

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

July 23, 2002

1. PLEDGE OF ALLEGIANCE, ROLL CALL, AGENDA UPDATE

Mayor Thalhofer called the meeting to order at 7:03pm.

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

ABSENT: Councilor Rimpa, (excused) and Councilor Rabe (excused).

STAFF: Galloway, Faith, Nelson, Kvarsten, Williams, Allen and Stickney.

GUESTS: See Attached List.

Mayor Thalhofer asked are there any agenda updates?

Kvarsten replied we have no update Mr. Mayor. I would note that immediately following the Regular City Council meeting there is a work session to discuss traffic concerns associated with the Troutdale Terrace Apartments and following that there will be an executive session to discuss real property transactions.

2. CONSENT AGENDA:

- 2.1 Resolution: A Resolution accepting two utility easements for street lights and one utility easement for a water utility from Reynolds School District at Reynolds High School.**
- 2.2 Resolution: A Resolution recognizing the completion of the Water Pollution Control Facility and accepting it into the City's Fixed Asset System.**
- 2.3 Resolution: A Resolution authorizing the Mayor and City Recorder to sign Supplement No. 15 to Intergovernmental Agreement No. 3012987 with Multnomah County for road maintenance.**
- 2.4 Resolution: A Resolution accepting a Warranty Deed from Multnomah County School District No. 7 (AKA Reynolds School District) for street right-of-way near Walt Morey Middle School and amending Resolution 1294.**
- 2.5 Resolution: A Resolution calling an election to submit to the voters the question of contracting a General Obligation Bonded Indebtedness in an amount not to exceed \$3,430,000 to finance parks and greenways capital**

construction and improvements and to pay all costs incidental thereto and repealing Resolution #1618.

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

No public comment received.

4. PUBLIC HEARING / RESOLUTION: A Resolution establishing the Sandy Heights Sanitary Sewer Pump Station Reimbursement District.

Mayor Thalhofer read the Resolution title and opened the Public Hearing at 7:09pm.

Jim Galloway, Public Works Director, stated this is a new process for us and this is the first time that a reimbursement district has come before the Council so I would like to take a moment and review the process. Back in 1998 the Council enacted, by ordinance, the reimbursement process that we are about to go through. The purpose of this was to provide a method so that someone who finances a sewer, water, storm water or a street improvement could receive reimbursement, for at least a portion of the cost involved, if another property owner could benefit from that improvement. The process for filing for a reimbursement district is first the person who makes the initial improvement and wants the reimbursement submits an application to the city. A report has to be prepared by my department and presented to Council, and that is what we are doing at this time. You conduct a public hearing, which has been noticed to the applicant and any affected property owners. You have the option of approving, rejecting or modifying my recommendation to you. If you decide to establish a reimbursement district, you do so by the enactment of a resolution, which is the matter before you this evening. The city then enters into an agreement with the person who created the improvement, which spells out the roles and responsibilities of the parties involved. Once the improvement is completed the applicant submits those final costs to the city. The Council then enacts a second resolution, which distributes those costs within the reimbursement district. The obligation to pay, which is created by a number of events that are mentioned in the staff report, is valid for a period of ten years. If someone in the reimbursement district that is created by the Council makes use of that improvement within a ten year time period after the resolution has passed, they are required to make the necessary payments to reimburse or partially reimburse the party that made the improvements in the first place. After ten years the right to that reimbursement ceases. The payments by those parties in the reimbursement district can be made initially in one lump sum or can be spread over a period of up to ten years. Basically, the City acts as a facilitator. Once the district is established and the ground rules are established, we in effect, act as a pass through for the payments made by the party(s) in the reimbursement district to the party that created the improvement. The particular case that we have before us involves the Sandy Heights

Subdivision, which is in the southeast part of the city. As part of that development the developer, Ron Johnston Enterprises, constructed a sanitary sewer pump station. The issue of the initial application from Mr. Johnston is a bit of a gray area. In recent months there have been some discussions with Mr. Johnston that indicated that he expected a reimbursement district to have been formed. In following through with that we have determined that in Mr. Johnston's view he submitted a letter of request to the City back in March of 2000 asking for the reimbursement process to be established. We have no record of receiving that March of 2000 letter and therefore did not respond to him telling him that the letter was incomplete and he needed to provide additional information. When it came to our attention that Mr. Johnston believed that he had made such an application or request to the City, we advised him of the information that he needed to submit and he did so by letter of June 11, 2002. I believe that you will find in the information from one of the affected property owners, that item might be in question. Another issue that will probably come before you during the discussion this evening is the manner of calculating the reimbursement. I believe that it is agreed by all parties that there is only one other property that might benefit from eventual connection to this sanitary sewer pump station. That is a property consisting of about 2.75 acres to the north of the Sandy Heights Subdivision owned by George Zifcak. The proposed method of calculating how much reimbursement should occur is one which there seems to be varying opinions on and one that the Council has the authority to decide. Mr. Johnston, in his initial application, suggested comparing the relative square footage of his property to the Zifcak property and prorating the costs accordingly. In my staff report I recommend a different course of action. I recommended computing the likely number of lots of the future development of the Zifcak property in comparison to the 23 lots that have been established in Mr. Johnston's subdivision and prorate accordingly. In the letter from Mr. Zifcak's attorney, there appeared to be agreement with the process or the methodology that I recommended, as opposed to that recommended by Mr. Johnston, but a disagreement on what the appropriate number should be. After consulting with our Community Development Department I determined that 12 is the appropriate number. Based on some preliminary plans that Mr. Zifcak has he believes the appropriate number is 10. That would change the ratio of the amount of the reimbursement to some degree. Mr. Johnston has indicated that the cost that he has involved in this pump station is in the neighborhood of \$130,000. Obviously, as part of this process, if you establish the district, he would need to come in with a final cost figure and some documentation to substantiate that. My recommendation is that the Council establish the reimbursement district. Mr. Johnston, in his letter of June 11th, does provide the necessary information to have a valid application and if in fact he did initiate this process back in March of 2000 and for some reason his request was lost or misplaced, we were not in a position to respond to him and give him the additional information that he would need. We do recommend that the reimbursement district consist of just the one tax lot, that is Tax Lot 8700 in Section 36 DD, Township 1 North, Range 3 East, which is the Zifcak property. We believe that has a potential of 12 lots. Using the ratio based on the number of lots of the Zifcak property to the number of lots in the Johnston subdivision, we recommend that 34.3% of the cost of the improvements be allocated to the Zifcak property as the reimbursement district. We also recommend that if the district is formed that in addition to making the reimbursement payment as calculated by the 34.3%, there be an additional payment of \$1,000 with the initial reimbursement district. That \$1,000 would help the city

