

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

November 12, 2002

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

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

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

ABSENT: None

STAFF: Erik Kvarsten, City Administrator; Jim Galloway, Public Works Director; Rich Faith, Community Development Director; Elizabeth McCallum, Senior Planner; Travis Hultin, Chief Engineer; Marnie Allen, City Attorney; Debbie Stickney, City Recorder.

GUESTS: See Attached List.

Mayor Thalhofer asked are there any agenda updates?

Kvarsten replied we have no changes this evening.

2. CONSENT AGENDA:

- 2.1 Motion: A Motion authorizing the Mayor to enter into an Intergovernmental Agreement between the City of Troutdale and the Multnomah County District Attorney's Office.**
- 2.2 Motion: A Motion authorizing the Mayor to enter into an Intergovernmental Agreement between the City of Troutdale and Multnomah County Sheriff's Office.**
- 2.3 Resolution: A Resolution repealing Resolution #610 and selecting an additional deferred compensation provider for the City of Troutdale.**
- 2.4 Resolution: A Resolution establishing Reynolds School District as the recipient of forfeited funds.**

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.

Dave Munson stated with the recent election there will be some new faces on the council, but before that happens I would like to thank each of you for participating in the city and for your time.

Dick, resident of Troutdale, stated the shrub located at the intersection of 257th and SW Cherry Park Road is interfering with the line of sight when you are making a right hand turn from SW Cherry Park Road onto SW 257th heading towards I-84. I would like the city to trim this shrub.

Council asked Mr. Galloway to look into this situation.

Bob Johnson, resident, stated when you drive up 257th, at the Cherry Park Road intersection, as you come around the corner the brush in the center median is also blocking the line of sight. I would also like the city to make a recommendation to Multnomah County to lower the speed limit on 257th.

Mayor Thalhofer stated we have discussed this in relation to the new apartments on 257th. We are aware of the issue and we will be addressing it.

4. PUBLIC HEARING / ORDINANCE (Introduced 10/22/02): An Ordinance amending chapter 12.10 of the Troutdale Municipal Code to remove provisions that established a permit system for persons providing the service of collecting and/or transporting exempt loads of solid waste for compensation within the City of Troutdale and reverting to an exclusive franchise.

Mayor Thalhofer read the Ordinance title and opened the public hearing at 7:15pm.

Jim Galloway, Public Works Director, stated this is the second reading of this ordinance. In May of 2000 the US District Court for Oregon acted upon a case, AGG vs. Washington County. AGG is a waste hauling company. The outcome was an injunction, which told local jurisdictions, such as the City of Troutdale, that they could not regulate a certain class of commercial solid waste. The particular type of solid waste that was covered by that injunction, must jurisdictions have referred to as "exempt loads". In order to comply with that court injunction, a number of jurisdictions, including Troutdale, enacted changes to their local codes or ordinances to comply with the direction of the court. We did that by enacting Ordinance # 697 in October of 2000. What we did with that change primarily had two impacts. We changed from an exclusive franchise agreement with our solid waste hauler to providing for a non-exclusive franchise. Secondly, we created a permitting system whereby any other non-franchise hauler that wished to haul those particular exempt loads could do so simply by applying for a permit, paying the permit fee and then doing business. To date, no hauler has paid that fee or made that permit application. We do understand that AGG is servicing at least one commercial customer in Troutdale. After jurisdictions made those changes, the appeal of that particular matter was decided earlier this year by the Ninth Circuit Court and they basically overturned the lower courts decision. What we have before you

tonight is really an effort to change our code so that it would be reinstated to the language that it had held prior to us taking the action a couple of years ago to comply with the lower courts order. Specifically what it will be doing is reversing our ordinance back from a non-exclusive franchise to an exclusive franchise and it would remove the permit process for the exempt loads. At the last meeting the Council had some specific questions that they asked us to look into. The Council asked us if we could determine what the commercial solid waste hauling rates are in the City of Portland. Portland does not regulate the commercial solid waste. Kevin Rauch contacted the City of Portland; the response that he received was that basically their commercial rates were all over the board. Haulers and customers negotiate the best deal that they can. Council also asked us if we could determine what problems Portland had with that type of an open market system. Again when Kevin spoke with staff from the City of Portland, their response was twofold. One, they are dealing with sixty-seven different hauling companies in Portland and the biggest problem that they see at the staff level is trying to administer and deal with sixty-seven companies. Secondly it left them in an uncomfortable position since there is no regulation of commercial solid waste, if a customer has a particular complaint and comes to the city, their hands are really tied and they cannot help the customer. The third question that you asked staff to look into was what type of community services were currently provided by our franchised hauling company and an idea of what that value might be. The main service that they provided is being a sponsor of our Spring Clean-up Event that is held each year in Troutdale. They provide for the mailing of our fall rate and recycling brochure. They are a sponsor of the Troutdale SummerFest and they do assist from time to time with miscellaneous pick-ups of waste that needs to be hauled away. Waste Management has given us an estimate for the value of those services of around \$10,000 annually. The last item that I want to mention is there were two changes that we are proposing to the ordinance that are new since the last hearing. The first one is to correct a mistake that we made. In Exhibit "A", Section 12.10.70 – Compliance and Enforcement and 12.10.80 – Private Right of Action are a part of our existing municipal code. When we prepared the document for your review at the last meeting we erroneously left those sections off of the document. We do think they belong in there and we are proposing to reinsert them so that portion of the code will read the same if you enact this ordinance as it does today. Secondly, one question came up internally since the last council meeting. As I mentioned earlier, we have on the books today an exempt load category and a provision for a waste hauler outside of the franchise arrangement to apply for a permit to haul those exempt loads. Such a permit, as it is established in our code, would run from July 1st of a year through June 30th of the following year. We were concerned if something were to come up where a hauler were to come in and obtain a permit while we are in the process of deciding whether or not this ordinance will be enacted, it could put us in a bit of a gray area of whether the permit is valid only until the new ordinance goes into effect or does the permit stay in effect until June 30th. To eliminate that questionable area we consulted with the City Attorney and the proposed language is shown in Section 2 of the ordinance entitled Retroactive Application. This basically says that if the ordinance is passed that the exempt load provision would go away retroactively to October 1st and that any permits would be denied.

Mayor Thalhoffer asked AGG hasn't applied for a permit, is that correct?

Galloway replied that is correct.

Councilor Kight stated you indicated that AGG is currently hauling for LaTourneau. Since they are hauling for LaTourneau would that load be exempt?

Galloway replied I think that the material that they are hauling falls under that particular definition, yes. If this ordinance is enacted, as is recommended, that definition and term would go away and their ability to haul those particular items would also go away.

Councilor Kight stated at the last council meeting AGG, in their testimony, indicated that when they haul for Gresham they pay, voluntarily, a franchise fee. Were you able to find out if the franchise fee was voluntary or is a requirement?

Galloway replied I don't know if it is called a franchise fee or not, I believe it is a payment equivalent to, in lieu of a franchise payment. It is my understanding that it is a requirement of the City of Gresham. So my answer is no, I don't believe that it is voluntary.

Councilor Rabe asked would it be fair to say that exempt loads are in fact recyclables?

Galloway replied I believe that a certain percentage of the load needs to be, yes.

Councilor Daoust asked were we specifically listed in the US District Court injunction?

