deck are you standing?

Dorrrough pointed it out on the board. (Dorrrough pointed to the area where Mr. Hockert has proposed to make the 45° cut.) My wife and I believe that Troutdale's Development Code for setbacks and neighborhood CC&R's were created to provide a livable standard for all neighbors to abide by. These guidelines, as any legal contract, provide conditions and terms for all parties to abide assuring reasonable privacy and comfortable community living. We discovered the Sandy Heights Subdivision the spring of 2000. We eagerly waited the developers' progress and once the neighborhood was open for building we quickly began construction of our home. We were the second house to be built in the neighborhood. Our lot has the same slope as the Hockert's lot and we have a daylight basement as they do. Maybe the slope has changed since the initial application, but it is a flat backyard. We were given the Troutdale Development Code and the CC&R's and the setback requirements and by abiding by these standards we created our house with the understanding that other houses in the neighborhood would be following the same rules. Our original plans showed our deck being larger and as we went through the process our builder pointed this out to us and told us the deck wouldn't work. At that point we had a choice and we asked ourselves what is more important, the house or the deck. In life everything is a compromise. We were the second people in this neighborhood to build, we looked at the rules and we followed them. I believe that variances should never be consented to without the affected property owners being heard. The builders are not the people that are affected; it is the homeowner that is affected. The builders are just trying to build houses and sale them and then they go on to the next one. Five years from now is the builder going to be concerned with what the landscaping looks like or other things? Not really. As far as the governing body is concerned, you need to be a non-interested party where you can look at the greater good of all. It should be the greater good of all as far as the affected property owners and not the builders, because they have no interest. In this case Ron Johnston is not going to object to getting a variance, not a chance, he is just selling lots. Back to the variance, since August 2001, when he purchased the lot he has his name and phone number posted on the lot. We were informed after the fact that he did communicate with Steve Yates to find out if he would object to the deck variance. Steve Yates' response to him was that he wasn't going to be living in the house and that he should ask the homeowner. It is true that one evening I had a conversation with Mr. Hockert and my recollection of the conversation was that he said something to the affect that he was getting a variance to expand his deck. The rest of the conversation we talked about kids and other things. I don't remember it being phrased in a way of what do you think or would you object to. It was I am going to do this. The deck is probably 12 feet off of the ground. We never found out that this application process was going on until all of a sudden the deck was there one day. At this point we contacted the city to look into the appeal process. He did call me and I returned his call and his suggestion for a compromise was to leave the deck as is except to place a 5 to 6 feet tall wall across the deck. To me that would even be worse then the observation deck where you can see clear across my yard. That would be a physical obstruction. The whole thing that I see the development code protecting is there is free space. Nobody owns the air or the sky. Basically there is some angles as you look out your windows that should be free and given to you. That is what I see the development codes protecting. His proposal will create a wall here so to the right of our yard there would be this wall. If we were to build a fence on that side of our yard that was 24 feet tall I would get the same kind of view that I will get if he puts the wall up on the end of his deck. I believe that the Troutdale Development Code setbacks