cover the administrative costs of processing this request as well as 1% of any outstanding balance if they should opt for the payment over a period of ten years.

Mayor Thalhoffer stated so there is some dispute over whether Mr. Johnston wrote a letter in March of 2000. Was the letter sent by regular mail?

Galloway replied yes. There is no indication, at least in Mr. Johnston's note to me, that he sent it other than regular mail. A search of our files was unable to find a copy of it. The individual in the department who the letter was addressed to, Jerry Ortega, has since left the city. I did contact him and he does not recall receiving that letter, but that was almost 2 ½ years ago.

Mayor Thalhoffer asked both parties agree on the method of using the number of lots rather than square footage?

Galloway replied I am not sure. I have not received any communication from Mr. Johnston since I prepared my report. He, along with Mr. Zifcak received copies of my report approximately two weeks ago. We did receive a response from Mr. Zifcak and his attorney, which is included in your packet, but I have not received a response from Mr. Johnston. His initial request was to just use square footage rather than lots. My report recommended the lot method. I believe in the letter from Mr. Zifcak's attorney, she echoed the lot method as being the more appropriate way to go, I am not sure if that is still an issue with Mr. Johnston.

Mayor Thalhoffer stated Mr. Zifcak, at least through his attorney, and the public works department agree on the methodology of using the number of lots rather than the square footage.

Galloway replied that is correct, although we don't agree on the number of lots.

Mayor Thalhoffer stated Mr. Zifcak thinks ten lots and the public works department thinks there are twelve. What is the difference here? This seems to be something that we could come to agreement on.

Galloway replied I will explain the method that we used, I am not sure of the method that Mr. Zifcak or his attorney used, they would be in a better position to explain that. We looked at the entire size of the parcel, which is approximately 2.75 acres. We deleted the percentage for the interior road network that wouldn't be available for lots because it would be used for city streets. We deleted the square footage of two major easements so that they were not included. We then took the remaining square footage and divided it by the minimum lot size required by zoning in that area, which I believe is 7,000 square feet and came up with the maximum number of lots, which was 13. On that property there is one existing home, which is already connected to the City's sanitary sewer system. We deleted that lot and ended up with twelve.

Mayor Thalhoffer asked so you have conceded that you received a letter, is that correct, or is that something we need to decide?

Galloway replied that is a tough one for you and a tough one for staff as well. We have Mr. Johnston's word that he submitted it and a copy that he provided that has the particular date on it that we are talking about. I recognize that any date can be typed on a piece of paper, but he has provided us with a copy that he says was submitted at that time. Other than the fact that we don't find a copy in our file, we have nothing to disprove his argument and it appeared to us that the appropriate thing to do would be to bring the issue forward so that it could be decided on its merits as opposed to the technicality of whether or not it was submitted.

Mayor Thalhofer asked so at this time his application is still not complete, is that correct?

Galloway replied no. When we discussed the issue with him several weeks ago, he brought forward this particular letter saying he submitted this a couple of years ago, we went back to him and said that it didn't contain near the information that it should have. He then came forward with his June 2002 letter, which is Attachment "A" in my report, which did provide the basic information that is required in the code. We believe that the application is now complete.

Mayor Thalhofer asked where would the \$1,000 come from?

Galloway replied that would be provided by the owner of the Zifcak property as a member of the reimbursement district.

Mayor Thalhofer asked they wouldn't split that cost?

Galloway replied my review of the code doesn't find any mechanism to impose that cost on the person making the improvements.

Mayor Thalhofer asked and the 1% thereafter?

Galloway replied that would also come from the owners of the properties within the reimbursement district, in other words, Zifcak.

Councilor Kight asked could the Zifcak property be served without the utilization of the lift station?

Galloway replied I haven't done an analysis to determine that. Given the topography of the area, I doubt it.

Councilor Kight stated so lets go on the assumption that they need that lift station. Whether the City did or didn't receive the letter, we have all lost mail. What is curious is that Mr. Johnston didn't follow-up on it and say that I haven't heard back from you on this particular issue, but maybe like the rest of us he is very busy and has a lot of projects going on. I guess the bottom line is the ten lots versus the twelve lots. Zifcak says ten and you are saying twelve. Currently there is an existing house sitting on the property, is that right?

Galloway replied that is correct.

Councilor Kight asked and how many lots does that particular lot encompass?

