

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

**December 10, 2002**

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

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

**PRESENT:** Mayor Thalhofers, Councilor Smith, Councilor Thompson, Councilor Kight, Councilor Rabe, Councilor Daoust and Councilor Ripma (7:42).

**ABSENT:** None

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

**GUESTS:** See Attached List.

Mayor Thalhofers asked are there any agenda updates?

Kvarsten replied we have no updates this evening.

**2. CONSENT AGENDA:**

- 2.1 Accept Minutes: October 22, 2002 Regular meeting.**
- 2.2 Resolution: A Resolution accepting the November 5, 2002 General Election results from the Director of Elections, Multnomah County, Oregon.**
- 2.3 Resolution: A Resolution authorizing the City to enter into a License Agreement to allow construction of a trash enclosure on city property.**
- 2.4 Motion: A Motion authorizing the Mayor to enter into an Intergovernmental Agreement to conduct a review of Verizon Northwest's franchise fees.**

**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.**

Linda Davidson, Chair of the Reynolds Education Foundation, stated with me is Angie Strange and Craig Gilbert, members of the Board. We are here to say thank you to Paul Thalhofer who was a founding board member back in 1996. He served two terms and unfortunately his time ran out with us. The bylaws require that after two terms you have to step down. Paul is a terrific supporter of education and we really appreciate the time that he gave to the foundation. Linda presented the Mayor with a gift to thank him for his service.

Bob Johnson stated I wanted to thank the city for clearing the bushes on 257<sup>th</sup> and Cherry Park Road. Last month I came here and asked if we could get those bushes trimmed and I appreciate that it has been taken care of.

Adam Winston, Waste Management stated we thought it would be appropriate to come back to the Council especially after the last meeting where there was a lot of discussion regarding LaTourneau Sales and Service. We just wanted to let you know that we have met with them and we listened to their concerns. We will continue to work to gain their trust.

#### **4. PROCLAMATION: Oxbow Park's Diack Nature Center Project.**

Mayor Thalhofer asked Charles Ceiko to give a brief background of this project.

Charles Cieko, Director of Regional Parks and Greenspaces for Metro, stated I am here tonight with Diane McKeel who is the Executive Director of your Chamber of Commerce, to ask for your support for the eventual construction of an environmental education center at Oxbow Park. Oxbow Park receives approximately 250,000 visitors per year. The park is best known for recreation, camping, fishing, boating and hiking. Perhaps less known is the fact that the park is regularly used for environmental education purposes. It is the same special natural resources that draw the recreation enthusiasts that create the unique opportunity for education. I am referring to the river and its five species of Salmon and Steelhead and the forest. Part of it is old-growth forest, probably the most accessible piece of old-growth forest in the Portland Metropolitan area. Last year about 7,000 students invested about 30,000 hours of study time out at Oxbow Park learning about the ecology of the Pacific Northwest. The fact is that we have only scratched the surface. Within ten miles of Oxbow Park there are 73 schools and roughly 40,000 students. In 1997 the Metro Council adopted a Master Plan for Oxbow Park that called for the eventual construction of a nature center at Oxbow Park to be named in honor of the Diack family who has done many things towards conservation of the Sandy River over the years. More recently we have signed a Memorandum of Understanding with the Oregon Parks Foundation to assist us in raising funds for the construction of this center. We come to the table with about \$300,000 seed money, which has been raised at the Annual Salmon Festival. Earlier this fall we began meeting with east county educators, including Councilor Rabe, and representatives from the three school districts in East County. We also met with a number of community activists or leaders, such as Diane. So far we have heard nothing but enthusiastic support for this project. We are hoping to receive your endorsement for this project, we are not asking for any money.

Diane McKeel stated I think this project is very impressive but two things in particular that impressed me were the visitor and educational components of the center. On the education side there is huge value to the schools and students in our area. On the visitors side, research has been conducted by the visitor industry, particularly after September 11<sup>th</sup>, showing that Americans are traveling more with their families and they are making more connections with the natural environment, our heritage and culture. The nature center is a perfect fit for the number of visitors that come through our visitor center. The second thing that was very impressive to me was the multi-use of the facility. There is a meeting room planned and as you know meeting and conference spaces are in short supply in our area. It is my feeling that the ability to hold small to mid-size meetings or conferences would be a benefit to our local businesses.