Galloway replied we were not.

Councilor Daoust asked so we were volunteering to comply with the injunction?

Galloway replied the logic was that since it was a federal court that the ruling would probably be applied to us should we be challenged. So it was an effort to try to get into compliance. Now since the Ninth Circuit Court has overturned that decision, our recommendation is to go back to the language that we had prior to when all the legal action started.

Doug Christopherson, LeTourneau Sales and Service, I wrote a letter to all of you regarding AGG's service to us. Before AGG came to us Waste Management was our hauler. We had a lot of problems with customer service with Waste Management. We would get a recording when we would call for service, we were put on hold and told they would call back and we would not receive a call back. Our billing was so much per month plus if there was any additional pick-ups, that was extra. They would take pictures of our garbage service when it was flowing over. We tried to contact them about getting some other kind of service where we could get rid of our waste without it piling up on the ground. Basically it was like we were talking to a wall. When AGG approached us and offered us another solution to get rid of our waste, we took it upon ourselves to do that and we saved ourselves a significant amount of money. We were getting our garbage picked up when we needed it and we had plenty of room to get rid of waste without it collecting on the ground. Shortly after we changed haulers we received a call from Waste Management saying that they would provide the same service to us that AGG was providing at a significantly less price than what AGG was charging us.

That made us angry. Up until that point we were never able to get in touch with anyone at Waste Management. We believe that everyone has the right to conduct business with whom they get the best service.

Mayor Thalhoffer asked how long have you been in business in Troutdale?

Christopherson replied since 1990.

Mayor Thalhoffer asked how many years did you receive service from Waste Management?

Christopherson replied approximately 5 or 6.

Mayor Thalhoffer asked and you have been receiving service from AGG for how long?

Christopherson replied 1½ years.

Mayor Thalhoffer asked how has your service been with AGG?

Christopherson replied excellent.

Councilor Ripma stated I don't recall seeing the letter you are referring to.

Christopherson provided a copy of the letter to Councilor Ripma. (A copy of the letter is included in the packet.)

Councilor Ripma read the letter, which was dated April 18th, "Dear Council, this is in regards to your current ordinance that allows the choice of waste and recycling haulers to conduct business within the franchised area of Waste Management. We have recently been informed that a court decision may cause a change to the amendment of this ordinance. We would hope that you seriously consider all advantages and disadvantages before changing it. We have conducted business with Waste Management in the past, we made the change to AGG Enterprises based on Waste Managements past performance. We at LeTourneau believe our customers associate with us because they receive the best parts and service for their dollar. We receive that from AGG Enterprises now. If that should change in the future we would want the option to change."

Councilor Ripma asked did you switch when Waste Management came to you and said they would provide the same service for less?

Christopherson replied no. I don't believe in doing business that way. If they wanted our business that badly they would have offered us that service before we made the switch.

Councilor Ripma asked how long ago was that offer made to you by Waste Management?

Christopherson replied in July of 2001, approximately two weeks after AGG started servicing us.

Councilor Ripma asked are you aware that AGG is operating without a City of Troutdale permit?

Christopherson replied I did not know that until the Mayor sent me a letter on April 26, 2002.

Councilor Ripma asked are you aware that Waste Management pays the City a franchisee fee for the exclusive franchise?

Christopherson replied yes.

Councilor Ripma asked before you switched to AGG and you were receiving poor service from Waste Management, did you contact the City?

Christopherson replied no.

Larry Davidson, Attorney representing AGG Enterprises, provided the Council with a handout (a copy is in the packet). I am here to speak on behalf of keeping the exempt ordinance that you currently have and to not make any changes. What this ordinance addresses is what we call dry loads, it is only mixed solid waste, a common example is construction and demolition, it is only drop boxes. It will not be an increase in truck traffic because only one box can be transported at any time regardless of who the hauler is. There is no residential service involved in this. The fees that get paid should be revenue neutral like Gresham has done. In other words, AGG does not want or expect or deserve any less of a cost for operating in Troutdale than Waste Management. The City would continue to receive the equivalent of its franchise fee; there would be no loss of revenue to the city. At the last hearing I understand that there was an argument made that AGG would come in and take the good accounts and leave the bad accounts to Waste Management. AGG would take any customer that wanted service and we will provide the service at a rate that is equal to and most certainly better than the rate charged by Waste Management. There is an impact of what you folks decide that goes beyond your territory limits. By charging inflated rates within the city limits, these franchise haulers can go outside into such areas like Portland and charge a lower rate. What happens is the businesses in the franchise areas end up subsidizing businesses in the non-franchise areas. AGG's equipment is of high quality so there is no problem of meeting the city's operational requirements. I want to emphasize the fees; it should be mandatory that haulers pay revenue equivalent to what the franchise fee would be. Actually AGG would even take it one step further, it is not on the agenda but it is something for the future and that is we would like to see all business customers within the limits of Troutdale be afforded a competitive service that AGG provides.

Mayor Thalhoffer asked AGG has been operating in Troutdale for around a year?

Davidson replied I am not sure exactly how long they have been operating in Troutdale.

Mayor Thalhoffer stated LaTourneau stated they have been receiving service from AGG since 2001. AGG provides service in Gresham and Portland also, correct?

Davidson replied correct.

Mayor Thalhofler asked do they pay fees in Portland, Gresham and the other cities that they operate in?

Davidson replied yes. Portland does not have any franchise fees for commercial accounts. It does have franchise fees for the residential accounts. For commercial they have a tonnage tax. Gresham, I am not familiar with the nuts and bolts of their ordinance, but it is my understanding they do have a tonnage fee that is equivalent to what the city would collect by way of franchise fee.

Mayor Thalhofler asked if you are paying a fee in Gresham and you are doing the same thing in Troutdale for the last year or so, doesn't that put AGG on notice that maybe they should be paying some kind of fee to the City of Troutdale or at least go to the city and ask if you need a permit?

Davidson replied I would like to defer those operational questions to Barry Peine.

Councilor Kight asked your comment about taking the more lucrative accounts and leaving the marginal accounts, I would like to hear your argument on how that wouldn't take place?

Davidson replied the rates in the City of Troutdale are so high, it is not just AGG, other haulers would love to compete for Mr. Christopherson's business or any other business. I think it is \$140.00, in the City of Portland those same rates are usually \$45.00 to \$75.00 for the drop box service. AGG will gladly serve any customer within the City of Troutdale and that service will be less than the franchise rate.

Councilor Kight asked the loads that AGG picks up are often times recyclable materials and they are able to sale those materials so they recover part of the cost in hauling material away and they recover costs by selling the recyclable material, is that correct?

Davidson replied I hesitate to answer because there are two different types of loads. There are mixed loads and source-separated loads. On the source-separated loads, some loads go directly to a manufacturing facility. The mixed loads go to a material recovery facility (MRF) and on those loads the recovery of the material is not done by the hauler, it is done by the folks at the MRF.

Councilor Kight asked so there isn't any scenario where the hauler in fact has cost recovery on recyclables?

Davidson replied with the loads that go to the MRF they are able to charge a reduced fee because the MRF recovers the material and that reduces the tipping fee.

Councilor Kight asked if that is the case, couldn't a hauler be selective on the type of customers he is choosing because he is going to have a lower tipping fee because there is cost recovery?