Galloway replied the entire parcel, 2.75 acres, is currently just one lot.

Councilor Kight asked could that piece of property, the house and the outbuildings, be served by one 7,000 square foot lot?

Galloway replied I believe so.

Councilor Kight stated lets go on that assumption and we will hear from the property owner later. If that is the case and that serves as one of the twelve lots based on your methodology, that would leave eleven net lots to build on, am I correct?

Galloway replied no. We looked at the maximum number of lots from that 2.75 acres after we deleted interior roads and easements and we came up with thirteen. Then we deleted the existing home and came up with a net of twelve.

Councilor Kight asked could we do something like this, prior to developing the property have the developer put money in an escrow account so that when the properties are built and he only develops ten lots, then he gets some money back and if he builds twelve lots then the money goes to the Mr. Johnston?

Galloway replied I can't think of a reason why that couldn't be done.

Councilor Kight asked how much money are we talking about for the two lots?

Galloway replied \$3,000 to \$4,000 per lot.

Councilor Kight stated I am wondering if you couldn't come up with an arrangement where there is a set-aside for that amount. At this point that property hasn't been developed so we don't know how many lots there will be. We could spend hours arguing over the number of lots.

Galloway replied if that were the consensus of the Council we would try to make that work.

Councilor Daoust stated the letter from the Cofield Law Office on behalf of the Zifcak's, seems to make a point of Johnston's failure to meet the application deadline and therefore we can not approve the formation of the reimbursement district, at least that is what is stated in their letter. When was the application deadline?

Galloway replied the requirement would be to have submitted the application, not to get final approval from Council, but to submit the application prior to approval of the construction of

the improvement. I think that started back in late 2000 or early 2001. If you accepted that the March 2000 letter is valid, it meets the deadline. If you don't, then that is another issue.

Councilor Daoust stated so it is staff's position that he did meet the application deadline based on the fact that you later received a copy of the letter that was dated in March of 2000.

Galloway replied basically we are accepting Mr. Johnston's word for that.

Councilor Daoust stated we do have a map of a theoretical subdivision of the Zifcak property into ten lots in our packet under Exhibit "B". They show the existing house as occupying a larger percentage of the area and the rest of the lots are divided up between 6,000 and 7,000 square foot lots, which meets the R-7 zoning. If the existing house is already hooked up to the sewer line, would there be any argument to say that there are nine lots that would be hooked up to the new sewer line? Is there any basis to that?

Galloway replied I think there is. I don't want to speak for the other party and their attorney, but it could very well be that the heart of the matter is how much land goes with that existing home. When we did our calculation we looked at each one as if it were of equal size, it certainly is depicted here differently. If in fact they were to give some insurance that this is the way that the development would go and that there wouldn't be more than nine or ten lots, then we could proceed in that direction. In preparing the staff report all we had to go with was one large parcel of 2.75 acres and what could theoretically be done with it.

Councilor Daoust stated and what could theoretically be done with it is the existing house could be torn down and thirteen lots could fit on that parcel. That was your basis.

Galloway replied it was with the exception that since that existing parcel is connected, we assumed that it would stay connected to the existing sewer system and would not have to make use of this pump. So we didn't use the existing home in the calculation.

Councilor Daoust stated since the number of lots could range from nine to twelve, I think Councilor Kight came up with a decent idea that maybe we should toss around. Maybe we should have some kind of reserve fund to deal with that difference.

Councilor Thompson asked is there a way, if we approve this reimbursement district for ten lots, that we could stipulate that it could not be subdivided into more than ten lots?

Galloway replied I believe we could. I think there is probably some mechanism, I would certainly want to consult with the City Attorney on how we would want to do that.

Marnie Allen, City Attorney, replied if the benefited property owner were willing to enter into some kind of restriction limiting further subdivision of their property, then I think that would be agreeable. I would be concerned about the City imposing that as a condition on its own without getting the property owner's agreement.

Councilor Thompson stated in the attorney's letter they say that the Zifcak's might agree on an apportionment that assesses the Zifcak property for ten potential lots and suggests the language for that to be put into the resolution that they are willing to agree to develop it at no higher than ten lots. I don't see any reason why we couldn't adopt that as part of the resolution.

Mayor Thalhoffer stated that appears to be a good resolution to this situation if they are in agreement.

Galloway replied they appeared to be from the letter. They are here this evening and I think they will probably come forward and they can respond to that question as to whether or not they would enter into a binding document that would do that. It seemed like they are in agreement to do that based on their letter. I would think that Mr. Johnston would want to fall back on his square footage formula, which would be more favorable to his position. He is here this evening and I am sure will comment on that.

Councilor Kight asked the existing house on the property doesn't utilize the lift station for their sewer line to the house. Would it be necessary for the new homes in that subdivision to all use that lift station?

Galloway replied my understanding, based on comments from Mr. Johnston, by reading through the lines in the letter from Mr. Zifcak, it would appear they would utilize that as well. I think the topography drops off enough so that probably would be required to either use Mr. Johnstons' or construct their own. I don't think there is the appropriate topography to allow for gravity flow from all of those properties into the city's system.

Councilor Kight asked as a requirement of the development or a condition of the development for that parcel, would you require the existing home to be tied into the newer system?

Galloway replied no.

Councilor Daoust stated the Cofield Law Office letter has an example of what could be inserted into the agreement. It talks about the City notifying the property owners that they are obligated to pay this certain dollar amount when the owners record the final plat for a ten-lot subdivision. What timeframe do we have for them to record that plat design?