Mayor Thalhoffer read the proclamation.

**5. PUBLIC HEARING (Continued from 11/12/02): Public Hearing on an application for a residential planned development. (Proposed Arbor Heights Subdivision located east of 257<sup>th</sup> Avenue, north and west of Hensley Road.)**

Mayor Thalhoffer called this item.

Tim Sercombe, City Attorney stated this is a Quasi Judicial Land Use Hearing. We are required to announce in advance of the hearing the procedures that will apply to the hearing. A staff report has been prepared and made available seven days prior to tonight's hearing. That staff report analyzes the applicable 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 applies to this hearing is that Ms. McCallum will present 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 and the Council deliberates and adopts the decision. If you are going to testify please sign-in and give your name at the beginning of your testimony so we can identify your testimony in the minutes. If you are going to submit exhibits you need to identify the exhibit and confirm that you want to have it put in the record before it is distributed to the Mayor and Council. 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 conflict of interest if there are any.

Mayor Thalhoffer asked if any Councilor has had any ex-parte contacts, conflicts of interest or bias?

None declared.

Beth McCallum stated this hearing is a consideration of the revised application for a planned development called Arbor Heights. The Council has agreed to hear new information in this application. In addition, the Council asked staff to specifically address the following: Notify the surrounding property owners of the December 10<sup>th</sup> hearing. Property owners were sent written notice on November 22<sup>nd</sup>. We were directed to analyze the new plan and that analysis is included in my staff report, which was made available to you. You also asked us to reply to questions raised about the storm water plan. The City's Chief Engineer has responded to these questions and his comments are on page 8 of the staff report. We were also asked to reply to the request for a petition for a sidewalk on the west side of SW Hensley Road, north of the site to SW 12<sup>th</sup> Street. The Chief Engineer's comments regarding this start on page 15 of the staff report. The revised plan substantially meets the four criteria for approving a planned development.

(Councilor Ripma arrived at 7:42pm)

McCallum read through the staff report contained in the packet.

McCallum stated that staff is recommending that Council approve the planned development with modifications as noted in the staff report and adopt the Findings of Fact and Final Order. Council may modify any of the findings as necessary to reflect the facts of the hearing this evening.

Mayor Thalhoffer asked would you review who is going to do the sidewalks?

Travis Hultin, Chief Engineer, stated sidewalks are required along the frontage of the site by the developer. The developer will construct the sidewalk in the area around Fairfax Heights at their expense. The area between the north part of the development and approximately SW 12<sup>th</sup> Street would be constructed by the developer and reimbursable by the city. That was requested by the neighborhood residents.

Mayor Thalhoffer asked would you go over the homeowners association again and how that is going to be enforced?

McCallum stated the Development Code does require that the Planning Commission review instruments guaranteeing maintenance of the common areas and that the City Attorney

approve the form of instruments used to guarantee maintenance of open spaces. That might take the form of a homeowners association or property management group. Draft condition 1 is written fairly broadly and reads, "Instruments guaranteeing the maintenance of open space shall be reviewed and approved by the City prior to issuance of grading permits for this site. The city may require that instruments of conveyance provide that in the event the open space is permitted to deteriorate, or is not maintained in a condition consistent with the approved plan, the City may at its option, cause such maintenance to be done and assess the costs to the affected property owners." This is hopefully a condition, with the appropriate recorded instrument, that will ensure that the common areas that are not deeded to the city are maintained.

Councilor Kight asked will that actually act as a deed restriction so that when people purchase the house they will know that if the common areas are not maintained that they will be assessed a fee by the city for that maintenance?

McCallum replied it is my understanding if it is a typical homeowners association there would be an awareness in their title search that they participate in a homeowners association and that there be accompanying conveyance conditions of restrictions recorded with the plat.

Councilor Kight asked regarding the detention pond, could you describe the final produce that the developer is proposing. There was talk about the vegetation where the water would come into a pond and the vegetation would act as a filtering mechanism and then there would be a pipe connected to the storm water system that would eventually end up in Beaver Creek and Sandy River. The last one had a filtration system called UIC. Could you give us a description of what that is like and how it functions and why you feel reluctant about putting your seal of approval on it?