and neighborhood CC&R's were created for good reasons. There are neighbors living on an R-7 lot of 7,000 square feet, there is not a lot of room left to do anything on it. That is why these guidelines have to protect this free space. I am one hundred percent against any deviation of the setback. Any deviation would affect our livability and our resale value. My wife and I should not be in a defensive position. This deck should not have been started until the appeal time was over. No variance approval should be given without the approval of the neighbors that will be affected. My wife and I do not approve a variance in the setback. The fact that this deck exists currently should not have an affect on the outcome of this hearing. In summary, some of our concerns about this protrusion are that it will give us a lack of privacy as our back windows can be looked into off of this deck from the angle it creates. We designed our house so that we would have an open view, we were there first and we abided by the rules. If we would have known the rules were different we would have done different things. At this point and time to change the rules it greatly changes our house. It cuts into the openness and privacy that we sought coming into this neighborhood. It creates an observation tower along the entire length of our yard. It will impede the sunlight that is allowed into our yard. Imagine if the neighbor on the north side of us gets a variance we will have a deck on each side of our house and basically we would be living in a cave. I feel that all of these things combined will decrease the resale value of our house. Because we were omitted from the initial variance hearing we had to pay a \$500.00 fee to file this appeal. We have also asked the City Council to refund this fee to us because we could have voiced our concerns at no cost if we had known that the variance had been applied for. The planning commission should not decide with the builders interest at heart they need to always consider the community and affected property owners. As far as general conditions, there needs to be some reason as far as creating a variance because something did not meet general conditions. In no way did I see how this variance is not a general condition. What makes this cul-de-sac any different than any other cul-de-sac in Troutdale? The error of the planning commission was that because the developer who sold the lots didn't object, they seemed to think everything was okay.

Councilor Daoust stated you stated that you and your wife do not approve of a variance to a setback yet your compromise proposal allows a 4½-foot variance. How did you come up with your compromise?

Dorrrough replied I believe that everybody should play by the rules. We understand that we are going to be neighbors and we also want to be neighborly, so that is where it came from. We really didn't want to file this appeal, we wanted to be good neighbors and just let it slide. But then we thought about it a little bit more. In downtown Troutdale next door to our dental office the builder read the rules different than everybody else and if you look at the back of these buildings you will see that everybody is in line except for this building next to us, which protrudes out quite a bit further. So everyday as I am working in my office looking out there I have to see this building sticking out, which should not have been allowed to be built that way. Again we wanted to be good neighbors but at the time we should have objected because for the next 30 years our view has been cut off.

Councilor Daoust asked did you base the 4-½ feet on your line of sight?

Dorrrough replied yes.

Councilor Daoust asked so your line of sight that you are most concerned about is from your deck?

Dorrrough replied there are several concerns. The big concern would actually be in the back yard and just not feeling like you were in a big fishbowl. We also should not have to worry about people standing on their deck being able to see in our back window.

Councilor Daoust asked if we upheld the Planning Commission's decision tonight, would the planting of vegetation or trees on the property line alleviate your long term concern? In other words, could you take care of your concern with trees or a hedge that grew fairly tall?

Dorrrough replied the deck is 12 feet off of the ground and with a person standing on there they are up 17 feet from the ground. For a tree to grow 17 feet tall would take a long time.

Councilor Daoust stated Mr. Hockert has proposed an alternative of cutting a 45° angle off the corner that gives them the most view of your property. He says that would take care of most of the view of your property. What do you think of his proposal?

Dorrrough replied I really don't like that proposal. I have a 3rd option. (Dorrrough drew his option on the white board). On the north side of the deck I would propose that it be taken back to 6 feet in depth, equal to ours, and 10 feet to 12 feet in the length. Basically cut out a rectangular piece of the deck.

Councilor Ripma asked your deck is at the setback line?

Dorrrough replied yes.

Councilor Ripma asked there is a 20-foot deep backyard on your house and his house?

Dorrrough replied we pushed ours to the setback.

Councilor Ripma stated 20 feet is the minimum setback for the backyard under the rules, correct.

Dorrrough replied correct.

Councilor Ripma asked you mentioned that when you considered his lot, you could have built there but the house would have been narrower in the front because it was a pie shaped lot?

Dorrrough replied yes.

Councilor Ripma stated which is something Mr. Hockert could have done. Were you aware that there was a planning commission hearing where you could object to his deck?

Dorrrough replied I was not aware of that.

Councilor Ripma stated you had a conversation with him somewhere along the line and he mentioned that he was seeking a variance, but you were not aware that there was going to be a hearing where you could voice your objection?

Dorrrough replied I was aware that he stated that he was going to get a variance.

Councilor Ripma asked but there wasn't a mention of a hearing?

Dorrrough replied no.