Davidson replied yes he could be selective. These dry loads, as outlined in the ordinance, have to have recoverable material in them so even the lower end of those loads are going to be attractive to a hauler who utilizes the services of a MRF.

Councilor Kight asked so in my hypothetical situation, a hauler can offer a lower rate when he knows he has a lower cost of operation because of the type of materials recovered, couldn't he then be selective about the type of customer he is choosing? One customer you get cost recovery and one you don't. As an end result you could lower your price for the customer where there is cost recovery and a higher price where there is not.

Davidson replied certainly for the customer with the lower cost they won't have to charge as much. With the customer that has less recoverable material the tipping fee may be increased but it will still be substantially below the franchise rate.

Councilor Kight stated you have indicated that on occasion, when asked, you provide community service to the City of Portland. What community service do you provide to the City of Gresham?

Davidson replied I do not know.

Councilor Kight asked do you provide any community service to the City of Gresham?

Davidson replied I do not know.

Councilor Kight asked we were told in earlier testimony that AGG voluntarily pays a franchise fee to the City of Gresham, they don't necessarily call it a franchise fee. We now find out that the fee in fact is not voluntary it is required by the City of Gresham, is that correct.

Davidson replied I do not now whether Gresham's fee is voluntary or mandatory. I don't understand why the city would make it voluntary. It should just be mandatory and have everyone pay it.

Barry Peine stated that is news to me that it is required. It is my understanding that representatives from the City of Gresham came forward and said that this is what we are asking of you and once they did that we complied.

Councilor Kight asked the amount of revenue paid to the City of Gresham is based on tonnage, is that correct?

Peine replied I believe it is based on gross receipts.

Councilor Kight asked is this on the honor system or is this something you provide to the City of Gresham? Who monitors this?

Peine replied every time one of our trucks goes into a facility the truck is weighed and there is a weight slip that is produced. We calculate what we pay the City of Gresham based on those weights plus I believe a haul fee as well.

Councilor Kight asked are those numbers given to the City of Gresham and who monitors it?

Peine replied I believe we provide them with a report and they in turn send us a bill.

Councilor Ripma asked the city has an exclusive franchise with Waste Management, isn't it inconsistent with their franchise for us to allow another hauler in the city to provide this service?

Davidson replied I haven't seen the actual franchise agreement that you have with Waste Management, but certainly with the ordinance that you are considering tonight, yes it would be inconsistent with their arrangements with the City of Troutdale.

Councilor Ripma stated the ordinance that we are trying to repeal and go back to the old language was inconsistent but for that court case. Given the fact that the court case has been decided in favor of exclusive haulers, aren't we duty bound and obligated by contract law to honor the exclusive franchise?

Davidson replied I would be happy to answer that question if I saw the contract. You are asking me a question about a contract between the City of Troutdale and Waste Management.

Barry Peine stated the first thing I would like to do is a little housekeeping. Since it was called to our attention that we were operating in the City of Troutdale without a permit, I would like to take this opportunity to submit to you Mayor, both the application along with the permit fee to start with.

Mayor Thalhofer asked Mr. Peine to submit that to the City Recorder.

Peine stated as it pertains to franchise fees, I have learned that we were paying LeTourneau franchise fees to the City of Gresham. We will get that corrected. I know by saying this I am going to complicate things a lot further, but in the early part of all these proceedings we were servicing a few other accounts here in the Troutdale area. We are in the process right now of going back and reconstructing all that we did in this area and once we have done that it is our intent to bring up-to-date and pay the City of Troutdale all those franchise fees. There were questions regarding community service brought up at the last meeting and I would like this to be official on the record that if we are allowed to continue to do business in the City of Troutdale we welcome your invitations to make contributions to your community. We do it in Portland on a regular basis. We have not been asked by the City of Gresham as of this point

and if they were to ask us we certainly would. We want to be part of the community. Another question that was asked at the last meeting had to do with pricing.

Peine provided the Council with a handout (a copy is included in the packet).

Peine stated one of the questions asked at the last meeting was what kind of rates are being offered in a competitive market like the City of Portland. If you look at Exhibit "A", this is an actual situation with rates offered by Waste Management. This customer has one 3-yard dumpster in service 4 days a week. The Troutdale franchise rate would be \$602.45 per month. Waste Management offered this particular customer with identical services and frequency in the City of Portland for \$325.00. If you look on the next page there is documentation that supports that. In Exhibit "B", again this is an actual case. This is a company in Troutdale that does medical packaging. We were doing business with them and we had to stop because the injunction that was issued said it had to be dry waste and unfortunately there was some medical solutions that were consistently in the load. They use a 20-yard drop box. The franchise rate starts with a box fee of \$81.55 per month, a haul fee of \$146.70 plus the cost of disposal, which in Troutdale runs at \$64.00 per ton. What we offered was no box fee and I was charging \$85.00 per haul plus the cost of disposal, which is \$62.50 per ton. The big difference between the two rates was in the monthly rate for the drop box and in the haul fee. Exhibit "C" relates to a question that was asked regarding picking off the more lucrative businesses. At the beginning of this process we were not only doing drop boxes but we were servicing dumpsters as well. There is a charity operation in Troutdale and we had one 2-yard container that we serviced once a week and we charged them \$90.00. The franchise rate in Troutdale for that service is \$112.00. There is an auto parts/salvage business in Troutdale that we had one 3-yard container that we serviced once a week and charged \$129.00, the franchise rate is \$159.70. The point I am trying to make is that our interest is not only in pursuing customers that were sizable but we would consider small as well. If we had an opportunity to compete we could benefit all sizes of business. I have a letter (copy is included in the packet) that was addressed to the Mayor that basically says if you folks are interested in conducting a survey, you would control the whole thing and we would pay for that. We believe that if you would do that you would be very interested with the results. My last comment is that I would hope that at the conclusion of all of this that at minimum you would consider maintaining the ordinance as is. Frankly, I hope that you can see some of the benefits of open competition.

Mayor Thalhoffer stated you were at the last meeting and talked about the fact that you were here about a permit and you hadn't paid any fees but you were paying fees in Gresham. Mr. Christopherson of LeTourneau and AGG's position is that Waste Management did not engage in good business practices as it pertains to LeTourneau. You did not bother to come into City Hall and check with our staff to see whether or not you needed to pay for a permit or franchise fee to the City of Troutdale. That seems to me that your business practices are not one hundred percent either, are they? Wouldn't that give us the idea that you are not following the rules? How can we believe that you would be any better of a corporate citizen than Waste Management?

Peine stated in my opinion that is one of the beauties of open competition. If there is a customer that does not believe that we are being open and above board, they can go elsewhere to receive service.

Mayor Thalhoffer stated I am talking about the city. Why didn't you see fit to come to the city and find out what the rules and regulations were?

Peine stated the first that I became aware that there was a requirement for all of this was at the last Council meeting. I might add that if you remember how I began my testimony, I started off by saying that inside of the City Portland the commercial and industrial side of the business is open to competition, outside it is all franchised. That pertains to debris removal. Recycling on the other hand is open to competition. With the advent of MRF's we got into a gray area because they were both debris and recycling. The Federal Judge said that he sees it as non-exempt or more like the recycling end of it. Now there are places that we do recycle outside of the city limits of Portland and there is no requirement. So, how were we to know? There are cities that we are not required to have a license in.