Galloway replied there is no timeframe that I am aware of as to when they would have to file a plat for a subdivision. If a reimbursement district is established the length of that is basically ten years. If they don't make use of, in this case the pump station, within ten years the district goes away and the obligation for them to pay anything if they connect to it goes away.

Councilor Daoust asked so if Zifcak doesn't develop his property for ten years he wouldn't pay anything?

Galloway replied that is correct.

Allen stated the Council was talking about the language in the Zifcak letter, to clarify that, we would not recommend that the Council adopt that specific language because it only triggers the obligation when the developer records a plat for a ten-lot subdivision. So, if there were any other development approvals that were approved on that property that took advantage of the pump station the obligation wouldn't be required. So we would like to propose some other language that would trigger the obligation when they receive final land use approval that utilizes the pump station, whatever that development looked like. If the Council is inclined to proceed in forming the reimbursement district and wants to look into making payments into escrow, because the reimbursement district obligation can be made in installments over a ten year period, and because we don't know until they develop the property how the property is going to be developed or how those payments are going to be made. For example lets say they decided to subdivide the property into seven lots and each of the builders that bought those lots and then built a home assumed the responsibility for making those payments as homeowners purchased the developed homes and then wanted to make them over a ten year period, it will be difficult to work out an arrangement to decide how much money should go into escrow and to oversee that and to release that to Mr. Johnston. I am willing to talk about this and figure out how we might be able to achieve that, but we will need some time to figure out how to make that work.

Mayor Thalhoffer asked what you are telling me then is if the Zifcaks say they will only build ten lots that we can't have an agreement with the Zifcaks saying that they only have to pay for ten lots, you can't do that?

Allen replied you absolutely can do that. What I am saying is we don't want to include language in the agreement that only triggers the obligation to pay the amount when they get final approval for ten lots because they may change their mind and develop the property some other way. There are two issues. The issue on getting the Zifcaks to agree that they won't create more than ten lots so that you can decide what amount of money they should pay is one issue. And once you decided the amount of money that should be paid, we need to decide what language to put into the agreement to trigger the obligation to pay it. If they decided to only build six lots, they are obligated under the agreement and allocation of the reimbursement district to pay for ten lots. They would probably have every reason and incentive to go ahead and build ten lots to maximize their contribution, but we just don't know how that development will occur.

Ron Johnston stated I am the developer of this project and I also put in and financed the pump station. You can see the dilemma that you have when you start trying to identify the number of lots on a piece of property. It is quite difficult to determine whether it is going to be ten or twelve or to predict how many lots there will be in the future. That is why I went on the square footage basis. I think that is fair. You take the total amount of square feet and you divide it by the total cost and that is how you come up with a number. It just seems more equitable to work on the square footage basis. The question came up as far as hooking up to the sewer line through the Hardy property to the north, that is a private line that goes through there. We inquired about that in the beginning. That issue was explored by the city and not knowing whether that line would meet city standards or not it became a mute point. I don't

know if you received the letter of March 15, 2000 that was addressed to the City of Troutdale, Mr. Ortega, Acting Public Works Director, or not so I will read it to you, "This letter is in regards to our conversation yesterday about the reimbursement to me for the cost of the proposed sewage pump station in the Sandy Heights Subdivision. This is a formal notification requesting such reimbursement. As we discussed, the fact that the cost cannot be determined until the city has provided the project engineer with the specifications and requirements of this improvement. If any other forms, documents or information is required for this reimbursement, please contact me immediately otherwise I will assume this letter is sufficient." During this period of time the city was in the process of building a sewage treatment plant and it was very difficult to get any information and we assumed that Mr. Ortega was following through with the people at the treatment plant as to what the requirements were. We now found out that probably wasn't the case. The letter goes on to say, "Also, George Zifcak, the only other beneficiary of this pump station has been in contact with the project engineer concerning extending the sewer, storm, water lines to the south property lines and the cost to do so. Additionally Mr. Zifcak has discussed with you, the project engineer and myself regarding future financial obligations for his share of the proposed pump station. I also relayed to him that the cost cannot be determined until the information has been provided and contractors estimates are completed. I hope this notification form is acceptable, if not please contact me at 661-4414." This was the letter that was provided to the city. As the letter states, Mr. Zifcak is aware that there was going to be some costs. Mr. Zifcak has benefited from this project. One, there is a stub street to his property, which eliminated 400 plus feet of unimproved road that he would have had to put in. He also has access to a storm system, which I had to acquire easements for. He wasn't involved with any of the improvements along Stark Street, which were quite expensive and he will benefit from. The water is to his property, which he didn't have before. Plus the sewer pump station, which he would have had no way of having. His property would not have justified \$130,000 cost for a pump station. With all those reasons in hand, I don't know what more I can say. It seems to be an equitable solution to resolving what I didn't think was going to be an issue. In regards to this letter not showing up, what other things have not shown up at the city. There was a cost estimate for the entire project that was requested and provided on February 11th, and you couldn't find it. It was faxed again on March 9th and you couldn't find it. It was faxed again, after Jerry Ortega left, to Mr. Galloway on April 9th. I received a letter from the city, which said thank you for faxing the construction costs for the infrastructure to be dedicated to the city. You are correct, you have submitted this information previously, I simply overlooked it. It goes on to say that I must inform you at this time that this project does not qualify for the city's reimbursement district program. That was the first time I knew that this project didn't qualify. Mr. Ortega and the project engineer discussed this reimbursement program many times during the project and there was never any indication from Mr. Ortega that there was a problem. I was always under the assumption that everything was okay. Why would a guy spend \$130,000 to put in a pump station for 23 lots and not try to get reimbursed for it. That was the first question I asked when the city wouldn't allow us to have a manhole into a gravity fed system on this project, which we could have done, but instead we have a pump station. Knowing that, why wouldn't I request reimbursement?