Councilor Ripma stated this is the way I understand your position. The 4 ½-foot compromise is better than the deck that was approved by the planning commission in that it would bring the deck back in 5 feet. But what you really want is for us to grant no variance except that you have now come up with another option. Between these various options I want to know what you really are asking for. Your arguments were all along the line of playing by the rules. I am getting a little confused. As I understand it you have a 4 ½-foot compromise that you no longer really favor. There is this other compromise that you are more favorable to but what you would really prefer is no variance at all. Is that a true statement?

Dorrrough replied the principal of it is I have a strong objection to the planning commission ever beginning this process in the first place. It was beyond anything that they should have ever done. Now the practicality or the hardship is that at this point and time his house is mostly framed. At this point picking up the whole house and moving it forward to where it should have been in the first place wouldn't be feasible. What I am trying to say is that I strongly object to this. At this point and time the planning commission made this mistake, and it is a gross mistake. They should have never allowed this variance. At this point there is no other solution other than a compromise. In trying to find a livable compromise that will create good neighbors afterwards and in trying to protect our interests, the downside to the 4 ½-foot option would be, as it is with our deck, that you can't put a patio table on the deck but you can put lounge chairs out. It would be a better solution. But if the neighbor on the other side doesn't oppose a larger deck on their side, although I am not in favor of that, it would be a compromise. So that is when I changed by mind to this other compromise.

Councilor Ripma stated you are a very generous and neighborly person. It does seem like this is a possibility. Keep in mind, I think the neighbor on the other side didn't object and this will be the last hearing on this and we could decide among various options that were outlined earlier. I want to confirm that you are asking us for the option that you just drew on the board, is that correct?

Dorrrough replied if Mr. Hockert would work to put the bulk of the deck to the other side. I am not certain on what the dimensions need to be so the details would still need to be worked out.

Mayor Thalhoffer stated regarding the \$500.00 appeal fee, it looks like the title company has the problem. They apparently didn't bring their records up-to-date at a time when they should have and so the city went off the title company's records for the owners of the property and consequently you didn't receive a notice of the hearing. That was a mistake by the title company not the city so I don't see that the city can refund the \$500.00. However, there may be cause of action against the title company by you or Mr. Yates to recover that \$500.00. In your conversation with Mr. Hockert did he tell you that he was building a deck that was deeper than allowed and he was applying for a variance?

Dorrrough replied my recollection of that is just a statement that he made that he was applying for a variance to enlarge his deck. That is what I heard out of it. The rest of the conversation was about kids and other stuff.

Mayor Thalhoffer stated he suggested that you might want to wait and see how it turned out so that you could also apply to have deeper deck?

Dorrrough replied yes he did.

Mayor Thalhoffer stated I think it is admirable that both parties want to be good neighbors.

Councilor Kight stated you have drawn a deck that you feel you could live with. Would you object to having a third party, possibly from our community service division, meet with both of you to work out a deck that both of you could live with?

Dorrrough replied that would probably be a wise idea.

Mayor Thalhoffer asked is there anyone here to speak on behalf of the appellant?

No testimony received.

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

Hockert stated I think that the major thing that Mr. Dorrough brought up that I disagree with is that there is open space in the back of the house. There is no saying that me or any other neighbor could plant a 20-foot tree along the property line that would obstruct his view and that wouldn't be against any code regulations. The only other issue is that he claims that off of my deck I have total access to his backyard. I do have a better view because it is off of the 2nd story, but I would note that his deck has similar views of my property as well. In terms of his suggestion, I really don't object to that. I think I would rather see that portion that is being brought back go back to the 4-½ feet that he originally suggested. The 12 feet in length sounds about right. I think I could live with that and change the deck style to appeal to his needs. I want to be a good neighbor also.