Mayor Thalhoffer stated the fact that you were paying fees to Gresham ought to have put you on notice that maybe you would have to pay a fee to the City of Troutdale also. However I am not going to belabor it.

Larry Davidson stated you were concerned about AGG not having a permit. In retrospect, yes it should have been done. As Mr. Peine stated, the bookkeeper was paying the LaTourneau fees to the City of Gresham by accident. It was an oversight and it should not have happened, but I don't believe that it was intentional.

Adam Winston, Division Manager of Waste Management stated regarding LaTourneau Sales and Service, I can not comment on the service that we provided at the time. I would like to research his account because we do take our service very seriously and if there was an issue I would happy to meet with them personally. There have been a lot of comments regarding the rates that Waste Management charges in the City of Troutdale. I do want to remind everybody that the rates are set by the franchise and are audited by a third party accountant. The rates are based on a reasonable rate of return; we do not set the rates. The rates were reviewed and we meet with the city to discuss them. There are no subsidies. The rates are developed by the work that we do within the City of Troutdale or any other jurisdiction, so the comments about subsidies is not an accurate one. There have also been a lot of comments regarding the open market versus the franchise system. The open market rates do vary according to what the market will allow. Open market rates can be higher or lower then franchise rates without any rate equity. Typically rates are set according to the type and density of customers waste stream as well the amount of recycling services provided. In the regulated system annual rate reports are submitted and rates are set for all classes of service for the entire city. Again I want to stress that there is very little regulation in the City of Portland; there is not ancillary charges that you have to pay for. It is difficult to compare one jurisdictions rates with another. There was a lot of discussion at the last meeting regarding the Portland Public Schools versus the Gresham Public Schools. The Portland rate does not include disposal charges and the Gresham rates do include disposal charges. That is an

example of a variance of what could be a very substantial distinction of different rates. There are also some other issues regarding the franchise system. It is more conducive to regulation and enforcement than the open market because the city knows which company is allowed to operate in the city. I would like to make a point that it is very simple to pick up the phone and ask the city, if you want to do business there, what are the requirements to start a business in that city. I would be happy to answer any questions you have regarding the solid waste ordinance. We have been a very good corporate citizen and I do urge you to rescind the ordinance and go back to the original franchise agreement as it was written.

Councilor Thompson stated AGG has indicated that franchise haulers like Waste Management use the higher rates in the franchise area to subsidize lower rates in the City of Portland for example, is that true?

Winston replied it is not possible. Use the City of Troutdale for example; we submit rate reports to you and they are given to an accountant that is hired by the city to review. If the accountant has any questions regarding any of those reports they will ask us and we have to justify it to them. It is very easy based on our customer base and the revenues to make sure that we are providing the proper numbers. We have a number of franchises that we service in the Portland area and we have to keep very diligent records on what rates or what expenses were reported and they are subject to an audit. It is not possible that we subsidize in the other areas.

Councilor Thompson asked so you do not charge lower rates in Portland?

Winston replied there are the low rates and the high rates and there are different things involved with it. The open market does not have franchise fees. We do provide a lot of other services to the franchise cities and so the rates do vary.

Mayor Thalhoffer stated I am real concerned about the testimony of Mr. Christopherson of LaTourneau that he repeatedly tried to bring to your attention the fact that he was getting poor service and that he couldn't get anyone to call him back. How did that happen?

Winston replied that is something that I would like to review. We keep notes on all of our customers so I can go back and look at those.

Terry Waddell stated at the last Council meeting Kevin Rauch was asked if he had received many complaints about Waste Managements service and the answer was no, very few. I know that if we don't take care of our customers we not only could lose a customer we could lose the franchise.

Councilor Kight asked how many commercial accounts do you have in Troutdale?

Winston replied I don't have the exact number; it is not a large number.

Councilor Kight asked how many folks do you have in your customer service department when someone calls in?

Winston replied we have 15 customer service representatives plus a customer service manager.

Councilor Kight asked what are your hours of operation for customer service?

Winston replied 8am to 5pm.

Councilor Kight asked how do you handle commercial customers, do they have a special line that they can call or do they call the same number?

Winston replied they go through the customer service department or they can go through the sales department.

Councilor Kight asked what is your standard for returning phone calls?

Winston replied no more than 24-hours.

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

No further testimony received.

Mayor Thalhofer closed the public hearing at 8:37pm.

MOTION: Councilor Kight moved to adopt the ordinance amending Chapter 12.10 of the Troutdale Municipal Code to remove provisions that established a permit system for persons providing the service of collecting and/or transporting exempt loads of solid waste for compensation with the City of Troutdale and reverting to an exclusive franchise. Seconded by Councilor Thompson.

Councilor Kight stated I think there are benefits to the city when the city has control over the people that are coming through your city. When there are complaints about poor service the franchise hauler has a relationship to the city and they don't want to jeopardize that. Out of all the commercial accounts within the City of Troutdale, to date the only one that we have a recorded complaint is from LaTourneau, there could be others. However, there is a side benefit to the city as a whole and that is that they provide community service that has a value of up to \$10,000. AGG has indicated that they would be willing to do that. I like to see control of those people that are coming into our city especially when it comes to hazardous material. I want somebody that can be accountable to the city not just for the commercial side but also to the residential side. I want to honor this contract. I think Waste Management has provided high-level service. When I had a complaint about some of Waste Management's trucks leaking in front of my house, they took care of it. I think they are very conscious about maintaining that franchise level. Will this make everybody in the city happy, certainly not. Anybody that operates a business is going to have folks that

are unhappy. I don't think that there has been a compelling argument tonight that Waste Management doesn't provide a very high-level service to both commercial and residential accounts.

Councilor Thompson stated I think Waste Management does a good job. We have a franchise with them for solid waste and I think it would be inequitable to have an open bidding process on exempt loads because the recyclables are valued in those exempt loads. To make only those subject to open competition I don't think is healthy for the franchise that we have granted to Waste Management.

Mayor Thalsofer stated I have always believed in competition. I think competition is healthy for our economy. The only thing that I find desirable about the franchise is that we have a way to regulate the industry. It is not an extremely compelling argument for me. I find it very difficult to see that we only have one phone company, power company and the other competition is not there like I would like to see. This country was based upon competition where companies compete with each other for better service and product. I think if we are going to be true to this franchise, as long as we are going to have a franchise, we would have to make it exclusive thereby ruling out the competition which goes against my grain. However, if that is where we are going I guess I would go there with mixed feelings. I think that Waste Management would want to visit with LeTourneau regarding the service they received. I personally receive good service from Waste Management. I am going to support the motion but I do it with mixed emotions.

Councilor Rabe stated I am going to support the motion for a few reasons. There is fairly good consistency of service through Waste Management and we can maintain that through regulations. They have demonstrated a history of community service to the city. They have also been very good with the level of communication with the city and staff in terms of keeping us up-to-date with changes to Metro's hauling rates and legislative changes. If we were interested in any kind of termination of this exclusive franchise I would suggest that we wait until the term of this franchise expires.