Mayor Thalhoffer stated I don't have any questions about the letter you say you wrote and the city didn't receive. Mail does get lost and things like that do happen. You apparently qualify for this reimbursement district. Mistakes are made sometimes by us and sometimes by other people, but in this case at least, it is not useful to go over who made what mistake. We are where we find ourselves. It looks like we need to find a way to assess the costs to Mr. Zifcak, whether it is square footage or the number of lots. I think Mr. Zifcak agrees that he should pay, I don't think that is an issue. Your method is square footage and that makes some sense because then you don't have to worry about the number of lots. Whether that is the fairest way to do it I don't know, we have no standard here that I am aware of as to how that is done. It would seem that you and Mr. Zifcak could get together and solve this problem yourselves. Have you tried that?

Johnston replied I didn't realize this was an issue until last Saturday when I received the letter from Mr. Galloway. My previous experience has always been based on square footage. That is the way that most jurisdictions I know of deal with the situation.

Mayor Thalhoffer asked what jurisdictions?

Johnston replied the City of Gresham.

Mayor Thalhoffer stated you make a pretty good case for it.

Councilor Kight asked Mr. Galloway, we are faced with the issue of square footage versus number of lots. Frankly, the square footage appeals to me more because we don't know what is going to happen in the future. As Mr. Johnston points out it could be ten lots or it could be twenty lots. Is there any reason we couldn't use square footage?

Galloway replied I know of no reason why we could not.

Councilor Kight stated then why don't we do that, it solves the problem doesn't it?

Galloway replied it may. That may not be as clean as it might be on its face.

Councilor Kight asked what problems do you see with using square footage?

Galloway replied I think there are a couple of issues. One there are some fairly significant easements involving the Zifcak property and I guess the question would be whether we net them out or not. The other issue has to do with the area that is known as a portion of Sandy Dell Road, which the ownership has been in question for some time and to whether or not that square footage would be allocated to those properties or not. I am not saying that we can't do it. When we get done with those numbers it could be possible that the parties wouldn't agree to those numbers either. We could certainly do that if you think it is the appropriate way to go.

Councilor Kight asked in the development that you referred to in Gresham, did they net out areas like Mr. Galloway just indicated?

Johnston replied no, they just took the total land area because you don't know where the roads are going to go, you don't know anything at that point. You just take the net area that you are dealing with and you divide it up equally.

Councilor Kight stated this is probably not the most equitable, but it is probably the cleanest way to do it. If we took the total acreage of the Zifcak property and your property and we divided up that way, forget trying to net out streets and easements, wouldn't that be the fairest?

Galloway replied I don't think it would be the fairest that is why I recommended the lots. I certainly don't think that there is any flaw with that process.

Councilor Kight stated the problem with the lots is we don't know how many lots, we do know how many square feet there are.

Johnston stated I couldn't delete the footage of the roads on my property. The roads are there and they go to the city but that was all figured as part of the square footage towards the cost of the pump station. I didn't delete the area where the pump station is and that is going to be city property. I have easements going through the property and I couldn't delete those out. So where do you draw the line?

Councilor Kight stated your point is well made.

Councilor Daoust stated just to clarify, the dollar difference that we are talking about is \$9,000 between the square footage calculation method and a ten lot calculation method. If we use twelve lots the difference would be \$4,000. The scope of our decision here is between \$4,000 and \$9,000. Surely if we address this in the future, the most logical thing to me would be based on lots. If we try to narrow this down for any future case that we may have to deal with, I doubt that we would use square footage because the use of the sewer line is dependant on number of houses that you have, it is not dependant on the square footage of land. I am thinking of how we would address this issue if we didn't have two parties sitting in front of us, we would most likely address it on the number of lots or the number of houses that would feed sewage into that sewer line. That being my assumption, I don't know why we just couldn't decide between ten or twelve lots or just split it down the middle and come up with an equitable solution. All we are talking about is \$5,000 difference between a ten-lot subdivision and a twelve-lot subdivision. Is \$5,000 worth that much time?

Johnston stated I guess the other question is what happens if he only wants one lot?

Councilor Daoust stated he would be assessed for a ten-lot subdivision. What incentive would there be just to put one house?

Johnston stated I heard you discuss the fact of what happens if he only develops one lot now and say ten years from now he doesn't develop any more lots? Would he pay the fee for only a single lot?

Councilor Daoust stated I think the way the agreement would be written up would be the assessment would be determined now based on a theoretical number of lots and that would be the fee that would be paid?

Johnston stated so that would be the fee whether he built one lot or ten lots?

Councilor Daoust replied yes.

Johnston stated I still think that square footage is the most equitable way but that is your decision.