Hultin replied let me clarify that for you. Early on the developer proposed a more traditional disposal system, which was a treatment/water quality facility followed by a detention facility which would then discharge into the collection system and does eventually end up in the Sandy River. The current proposal by the developer is a two-stage system. You have a water quality facility and a disposal facility. The water quality facility that they are proposing this time is a vegetative swale. Essentially it is an open channel on the surface of the ground that is populated with certain types of vegetation that act as a filter or treatment facility that removes pollutants from the storm water. That would then go into an infiltration system. A drywell is a typical infiltration facility. It is essentially putting the water into an underground well that allows the water to trickle into the ground, so it would not go into the collection system. That does pose some concerns for us; the reason is because over the last couple of years DEQ has been developing new regulations regarding infiltration facilities, a typical term for that is UIC or underground injection control. These regulations by DEQ essentially address the proximity of infiltration facilities to domestic water wells. We do have a domestic water well along 257<sup>th</sup>. DEQ has indicated that the regulations will require a two-year time travel, which is the time it takes for the water to seep into the ground at the infiltration facility and travel underground to the wellhead, or more specifically the aquifer.

Councilor Kight asked what is the soil like? When you mention water you are not talking purified filtered drinkable water, you are talking about water that still potentially has pollutants. I am really concerned about that being that close to the wellhead.

Hultin stated you are correct. Even after passing through the vegetative swale, there will most likely be some pollutants remaining in the water. The applicant has had a two-year time travel study prepared by a consultant. Geology is not often an exact science, you can make some generalizations and you can make some analysis. The analysis that was prepared by their consultant indicated that the infiltration facility as proposed is outside of the two-year time travel. The regulations from DEQ do not recognize three-dimensional analysis, essentially it is a two dimensional analysis. They only look at what the straight-line distance is. In reality the aquifer is several hundred feet underground and there are several geologic layers. The potential time of travel when you look at the three dimensional perspective could be over one hundred years. I am quite confident that it is outside of the two-year time travel for that well.

Councilor Kight asked is there going to be undergrounding required on 257<sup>th</sup>?

Hultin replied currently we are not proposing to condition that on the developer. The City does have a project in development to do undergrounding on 257<sup>th</sup> from Cherry Park to SE Stark Street. It will be much more effective to do the small section that front this development with our larger project.

Councilor Kight asked what about sidewalk improvements, is there a requirement to widen the sidewalk on 257<sup>th</sup>?

McCallum replied the County has accepted the City's 257<sup>th</sup> Design Standards which includes widening the sidewalk to 9'.

Councilor Kight asked so that will be happening along the frontage of this development?

McCallum replied yes, where their development abuts 257<sup>th</sup>.

Councilor Kight asked the neighbors immediately to the north and east of the detention pond were concerned about flooding, how is that going to be mitigated?

Hultin replied per our construction standards, all of our storm water facilities are required to be designed to handle up to a 25-year event. Beyond a 25-year event we can't really guarantee that there will not be some flooding.

Councilor Kight asked have the neighbors been contacted and has there been any feedback relative to this new proposal?

McCallum replied the notice was sent out to the property owners within 250' on November 22<sup>nd</sup>. I don't recall having anyone come and talk to me regarding this development; they

could have talked to others in the department. We have not received any letters from the property owners notified.

Councilor Rabe asked in regards to the maintenance of the storm water facility, if they went with the vegetative swale, which is proposed, who bares the liability of maintenance of the facility?

McCallum replied when they are privately owned and not deeded to the city, a property management group or homeowners association maintains them.

Councilor Rabe stated so as I understand it the homeowners association, which are composed of people who primarily are not necessarily engineers or hydrologists, would be in charge of maintenance and repair and mitigation, is that true?

Hultin replied with regard to the swale specifically, I am not entirely sure if they made a specific proposal on who was going to maintain that.

Councilor Rabe asked that would be something that I would be concerned about. Regardless what the system is, that would need to be addressed. After the treatment, assuming we are talking about a detention basin, would the water then go into our storm drainage system?

Hultin replied the developers current proposal is that it would go into an infiltration facility, so the answer would be no it would not go into our system.

Councilor Rabe asked so we wouldn't be putting an additional load onto our existing storm water system?

Hultin replied not with an infiltration system.

Councilor Rabe asked is the approximate elevation of the proposed area is less than that of the well?