Councilor Daoust stated I agree with the Mayor. I am reluctantly supporting this. The bottom line to my support is to honor our contract that we currently have. Residential satisfaction is good with Waste Management. I don't know what the business satisfaction is. I will vote yes on this to rescind the ordinance and go back to the original exclusive franchise but I must agree that most of the accountability comes from business competition and not from a controlled franchise. I am not opposed in the near future to a city survey, not one that is paid for by AGG but a city survey to see what exactly the business satisfaction is.

Councilor Smith stated I have been happy with the service provided by Waste Management. I wish there was more competition.

Councilor Ripma stated I also favor competition when we are not legally, and in this case probably morally, bound to honor a franchise that we granted. I was somewhat

startled at the difference in rates that were presented. I know our staff reviews rates charged, that is probably something that we need to continue to look at to make sure that our commercial customers are not being overcharged. Perhaps some day down the road we might consider more competition in the commercial area but for now I share the views of the other Councilors that we are bound to honor the exclusive franchise. I favor the motion.

VOTE: Councilor Thompson – Yes; Mayor Thalhoffer – Yes; Councilor Kight – Yes; Councilor Rabe – Yes; Councilor Daoust – Yes; Councilor Smith – Yes; Councilor Ripma – Yes.

Approved 7-0

Mayor Thalhoffer called for a 10-minute break.

Mayor Thalhoffer reconvened the meeting at 9:02pm.

5. PUBLIC HEARING: Public Hearing on an application for a residential planned development. (Proposed Arbor Heights Subdivision located east of 257th Avenue, north and west of Hensley Road.)

Marnie Allen, City Attorney stated this is a Type IV Quasi-Judicial Land Use Hearing. The procedures for this hearing is bounded by State Law and the Troutdale Municipal Code. A staff report has been prepared and made available seven days prior to tonight's hearing. That staff report identifies the approval criteria that applied to the applicants proposed development and it analyzes those criteria that come from the Troutdale Development Code. If you would like the city to identify those criteria please let the Mayor know when you are testifying and I would be happy to read the criteria. The procedure that we will follow for this hearing is that we will begin with a staff report then the Mayor will open the public hearing. The applicant will have an opportunity to address the Mayor and Council and present their application and respond to any questions. Anyone who is here that wants to testify in support of the application will then be given an opportunity to testify and respond to the Council's questions. Anyone who wants to testify in opposition will then be given a chance to testify and respond to questions. If there is testimony in opposition the applicant will then be given the last opportunity to provide rebuttal testimony to the Council. After all of the testimony has been submitted, the Mayor will close the public hearing, or the Mayor could decide to continue and leave the record open. Assuming that there is no reason to leave the public hearing open, the Mayor will close the public hearing and the City Council may deliberate and make a decision tonight. If you are going to testify please give your name at the beginning of your testimony so the city has a record. In your testimony if you could address the approval criteria that guides the City Council decision in this matter and explain why you think that they have or have not been met. If there are approval criteria that you believe the city has not addressed, you need to bring that to the City Council's attention. The Mayor may limit oral testimony depending on time constraints tonight. Any party may submit written testimony as long as the record is left open. If you would like the Council to leave the record open you need to make that request when you are testifying tonight. If the City Council makes a

decision that you disagree with, any issue that you want to raise later on appeal has to have been raised for the City Council to review and consider and decide on. Your failure to raise an issue on record with enough information so that the City Council can consider it will preclude you from raising that issue on appeal. That summarizes the procedure. I would remind the Council to disclose any bias, ex-parte contacts or conflicts of interest if there are any.

Mayor Thalhoffer asked are there any bias, ex-parte contacts or conflicts of interest that need to be disclosed on the part of any member of the Council?

Councilor Kight stated I contacted Randy and Diane Barta. I called them last night. I also had a conversation with Max Maydew here tonight. I asked both parties what they felt was best for this particular site. Mr. Maydew is in favor of the current proposal that has been worked out with the developer and the neighborhood. Mr. Barta was hoping to see less density and they didn't know how that would fall out, if it was going to follow the A-2, R-5, R-7 format. Essentially they didn't want the high density.

Councilor Ripma stated I talked to Max Maydew on the telephone. He had testified at the planning commission meeting and I asked him about the 258-lot subdivision proposal that was in our packet. He explained to me the neighborhood meetings that had been held that derived this proposal and he spoke generally in favor of the 258-lot subdivision.

Marnie Allen stated I would like to encourage anyone who is here to testify that if you have any objections or opposition to these ex-parte contacts or believe that neither of these Councilors are bias, that you raise that objection during your testimony tonight.

Beth McCallum, Senior Planner stated this is a hearing for the Council to consider the Planning Commission's recommendation for denial of the 312-lot residential planned development that was presented to the Planning Commission in September. In your packet Exhibit "E" is the Planning Commission's Findings of Fact and Final Order.

McCallum showed a power point presentation. (A copy of the power point presentation along with the narrative read by Ms. McCallum is included in the packet.)

McCallum stated the Council action before you is one of the following three options: 1) Close the hearing and take action on the application to either uphold the Planning Commission's recommendation for denial or approve the application based upon the modified plan introduced this evening. Staff will need to prepare a Final Order for either action and present it to Council at the December 10th meeting. 2) Continue the hearing to consider the modified plan introduced this evening. Pursuant to TDC 16.110, Request to Present Additional Evidence, the Council may continue the hearing to a date, time and place certain at least seven days from the date of this hearing in order to consider the new information presented by the applicant. 3) Remand the application back to the Planning Commission for review of the modified plan introduced this evening. A new public hearing would need to be scheduled and noticed. The applicant would need to be willing to suspend the 120-day clock to give

time for the additional notification period and hearings before the Planning Commission and City Council.

Councilor Kight asked one of the issues brought up was water quality. We have a wellhead in that area. With the addition of that many homes there is going to be a lot of impervious surface.

McCallum stated the applicant hired a consultant and had a study done and as I understand from the study there is no danger to our wellhead. I believe the applicant will address this in their testimony.

Councilor Kight asked the other issue is the increase of traffic on an unimproved street that doesn't have sidewalks. You indicated that the developer wants to add sidewalks not only adjacent to his property but he is also willing to supply sidewalks on the north/south route on Hensley, is that correct?

McCallum replied under the 312-lot proposal and their modified 305-lot proposal that went before the Planning Commission they were willing to do that.

Councilor Kight asked along with the sidewalk improvements there would have to be half-street improvements, were they willing to make the half-street improvements along with the sidewalk improvements?

McCallum replied under that particular version of the application they were willing to make the half-street improvements on the north side of Hensley and the west side of Hensley.

Councilor Kight asked wouldn't that normally be a condition of the development?

McCallum replied it is only required as it abuts a property. They were willing to include a portion along Fairfax Heights.

Councilor Kight asked are you telling me now that they are rescinding that?

McCallum replied they will speak to that during their testimony.

Councilor Kight asked parking of vehicles, boats, RVs etc. on the street, how would the neighborhood association address that?

McCallum replied based upon the discussions at the Planning Commission hearing they were moving towards establishing the CC&R's for the neighborhood association that would limit RV use on the public street. CC&R's cannot restrict the use of a public street. That would be enforced through our municipal code. As far as meeting the minimum parking, the Development Code only requires one off-street parking space per single-family detached dwelling. In that sense, their proposal meets the minimum off-street parking space requirement.

Councilor Kight stated you talked about other public amenities that they would provide, what does that include?