Dorothy Cofield, Attorney, stated I represent George Zifcak. Before I start I would like to give a little bit of history with this property because I can see that the Council doesn't quite understand why this property hasn't been developed and the speculation that it will ever be developed. That is one of the big issues that Mr. Zifcak has with this proposed assessment. It is not the difference between \$4,000 and \$9,000. It is the difference between \$45,000 and maybe one lot. Mr. Zifcak bought this property in 1996 to develop. Due to issues related to the east end of Sandy Dell Road, he has not been able to develop and it is now the summer of 2002. Mr. Johnston has developed his property and has the benefit of using the sewer pump station. Mr. Zifcak has one existing house on one lot. The city has reached a settlement agreement with Mr. Zifcak because of the issues related to Sandy Dell Road. Those issues are that eighteen easement holders say that the city never had authority to accept the dedication of Sandy Dell Road and without that dedication there is no access to that property for future development. That is trying to be resolved through the settlement agreement but there are no assurances that the property will ever be developed. It might end up that the property is just sold as one piece and the existing home may be remodeled and possibly have a guesthouse built. Mr. Zifcak is worried that would trigger a \$45,000 assessment for a sewer system that he is not even using. The first issue that I would like to talk about is your ordinance requirement because this is the first time you have used this ordinance. It seems very clear to me, as it is with most developments, that Mr. Johnston as a developer has certain requirements. He isn't just allowed to write a letter and say tell me what to do next and rely on that letter. Your ordinance in the Troutdale Municipal Code Chapter 12.08.210 says any person who chooses to get reimbursed has to make an application for the reimbursement district, in writing, filed with the director accompanied by a processing fee established by Council Resolution and the application has to include a series of items. That application has to be made and filed before the construction plans for the pump station are ever reviewed. If you meet that hurdle and the plans are reviewed, then you can go ahead and construct, but that person takes the risk. The code reads that the applicant may proceed with the construction of the improvement prior to the Council authorizing the reimbursement district if he submitted a completed application before the plans were approved, which in this case didn't happen. If the Council does not authorize the reimbursement district the applicant will be responsible for the full cost of the improvement. Mr. Johnston did make an investment of \$130,000, but he took the risk and it wasn't the City's obligation to track him down and tell him what the submittal requirements were, it was right here in your code. Our first argument really is that I don't think the city has jurisdiction to

even form this reimbursement district and I think that it violates Mr. Zifcak's due process rights because at the same time he was negotiating a settlement agreement with the city on whether his property would ever be developed, he was trying to come up with cost and damages and if this reimbursement district had been applied for in the timeframe that it was supposed to be, back in March of 2000, he would have used that in his settlement. It wasn't there and in his mind there was no application for reimbursement. So, we would first like for the Council to really strongly consider if you want to be changing your ordinance on a case by case basis or do you want to hold people to application requirements. Having said that, we did write in our letter the issues related to per lot and square footage. I think the Council did a good job of looking at the problems with square footage. With the way the resolution is written right now and the agreement between the Mr. Johnston and the City, if one accessory building were put on the existing lot that would trigger the reimbursement for \$45,000. That clearly is not fair. When you look for guidance on how you should do this, the law is clear that it has to be fair and proportionate. If Mr. Johnston has twenty-three lots and Zifcak only has one lot because of legal issues and he ends up paying 37% but he only has 1/23 share, that is in no way a fair portion of the cost of the pump station. I think the only fair way to do it is by the number of lots. The only fair way to do that is when the subdivision is actually platted. Mr. Zifcak has already put in a partition application and a subdivision application that both have legal issues and they cannot be developed or recorded. He has to have a certainty that there isn't going to be this ten year lien for any kind of development that happens on that property that wouldn't represent a fair portion. I would like to have George explain why ten lots are the maximum that can fit on this piece of property.

Mayor Thalhoffer stated before we do that I would like to ask our City Attorney to comment on your statement that we don't have jurisdiction to even hear this case.

Allen stated it is my opinion that the Council can waive the timing requirement that is set forth in the ordinance for when the completed application has to be filed. In situations, as exists here, the letter and follow-up application materials arguably would have been filed on time had the letter been received. If the City Council believes that the letter was lost in the mail, the City Council has the discretion to waive that timing requirement. It would be up to you to decide whether or not you want to do that in this case or not. I do believe you have jurisdiction to review and decide to create the reimbursement district. The other issue that I would like to point out is the City Council, separate from receiving an application from a private developer who has made the improvements, can initiate the creation of a reimbursement district on its own. I am comfortable that you can proceed with deciding whether or not to create the district.

George Zifcak handed the Council three drawings, which are contained in the packet.

Zifcak stated the first drawing shows the subdivision that Mr. Johnston and I submitted with 8 new lots. This addresses the issue of how many lots can you get in the area of the existing house. Of course you could tear it down, but with the existing easement, the configuration of the land and the topography the fact of the matter is that it is probably not going to get developed. The second drawing is the one that came with the settlement agreement.

Councilor Kight asked who is the settlement agreement with?

Zifcak replied it is with the city regarding the legal issues on Sandy Dell Road. Sandy Dell Road was dedicated as a public road in 1989 by the previous owners of the property, Mr. Parks and Mr. Hardy. I bought it based on the fact that we had public road access. When Mr. Johnston and I put in our subdivision application the eighteen easement holders from down below Sandy Dell Road on the river objected and said that there could not be a public road there because they had a document saying there could never be a public road. Evidentially the city did not investigate this. That subdivision application was withdrawn because our only recourse was to sue the eighteen easement holders.

Councilor Daoust asked your subdivision was withdrawn?

Zifcak replied the joint subdivision with Mr. Johnston. One month later Mr. Johnston submitted his own application that did not include Sandy Dell Road.

Councilor Kight asked so where are we with Sandy Dell Road?