Hultin replied the site topography generally lends itself to conveyance of the storm water to this part of the site. It would all be a gravity conveyance system.

Councilor Rabe asked if we went with the UIC, you suggested that there would be some potential for contamination of the aquifer, are there any conditions that have been discussed for oil separators?

Hultin replied let me clarify. The UIC is generally used to refer to infiltration facilities, that is not generally considered to be a treatment facility although as the water percolates there is some removal of pollutants. The water treatment or pollutant removal would occur within the swale. The oil/water separator is the other possibility that Ms. McCallum mentioned in her staff report which would be the black box treatment. The only black box treatment that is allowed under the Portland Storm Water Manual, which is what we have adopted, is the storm water management storm filter.

Councilor Rabe asked we are basically looking at two different systems. The UIC which would handle everything on site. The second is to take all of the impervious surface run-off and take it to a swale.

Hultin replied actually those two work together. Those are two parts of the same option.

Councilor Rabe stated it says that discharged treated storm water to the conveyance line that would connect to the City's existing storm drainage pipe.

Hultin stated there were two different possibilities that the developer has considered over the course of making their application. Initially they indicated a detention facility then discharge to our conveyance system. Their current proposal is for an infiltration facility rather than a detention facility. In either case you would have a water quality facility in front of that. It is a two-stage process, you have quality treatment then you have disposal.

Councilor Rabe asked in your professional opinion, which do you feel is the sounder methodology to maintain the water quality of the aquifer?

Hultin replied the increased risk of an infiltration system would be minimal.

Councilor Daoust asked how deep are infiltration facilities?

Hultin replied it depends on the system, that is part of the design process. A typical drywell that has been used in the city in the past is 20' deep.

Councilor Daoust asked we keep saying that the vegetative swale should be properly sized but we don't say what that size is. Based on the configuration we see in the tentative design, the plot layout of the homes and the area that they have identified for the swale, is there any area size we are looking for?

Hultin replied that would require some analysis and design work that at this stage has not been performed. Essentially we would require them to size it to handle up to a 25-year event. In our review of their design work we would make sure that standard is met.

Councilor Daoust asked so there is potential that the size of the swale could take up another home lot if it is not big enough?

Hultin replied that potential is there.

Councilor Daoust stated the city is paying for two substantial investments. One is about 500' of sidewalk along Hensley to the north and the second is a half street improvement, but not the sidewalk, going towards Sunrise Park. What funds are to be used for those city expenses and do you know the approximate cost?



Hultin replied we do not have a construction cost estimate yet. The money would come from the street improvement fund.

Councilor Daoust stated I have a question related to the 6' concrete sound wall. The applicant was proposing a 6' concrete sound wall along 257<sup>th</sup> to buffer those lots from 257<sup>th</sup>. In Condition #1E we are requiring a 42" fence, which cannot be concrete, to be substituted for the proposed 6' concrete wall along 257<sup>th</sup>.

McCallum replied that is a Development Code standard. That came about when the supplemental development standards for 257<sup>th</sup> Avenue were adopted in 1997. A 6' fence could be allowed in the yards along 257<sup>th</sup> if it was the required setback from 257<sup>th</sup>, which is 20'.

Councilor Daoust stated if they put that 6' fence 20' back from 257<sup>th</sup> it would be right up against the back of the homes. I realize that this standard is in the Development Code but could we view this as the applicant asking for a variance from those standards? If I look at other places where a developer built a low level fence along a major arterial, eventually over time they end up building their own fences inside the developers built fence and it looks bad because every lot has their own individual fence. You can see that starting to occur along Cherry Park Road. I am viewing this as the developer asking for a variance and if the Council could approve the 6' concrete sound wall in order to have a buffer between the homes and a busy arterial.

McCallum replied you could make your own findings to support that decision.

Tim Sercombe stated typically in a planned development there is an allowance for some variance from the dimensional standards if necessary to make the planned development work. I am not sure if there are limits to the degree of the variance. I would have to look that up and get back to you.

Councilor Daoust asked my assumption is that the county would not have to approve any kind of variance here because we are outside of their right-of-way?

McCallum replied no. The county would have to approve the variance to allow that.

Councilor Smith asked with the storm water facility, if the homeowners association maintains it wouldn't we need to inspect if from time to time to catch any problems before it was too late?