McCallum replied their 312-lot proposal has three on-site open space areas for the use of the residents, they will be privately owned and would be privately maintained by the homeowners association. The city does not require that these open space areas be deeded to the city. The code does not have a specific ratio required. The Planning Commission's finding was that they were not sufficient.

Councilor Daoust asked the Planning Commission made a ruling on a 305-lot plan. Is this coming to us as an appeal of their decision?

McCallum replied no. A planned development requires the planning commission to make a recommendation to the council and the council makes the final decision on a planned development.

Councilor Daoust asked since the plan has changed since the Planning Commission's public hearings and it is coming to us as a modified plan, what is the criteria we could use to revert it back to the planning commission for them to look at the revised plan, which they have not reviewed?

McCallum replied it is my understanding that the Council may remand this application back to the planning commission.

Councilor Daoust asked would the applicant have to be willing to suspend the 120-day time period? What if they said no?

Allen stated if they said no then we would be faced with having to make a decision on whether or not you want to proceed and consider the new information they have submitted tonight or whether or not you wanted to keep your review and decision limited to what was heard by the Planning Commission and whether or not their decision should be affirmed or not. Without the applicants agreement to waive the 120-day rule, as I understand it you do not have enough time for the decision to be reconsidered by the planning commission and to come back to you and finally be adopted.

Councilor Ripma asked if we were to accept the new proposal has there been a notice of the new proposal sent to the neighbors?

McCallum replied no, other than their own private meetings with the neighbors.

Councilor Ripma asked has their been sufficient notice to the public for us to accept this new proposal?

Allen replied I believe that the matter has been properly noticed and is properly before you. We have complied with the notice requirements under state law. There is some obligation on neighbors and parties that are interested in following this to continue to participate in the

process knowing that in our process we do allow for a de-novo hearing before the City Council which means that new evidence can come in either by neighbors or by the applicant up until you close the public record.

Councilor Ripma stated the new proposal has not received staff review. We might be considering a proposal that somehow may not comply with our rules or code. How would that be handled if we were to entertain the idea of accepting this new proposal?

McCallum replied my understanding is that we would hear the applicants testimony this evening and then staff would return on a date certain with a final order that addresses the planned development criteria and a modified staff report explaining content of the draft final order for the Council's consideration for approval, approval with conditions or denial.

Mayor Thalhoffer opened the public hearing at 9:39pm.

Donald Guthrie, General Manager for West Hills Development stated included tonight was a detailed letter from us to you, which also included a traffic study report (a copy is included in the packet). We went before the Planning Commission on September 25th. They have recommended denial of the 305-lot planned development. We took both the planning commissions concerns and more importantly the planning commissions concern about the lack of neighborhood support for the plan seriously. We set out a path to meet with the neighbors on as many occasions as they felt necessary to craft a plan that they would adopt. In other words, develop a neighborhood plan. We met for the first time on the 17th of October with 37 adjoining neighbors. In that process I presented to the neighbors what we call a base zone compliance map, it meets all of your zoning ordinances. This is what is allowed on the property. It is 355 units and that would meet all of your code and zoning requirements. We demonstrated and showed them what the project would look like in the A-2 zone, approximately 200 units of apartments. We also discussed with them that there are other alternatives and I wanted to start with an open pallet and pen and work with them towards the things that they might desire. I presented the first plan, which was initially 260 plus units and I received a tremendous amount of input from the neighbors. Some of their concerns were: the traffic signal; the issue of traffic; the sidewalk to the north of Hensley for 500' that would provide connectivity to the north; the density in the carriage product; the traffic bulbs for fire, life and safety and the ability for vehicles to get in and around the community. The initial plan in the eastern portion of the development the houses initially fronted and came out on Hensley. The neighbors asked us to turn those lots interior and bring the interior road in. In doing so we spent the rest of the evening addressing all of the issues the neighbors had. One additional issue they had was a concern for a new study that would be done to supplement the existing study for the need or warrant for a traffic signal on Hensley. When I went back to the consultants we addressed each of the issues that the neighbors had and we asked Kittelson to do a further study of counts to determine whether a traffic signal was warranted. We then met again with the neighbors on the 24th, only 15 neighbors showed up. I presented the existing 258-lot plan. I reduced the number of carriage homes. We talked about the park, circulation and we agreed that we would work with the city on the approximately 500' of sidewalk that is north on Hensley for connectivity and pedestrian access. We agreed that if the study came back from Kittelson we would be willing to, if it was

warranted, put in a traffic signal. We also shared with them the type of home that we intended to build. We took the planning commission's concerns about the Z-lot product, which some view as experimental, out of the plan. The plan has 258 traditional single-family detached homes that will work within an association with governing CC&R's. There are three different products. The carriages collection is the smallest product in this community. They are on an average 2500 square foot lot and are in the A-2 zoning. We do have a plan that has a single-car garage, but we also have plans in the carriage collection with a two-car garage. That product ranges in size from 1300 to 1500 square feet. The fronts of all 258 homes will be landscaped by the developer and maintained by a professional homeowners association management company, which is consistent with the other communities that we are developing. The cottage collection is a two-story home that ranges in size from 1600 to 1800 square feet. The classic collection homes are the largest of our products and they average in size from 1950 to 2250 square feet. Each of those collections has about four floor plan designs, so there are twelve designs for the community and each one has a minimum of three different elevations that allow them to sit next to one another without you believing that you have the same home. So we have about 36 different elevations. We also agreed that we are willing to take care of the cost of the sidewalks, and a commitment and understanding with the city, along Fairfax Heights, which is not adjacent to the project. We also agree to take care of the traffic signal because the new study that is in your packet, from Kittelson, provides that it is warranted. The parks in this plan are one larger park with playground equipment and an area where people can bring their families. It is 35,000 feet. The park above, which also maintains the water quality area, is 23,000 feet. That equals about 2 acres of park for the community. After we concluded the second meeting with the neighbors we had a unanimous decision by the neighbors present to support the plan. With reservation that they want to make certain that they have the opportunity to come to the Council to address their concerns about the 500' of sidewalk on Hensley and their concerns about the traffic signal, which we are willing to address both in this modified application tonight.

Mayor Thalhoffer asked do you think that is enough park space for a development of this size?

Guthrie replied yes.

Councilor Kight asked you indicated that the neighbors felt it is warranted to have a traffic light on Hensley and 257th and you also indicated that you would be willing to pay for that. Has anybody at Kittelson & Associates said that the light is warranted?

Guthrie replied yes, that is on page 4 of their report.

Councilor Kight asked has anyone checked with the county to see if they will approve the installation of a light at that location?

McCallum replied yes.

Councilor Kight asked the sidewalks that you originally planned involved connectivity on the sidewalk on Hensley. If I understand you correctly, you have rescinded that to the degree

that there wouldn't be connectivity, there would be a missing link to the Fairfax development, is that right?

Guthrie replied no, that is incorrect. We are still proposing to take care of the connectivity of sidewalk on Fairfax Heights both to the north and south.

Councilor Kight asked the half-street improvements will be made by?

Guthrie replied I think they will be done in combination with our development cost and work with the city for some reimbursement.

Councilor Kight asked how will the homeowners association (HOA) work within this development?

Guthrie replied each of our last twelve developments that are highly successful have an outside professionally managed HOA management services.