Zifcak replied we are working on it. We have an agreement with the city. I think that what has motivated me now is that I felt that the city was lax when they accepted that dedication in 1989 and as a result I suffered holding this property for six years trying to resolve this issue. I saw a public road there that the city accepted by resolution saying that we accept this as a public road. In my view the city didn't do its homework. That is why we have this agreement because the city in some form is acknowledging that maybe they didn't do their homework. The settlement agreement includes the second drawing with nine new lots.

Cofield stated what happened is when the eighteen easement holders objected to Sandy Dell Road being a public road, Mr. Zifcak and the city entered into a settlement agreement. The city said that it would attempt to get a quitclaim deed back from Hardy and Parks that had dedicated the road to them and then turn around and dedicate Sandy Dell Road to Mr. Zifcak and then he could put a private road on it. The easement held by the other parties just says if it is a public road it needs their consent, but there is no issue if it remains a private road. Right now the city has received one quitclaim from Mr. Parks and is attempting to get the other quit claim deed from Mr. Hardy and then the city will turn around and deed it to Mr. Zifcak and then the property can be developed. The letter from Mr. Hardy's attorney contains demands that Mr. Hardy is making before he will quitclaim his interests in Sandy Dell Road back to the City. If you read that letter you will see that the development of Mr. Zifcak's property is still very much up in the air. He is asking that lots only be ½ acre in size, which can't happen under the City's code. When we say it might only be that one new house is built on this 2.75 acre lot, that is the truth.

Marnie Allen stated from my prospective and staffs prospective, issues associated with Sandy Dell Road and the settlement agreement really are an entirely separate matter from whether or not a reimbursement district should be created. While I appreciate Mr. Zifcak's comments about the city not doing due diligence in discovering a 1939 restrictive covenant that prohibited Sandy Dell Road from being dedicated as a public street, he to failed to do the

due diligence to discover that and in entering into the settlement agreement the City in no way admitted to any wrong doing or negligence. In fact, when property is dedicated to a city for use as a public right-of-way, cities do not require title reports and do separate due diligence on prior restrictions that apply. That obligation typically lies with the developer that is developing the property.

Mayor Thalhofer asked what is page three of your handout?

Zifcak replied it is a preliminary subdivision with a maximum of ten lots.

Mayor Thalhofer asked so is that what you plan to do, ten lots?

Zifcak replied I don't really see being able to get more than that.

Mayor Thalhofer asked does it appear that the road issue will be worked out?

Zifcak replied I hope so but I am not that optimistic.

Mayor Thalhofer asked how long has this been going on?

Zifcak replied since 1999.

Mayor Thalhofer asked are you going to develop ten lots or aren't you?

Zifcak replied that is what we will do if we get the go ahead.

Mayor Thalhofer stated well either we assume that the road issue is going to be resolved and act on this today or else we table this item.

Zifcak stated the language in the staff report that says when we record the plat and for the number of lots that hook up. If we do a ten-lot subdivision then all ten lots will hook up.

Cofield stated the problem right now is that it is not as easy as a difference between \$4,000 and \$9,000. We wouldn't be here if that is all it was. The problem is he could have a potential lien of \$45,000 for the next ten years and not be able to develop the property due to the legal issues. We need to devise some way that is fair if you think the procedural hurdle is met and I am not sure of that.

Mayor Thalhofer stated we could spend the rest of the night trying to figure out what is fair. Can we ask the parties to get together and see if they can work out some agreement? It appears that you should be able to do that. This is very complicated. You are the ones involved and it looks like you could work out something that would be satisfactory to all parties. You might come up with something better than we might come up with. Are you willing to do that?

Cofield stated yes. What I would like to do is formally request a continuance so that we have time to work with the City Attorney to see what the ordinance will allow.

Mayor Thalhoffer asked Mr. Johnston, are you willing to sit down and see what you can work out?

Johnston replied sure.

Mayor Thalhoffer stated so my proposal is that you both, along with the city, try to work this out. If you can't then you can bring it back to the Council.

Councilor Daoust stated that is a good suggestion. I would just like to clarify what they are really objecting to. You said your main objection was with the timing of the obligation. The way we have it written now is the timing is triggered when the owner or owners agent submits a subdivision or partition application or applies for a permit to expand the existing use of the owners property.

Cofield stated the language of submits a subdivision application. There has already been subdivision applications submitted, so just submitting an application doesn't mean this property will ever use the sewer. That is why we are recommending that you use the word record instead of submit.

Erik Kvarsten stated I would suggest that the hearing be set to a date certain, and that would be August 27, 2002.

Cofield replied actually I will be on vacation.

Kvarsten stated would September 10th work?

Cofield replied that works for me.

Mayor Thalhoffer stated this hearing will be continued on September 10th if you are unable to settle it yourselves.

5. PUBLIC HEARING / ORDINANCE (Introduction): An Ordinance amending Chapter 2.52 of the Troutdale Municipal Code, disposition of Personal Property.

Mayor Thalhoffer read the ordinance title and opened the public hearing at 8:28pm.

Kyra Williams, Finance Director, stated the ordinance before you provides for changes to our Municipal Code on how we dispose of property. This chapter of the code has remained almost unchanged since it was originally adopted in 1979. Laws have changed, mostly in the disposition of property related to police issues. All this ordinance does is update our code so that we are in compliance with those laws.

Councilor Thompson asked what about abandoned motor vehicles, are we just striking that whole section?

Williams replied that is covered in the Oregon Revised Statutes, so we don't need that language in our code.

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

No public comment received.

Mayor Thalhoffer closed the public hearing at 8:30pm and stated that there will be second hearing on this ordinance at our August 27th meeting.