Councilor Daoust stated what you would prefer is a 7-foot deep deck instead of a 6-foot deep deck and you are okay with cutting off 12 feet of the length. (Councilor Daoust drew this image on the white board)

Hockert replied I am okay with that. I think that the portion coming back to go to the 4 ½ feet that he originally suggested alleviates his problem.

Councilor Daoust stated I don't think we need to get hung up on the actual dimensions, I just wanted to be clear what you were okay with.

Councilor Kight asked do you have any problems with my proposal of a third party getting together with the two of you to work out the details?

Hockert replied no.

Mayor Thalhofer closed the public hearing at 9:53pm.

Councilor Ripma asked is it possible to defer final action and continue this hearing at a later date to see if the parties can reach a compromise?

Tim Sercombe, City Attorney, replied you should continue your deliberations to some time certain in the future and then if you have to you can reopen the public hearing and allow for a compromise proposal to be put forth by the appellant and applicant.

MOTION: Councilor Ripma moved to continue our deliberations to the June 25th meeting to see if the parties can resolve their differences and terminate the need for any further action. Seconded by Councilor Thompson.

Councilor Ripma stated I think we have heard more than just a glimmer of a compromise here. I think we have heard two neighbors trying to resolve what could be a fierce and bitter fight with a reasonable compromise. They both seem willing to resolve it approximately the way it was drawn by Councilor Daoust and they can work out the details with city staff. If they are unable to resolve it and they still want to go all or nothing we will have to render a decision.

Councilor Thompson stated I concur with Councilor Ripma's remarks.

Councilor Kight stated I need some clarification. If the neighbors are able to resolve this, I am concerned that Mr. Hockert has people working on his house right now and we don't want to impede the progress of the home. If they are able to come to a compromise sooner than June 25th, could Mr. Hockert go forward with his deck?

Sercombe replied I think that you should postpone this to a time certain that way you do not have to re-notice it. If they come up with a compromise before the June 25th date, I think they still have to wait to present it to the Council.

Councilor Kight stated it sounds like they have initially worked out a compromise they just need to work out the details.

Sercombe stated maybe you should move it to the June 11th meeting.

Councilor Ripma asked the parties if two weeks was enough time.

Both parties agreed to two weeks.

MOTION TO AMEND: Councilor Ripma moved to amend his motion to continue the hearing at the June 11th Council meeting. Seconded by Councilor Thompson.

Councilor Daoust stated I think we got to a good ending. Mr. Hockert made ample attempt to communicate to the neighbors and to follow the process. I have nothing against what Mr. Hockert did in this process. He did what he was supposed to do. I realize that the Dorroughs' missed out on their effort to get involved and that is why we are here tonight. I have nothing against what the Dorroughs' are doing either. What I am please about is how both neighbors are looking into the long term and willing to work this out. I am very impressed with both of you.

Councilor Smith stated I think the compromise is good especially when you have kids and you are neighbors.

Mayor Thalhofer stated I am struck by the willingness of both parties to compromise, that doesn't happen all the time. I know you both had to give up something here. I think this compromise is probably the best result that could come out of this and I commend both parties.

Councilor Kight stated I want to congratulate both of you on this process.

Councilor Daoust stated resolving the issue of refunding the \$500.00 to the Dorroughs; can we deal with that at the next Council meeting?

Mayor Thalhofer replied yes.

VOTE: Councilor Daoust – Yes; Councilor Smith – Yes; Councilor Ripma – Yes; Councilor Thompson – Yes; Mayor Thalhofer – Yes; Councilor Kight – Yes.
Motion was approved by a vote of 6-0.

6. COUNCIL CONCERNS AND INITIATIVES:

Councilor Ripma stated tomorrow from 5pm to 7pm the Troutdale Historical Society is hosting the opening of the new Depot Exhibit. I would like to invite the public to attend.

7. ADJOURNMENT:

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

Meeting adjourned at 10:05pm

Paul Thalhofer, Mayor

Approved August 27, 2002

ATTEST:

Debbie Stickney, City Recorder