Councilor Kight asked about impervious surface. You indicated in the northeast section is where the bio-swale is and that will eventually dump into our storm water system. How is that set as far as the 100-year flood event?

Guthrie replied I would ask Fred Holts to address that for me.

Fred Holts, LDC Design Group, stated we want to have the system designed per the City of Portland Storm Water Manual, which typically is going to be designed for a 25 to 50 year event.

Councilor Kight stated the reason I mention this is because we had a bio-swale type of design for Strawberry Meadows and it went into total failure.

Holts stated this system that we are designing is going to have the bio-swale for the pre-treatment and then it will go to an infiltration bed, which is actually underground and will be able to take advantage of how fast the ground percolates in this area.

Councilor Kight asked the public areas that you have indicated, who maintains those?

Guthrie replied if the Council decided that they wanted to have them deeded to the public, so they are open for public use, we are willing to do that. If the Council is not interested in doing that they would be maintained through the CC&R and the HOA as private parks.

Councilor Rabe asked the park in the northeast corner that contains the bio-swale, what percentage of that park will actually be usable?

Guthrie replied almost the entire park will be usable because the bio-swale actually sits underneath the park. There will be a small section that gathers water.

Councilor Rabe asked will there be any percolating gases that will be emitted from there?

Guthrie replied no.

Councilor Rabe asked how will you vent the biodegradable gases that will come off of that decomposition process?

Holts replied there will be essentially no biodegradable gases coming out of it. The bio-swale itself will be open to the air and by the time the water is through the bio-swale it is cleaned and it will be going into the infiltration system under the park.

Councilor Rabe asked have you already done your perk tests?

Holts replied yes. We find that it is at about a 200 inch per hour percolation rate in this area.

Councilor Daoust asked so the map you are showing us tonight is a result of the two public meetings?

Guthrie replied that is correct.

Councilor Ripma asked you mention a four-year requirement. Does that mean that your plan requires you to sale all of the lots in four years?

Guthrie replied we mean to demonstrate that the three collections of homes, all single-family detached, with these product types and price ranges we can get through the community in four years.

Councilor Ripma asked through building and selling?

Guthrie replied that is correct.

Mayor Thalhofer asked is there anyone here to testify in favor of this development.

Johnnie Mansfield (provided the Council with a letter and petition, a copy is included in the packet) stated I have been to every neighborhood meeting that Arbor Homes has had with the people in Troutdale. I have lived in Troutdale since 1976. I have approved of just about everything that has happened here in Troutdale with the city. When I found out that the Finnegan property was being sold I was very concerned because I live close to it. I believe that Mr. Finnegan had a right to sell his property and whoever bought it should be able to do with that property as they so desire provided that they meet the rules and regulations of the City of Troutdale. When I found out about this development I was concerned, not so much about the development, but about what the City of Troutdale had neglected to do in the past. That was when the area was developed on SW 14th and SW 15th back in the 1970's they neglected to put in a sidewalk. That is past history but I didn't want this to happen with this development. I found out that Arbor Homes was willing to put a sidewalk from their property around Fairfax Heights all the way out to 257th. I went around and talked to over 70 people

and I had one person that would not sign my petition to have a sidewalk in front of SW 14th and 15th Street. Arbor Homes advised me that if I could get the City of Troutdale to fund the sidewalk that would be in front of SW 14th and 15th Street they would put it into their contract and it would be a lot cheaper. About a year and a half ago the on 15th Street the city required that it be opened up to a new development but did not require any sidewalks. If Arbor Homes puts in a sidewalk where their property starts all the way around this would still be a dangerous area for pedestrians on that section of Hensley. This would be a cheap way for the city to get a sidewalk and provide safety for the students at Reynolds High School. I talked to Mr. Galloway and he said the city has the money to do this provided that he could get the permission from the Council. Arbor Homes has complied with a lot of requests from the citizens regarding this development.

Max Maydew stated there is a letter that is in your packet that says several negative things about this subdivision and I testified against it during the planning commission's hearings. I objected very strongly to several of the ideas that were in the subdivision. Particularly in the original subdivision plan there was a major transfer of density towards the east. In my opinion that was very unfair to all of the people that had bought homes in the subdivision around this development because they were counting on the zoning to be adhered to and it was not. After the planning commission hearing a couple of representatives of Arbor Homes came and talked to Sheryl and I. They asked us what it would take to get this done. My response was that you have to stay with the zoning basically. They then developed a basic plan that kept the basic zoning and I think they have done a good job. Some questions have been raised tonight about whether this is marketable. The plan they have I think will work and because of that I now support the development.

Dave Munson stated I attended some of the meetings and I thought that Arbor Homes has really tried to satisfy the neighbors. I am in favor of this development and I think they will be good neighbors.

Gail Luthy stated I live in Fairfax Heights and I am a civil engineer with the City of Portland and I have some familiarity with storm water management programs. In general, I favor the way that Arbor Homes has modified their plan. My concern is that there are a number of issues currently with infiltration systems, storm water quality and storm water management. What I have seen on each of the revisions is that the densities have been increased every time they have had to take away something. I am concerned that the storm water management has to be done at the east end of the property because it has to be outside of the two-year time travel to the wellhead, so they are limited as to where they can locate it. I am concerned that if in fact they end up with issues on how they deal with storm water management, especially under the more stringent regulations that are coming from DEQ, that could significantly impact that end of the development.

Mayor Thalhoffer asked is there anyone here to speak in opposition of this development.

Bob Johnson stated I live in Fairfax Heights. The people have worked with Arbor Homes a lot because we were concerned about what was going to go behind our homes. They did not want to put in any apartments, they wanted to stay with the single-family homes. They were

willing to get rid of the A-2 zoning, which is apartments in exchange for the little homes along 257th and we agreed that was a good choice because we don't want to see apartments either. All of the rest of the property is kind of like apartments but squashed out flat because they are all small lots. When we first met with them we could not tolerate the small lots. There is only 7' between the homes and with the roof overhangs you can almost jump from roof to roof. You could only imagine what a fire would do. The unanimous decision that the people came up with working with Arbor Homes was, yes we had a unanimous decision that what they would accept and what we would accept as their best proposal but it still doesn't fit Troutdale's Comprehensive Plan. I was on the Citizens Advisory Committee and we spent a lot of time working with Metro and the City to get a workable Comprehensive Plan for Troutdale. There is R-10 zoning to the east, north and south of this development. What they are laying out is not anything close to R-10 zoning. This development is not compatible with the R-10 zoning that surrounds it. The staff asked us to address the approval criteria; there is no need for a planned development on flat land. The public has not had a chance to review the material that Arbor Homes submitted to you, that is an unfair advantage. If it is what we discussed at our last meeting with them then it is probably okay, but we haven't had a chance to look at it. We haven't seen the results of the second traffic report but what they are saying is they are recommending a traffic light on Hensley and 257th. We definitely need that traffic light. The reason we had a unanimous decision is we were put in a position to help them figure out the best that they could do to make this development work for what they have in mind. So if you are going to accept what they have in mind then the people are in favor of this proposal. My biggest concerns are the small lots, houses too close together, and large amounts of storm water run-off that goes to one bio-swale. The city is only holding them responsible for the bio-swale for two years and after that the city is responsible and that means I will have to help pay to fix it. With all of that storm water going into one area, I think that is a disaster. I am concerned about the parking in this development. With all of these homes there are going to be children and if you don't have any backyard or front yard the kids will be playing in the street. If you do accept this development you will be setting a precedent in Troutdale that small narrow lots with large houses are okay.