6. PUBLIC HEARING / ORDINANCE (Introduction): An Ordinance amending Chapter 10.12 of the Troutdale Municipal Code regarding Parking Vehicles in public rights-of-way.

Mayor Thalhoffer read the ordinance title and opened the public hearing at 8:31pm.

Chief Nelson stated this is the first reading of this ordinance amending Chapter 10.12 of the Municipal Code. We are recommending that the following language be added to the end of Section 10.12.090, "offering the vehicle for sale". We are also recommending that the language in the first sentence be changed to read, "no operator shall park and no owner shall allow the vehicle to be parked upon the street *and or public right-of-way* for purposes of". Several years ago the Council imposed a parking restriction on Troutdale Road between Stark and Cherry Park Road. Since then we have received a number of complaints at the police department, and I believe the Council has also received complaints, regarding this 2-hour parking restriction. As I understand it, the parking restriction was primarily initiated to eliminate vehicles for sale. So what we are doing is we are changing the ordinance to restrict vehicles for sale and we are removing the 2-hour parking restriction, which will allow residents along Troutdale Road to use the road for parking.

Mayor Thalhoffer asked this doesn't affect the 2-hour parking downtown?

Chief Nelson replied no. What we would be doing if the Council approved this is I would ask Mr. Galloway to ask Multnomah County to remove the signs that they put in approximately three years ago.

Mayor Thalhoffer asked with this change any vehicle for sale on the public street or right-of-way could receive a ticket immediately, is that correct?

Chief Nelson replied they could. We would probably contact the owner and ask them to remove the vehicle and if they did not then they would be issued a citation. By removing the 2-hour parking on Troutdale Road, there would still be a city-wide ordinance that does not allow people to use the public road for storage. There is still a 72-hour time limit for parking vehicles on a public road; there is no change in that ordinance.

Mayor Thalhoffer asked what about the situation near Stark where people are parking across the street from the apartments on Troutdale Road on the shoulder.

Chief Nelson replied I believe what they have done is the 2-hour parking signs were initiated on the west side of Troutdale Road. The signs were not put in place on the east side of Troutdale Road, so the residents have just simply moved across the street and there are no parking restrictions there.

Mayor Thalhoffer asked could we, at a later time, have signs installed on the east side of Troutdale Road in that area like we have from Troutdale Road eastward on Stark Street on the south side where it says “no parking at any time”?

Chief Nelson replied if the Council chooses to do that, yes.

Councilor Kight stated I concur with the Mayor. I think parking on the east side of Troutdale Road is dangerous; there is no shoulder there and people are crossing the road to go to the apartments and that particular section of the road is very narrow. People come around the curve and across the bridge and all of a sudden there is someone crossing the street. There is no sidewalk there, so a lot of time people have to go around those cars in order to walk to the stores that are on Stark Street. I would like to see signage there myself. How long can people currently park in the street?

Chief Nelson replied up to 72-hours.

Councilor Kight asked after 72-hours the car can be tagged?

Chief Nelson replied yes.

Councilor Kight asked as far as enforcement with regards to the cars that are advertised for sale, you would contact the owner and if that doesn't work what is the next step?

Chief Nelson replied the registered owner would be issued a citation under this ordinance.

Councilor Kight asked at any point does the car get towed, or is that the 72-hours?

Chief Nelson replied it would fall under the 72-hours.

Chief Nelson stated I have one clarification, you are asking for “no parking at anytime” signs on the east side of Troutdale Road between...

Councilor Kight stated from Beaver Creek, where there is no sidewalk, from that point south on the east side of Troutdale Road.

Councilor Daoust asked did you see the letter from Mr. Strebin?

Chief Nelson replied yes.

Councilor Daoust asked what is he referring to? Is he objecting to parking on both sides of the street on Troutdale Road?

Chief Nelson replied that was my impression from reading his letter. Primarily the concern is that this abuts his property.

Councilor Daoust asked so people are parking in front of the apartments because there is not enough parking in the rear, is that the case?

Chief Nelson replied I am assuming so. Between the town homes that are there and the additional businesses that have been built at Stark and Troutdale Road, people that park there are also frequenting those businesses. I believe the primary use is from the town houses.

Councilor Daoust asked have we had any police incidents on the west side of Troutdale Road in front of the apartments, as far as parked cars go?

Chief Nelson replied I don't believe so.

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

No testimony received.

Mayor Thalhoffer stated this is the first reading of this ordinance. A second public hearing will be held on August 27, 2002.

7. COUNCIL CONCERNS AND INITIATIVES:

Mayor Thalhoffer stated the lifeguard program is working really well. So far no one has drowned in the last three years. The lifeguards and the police seem to be working well together down on our beach. You have probably heard that American Medical Response is running a similar program at High Rocks beach and I hope they have the same success as we have had here.

Councilor Daoust stated I would like to expand on the Mayor's comments. The Troutdale Booster Club has expanded its role to become the Oregon River Safety Program. They are not only trying to raise money for Glenn Otto Park, they are now involved with trying to raise money for High Rocks. There are bank accounts being set up at the Merchants Bank in Gladstone and Oregon City where contributions can be made.

Councilor Smith stated the live transmissions of our Council meeting are terrible, you cannot hear them. The reruns are fine. I think we should look into that.

Kvarsten stated I will have our facilities maintenance department work with the cable folks.

8. ADJOURNMENT:

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

Meeting adjourned at 8:47pm.

Paul Thalhofer, Mayor

Approved September 10, 2002

ATTEST:

Debbie Stickney, City Recorder