Theresa Elmer stated I have been to all but the last neighborhood meeting. I think this is going to be a beautiful community and it will compliment our neighborhood. My only concern is their water facility because my property abuts it. I am concerned that my house will flood.

Florence Goad stated I live in Fairfax Heights and I have been a resident since 1970. I have seen many changes. My concern with this development is the small lots. I think if we make the small lots a precedent in Troutdale they will continue and there isn't that much land left to develop. The children are also a concern I have; there are too many kids in the schools now.

Barbara Kyle stated I am a member of the Planning Commission but I am here tonight as a resident and a residential realtor. I submitted a letter to you (a copy is included in the packet). Since real estate is my business I am concerned about the smaller lots. I do not see a large demand in our area for these small lots. 212 lots with 30' to 40' widths. I know the developer has indicated that they plan to use professional management for the HOA. If you do accept this plan please go one step further and condition a HOA professional management company. I am familiar with other small lot developments in Troutdale and one

of those plans I included in my letter to you. You can drive through that development and you will get some idea of what small lots look like. Although that is a mixed housing area the lots sizes are from 11' wide to 40' wide. That area has no HOA and the CC&R's are not enforceable.

Mayor Thalsofer asked if there was anyone else that would like to speak in opposition?

No further testimony received.

Mayor Thalsofer stated it is now time for the applicant to provide any rebuttal testimony?

Guthrie stated in regards to Bob Johnson's concerns, the setbacks we are proposing meet the city's requirements. In terms of the storm water facility, I expressed to the neighborhood group in both meetings our willingness to work with the city in designing the storm water management plan the way the city sees fit. The comment that it would be bonded for one year and then it would be the city's responsibility, if you want to condition the approval for the four years that we are developing the site, we would be willing to do that. Yes the property has some smaller lots. Our market studies indicate that there is a need in Troutdale for housing. I don't believe that it is all over \$200,000. I believe that there are a number people that reside in Troutdale and commute to find affordability. We have a very good track record in several communities of being well thought of and being absorbed and sold at a good pace with the front yards being maintained so that private ownership ends up looking much nicer to the community than the apartments that might front 257th.

Mike Robinson stated I am here on behalf of West Hills tonight. Councilor Ripma asked a question about the four-year requirement. In my view, as the planning commission discussed it, I believe they had to have evidence that there was sufficient absorption that it could be built in four years. Frankly, I think you can read it that the improvements be completed in four years. We have addressed that in page 8 of my letter and we believe either way the Council might look at it we can meet that approval criteria. We have heard testimony that we believe there is more than sufficient market demand to meet that. Councilors Rabe and Kight asked about the storm water and several of the neighbors have also talked about the storm water. We have done several studies and Fred, who is a registered professional engineer in the State of Oregon has answered these questions but if you have any doubts about whether we have met the city standards, I encourage you to ask Mr. Galloway or Mr. Hultin to testify tonight to that issue. In fact we have met with them at least once since the planning commission hearing to confirm again that they believe that the plan we propose not only takes care of the storm water from the site but it doesn't impact the neighbors. Mayor Thalsofer asked about parks. I know that we are providing 100% more parks than the city would receive if this were a traditional subdivision. When we originally met with staff last spring we talked about what the city would like with respect to parks and at that time staff's opinion was that it made sense to do the sidewalks around Fairfax Heights so folks could walk over to Sunrise Park. It is clear that the planning commission and neighbors believe that wasn't an acceptable solution. That is why when you compare the plan that was before the planning commission and the plan you are reviewing tonight what we have tried to do was to take those smaller areas and put them into two larger areas. If you watched any of the

planning commission hearings what is amazing to me is what took two nights to get through all of the opponents testimony, tonight you had four opponents. We were surprised that the planning commission was recommended denial of the plan but West Hills went right back out and met with the neighbors to see what we could come up with. I would like to address some of Mr. Johnson's comments. I know that the fire department is not opposed to this application to the extent that he was concerned about fire because of the side yard setback. I think that the application does fit your Comprehensive Plan. Goal 10 of your Comprehensive Plan expressly notes the desire to use planned developments to increase density. We are not seeking to increase the density; we are just barely above the 80% minimum. We do meet the lot size requirements. The motor homes and boats, West Hills believes that the CC&R's that are enforced by a management company make a difference. In their experience in Washington County has been that folks over there like boats and RV's but they know that they can not put them in their driveway or in their backyard, they have to find somewhere else to store them. They have a track record with twelve subdivisions over the last six years and they have not had a problem with any of those uses. Councilor Kight asked about parking, each of these lots will have a minimum of two off-street spaces. The lots are designed so that you can have on street parking spaces. The only other point I would make is that not all small lot homes and subdivisions are built the same. I think it depends on the person and company proposing it. This is a company that has a track record of doing this kind of development and doing it well. We would sure like for you to act on it tonight but if you would like more time or if you decide to send it back to the planning commission we will grant a reasonable extension of the 120-day rule.

Mayor Thalhoffer closed the public hearing at 10:58pm.

Mayor Thalhoffer stated the matter is before us for consideration tonight or we can set it over until December 10th and hold a continuation of the hearing. Unfortunately we did not receive this information from West Hills in time to read it before the meeting. I would like to have some time to review this material before we make a decision.

Councilor Kight stated I would like to concur with your decision to hold this over until the December 10th meeting. I don't feel comfortable with going forward with this decision tonight. A lot of people are affected that adjoin your project and to your credit you have met with those neighbors. Additionally you have said you would extend the 120-day timeframe. We have correspondence from you and other folks that we have not had time to read because we just received it tonight. I would like a chance to read the material before I make a decision.

Councilor Ripma stated I concur with the general idea. I would like to have us direct staff to analyze this proposal and come back with a staff report on this proposal. The notice that was given to the neighbors was the other plan; it seems to me that there is time to send this revised plan out to the neighbors with a notice of the meeting on the 10th of December.

Mayor Thalhoffer agreed that the December 10th meeting notice should be sent to the neighbors.

Councilor Ripma stated staff should include in their December 10th report information that addresses the issues raised regarding the storm water system. Also a report on the sidewalks north to 14th and 15th and how the financing would work and finally I would like the proposal to come back with a mandatory professional HOA as a requirement.

Mike Robinson stated what I am hearing is that we would come back on December 10th and re-open the public hearing.

Mayor Thalhoffer replied yes.

Councilor Daoust stated the planning commission determined whether Criteria A, B, C and D were met. I assume staff would look at Criteria A, B, C and D with this new plan to see if it is now met and include that in the staff report.

Rich Faith, Community Development Director stated I would like some clarification. When we come back to the December 10th meeting as part of our staff analysis do you want a recommendation, which may include draft conditions and final order that you would consider for adoption?

Mayor Thalhoffer replied yes.

6. COUNCIL CONCERNS AND INITIATIVES:

None

7. ADJOURNMENT:

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

Meeting adjourned at 11:00pm.

Paul Thalhoffer, Mayor

Approved January 14, 2003

ATTEST:

Debbie Stickney, City Recorder