Hultin replied whether it is an infiltration system or a detention pond, those would be maintained by the city. It has not been discussed as to who would be maintaining the swale, we will need to discuss that.

Councilor Ripma stated the conditions require that a light be installed at 257<sup>th</sup> and Hensley by the developer. The way I am reading the condition the county is not spending any money on

this and then there is some math in the traffic study that shows that the developer will get 80% of their cost reimbursed. Who reimburses them? It looks to me like it is the city.

Hultin replied I believe that the developer has requested reimbursement for around 80% of the cost. The city has not agreed to this. Under our code you can make an application for reimbursement for constructed infrastructure if it exceeds the capacity needed for their development. We have not received a formal application and our initial research indicates that they would not be eligible for any reimbursement.

Councilor Ripma asked could we make that a condition that is very clear that no reimbursement by the city will be granted?

Tim Sercombe replied you can write whatever condition you want. The issue is going to be whether or not the imposition of that cost on the developer completely is consistent with the standards. After hearing the evidence if you believe that this is an appropriate exaction then you can exact it.

McCallum asked I believe that Councilor Ripma is referring to a Municipal Code provision, and we are looking at the criteria from the Development Code. How does the overlap of those two standards get resolved in these conditions of approval?

Tim Sercombe stated if your question is whether or not the traffic light is not eligible for system development charge credit, I think in the land use process you can say we are determining that we are not going to declare this and impose this as a condition of development. At the same time the normal standard for whether or not something is creditable for system development charge is whether or not that improvement is showing on a capital improvement plan as an improvement that we were going to build anyways and the developer just happens to come along and agrees to build it and contributes part of the cost and we pick up the rest of the cost. So the issue for this stoplight is whether it is on our capital improvement plan and whether or not this is something that is caused by the development to be needed or not, that is typically the way the system development charge credits are done.

Councilor Ripma asked did you make any findings?

Hultin replied that traffic light is not in our capital improvement plan.

Councilor Ripma asked which is why they will not get any reimbursement?

Hultin replied correct.

Councilor Thompson asked you mentioned that the CC&R's are going to require a homeowners association, is that correct?

McCallum replied there is a draft condition that requires one. With respect to the landscaping in Condition #1, we have been talking about the assurances for the ongoing maintenance of

the common elements and even of the storm water facility. I have realized that the language of Condition #1A that talks about instruments that guarantee the maintenance of these open space areas, we probably should tighten this language some and also include ongoing maintenance requirements in draft Condition #4 specific to the storm water facility.

Mayor Thalsofer called for a 10-minute break at 9:05pm.

Mayor Thalsofer reconvened the meeting and opened the Public Hearing at 9:18pm.

Mike Robinson, Land Use Attorney stated I am here on behalf of the applicant of this appeal. With me is Don Guthrie who is the General Manager for West Hills Development.

Mike Robinson distributed material to the City Council (copies are included in the packet).

Robinson stated we want to thank city staff. Travis, Jim, Elizabeth and Rich have all worked with us to come up with staff supported conditions that not only meet the approval criteria but that are acceptable to the community, this body and to us. We are not entirely there but we are real close. We agree with all of the conditions of approval except for the few conditions that we are going to mention tonight. I want to also remind you, as I am sure you remember from our meeting on November 12<sup>th</sup>, after the planning commission hearings West Hills met with neighbors on two separate occasions and worked very hard with them to develop a plan that was responsive to their desires for the community and also responsive to what the city believes is appropriate for this site. We think we are there, if not we are very close. I would like to go through some of the issues asked by Council following the staff report and the three of four conditions that we want to address and discuss some alternative language that might be acceptable by Council. Mayor you asked about the sidewalks. We have agreed to construct the sidewalks around Fairfax Heights at our cost without any reimbursement from the city. We are also constructing, on our site, the sidewalks at no cost to the city. The only issue that we have with respect to sidewalks is the section on Hensley north of our subdivision where sidewalks were not constructed at the time of development. We have said we would do that but we have a slight disagreement with staff. What your staff has proposed is that it be construction cost only, soft cost, the administration and overhead not be included. That is something that we have not agreed to. We would like to construct the sidewalks and we would like to work with the city and the neighbors. We appreciate the city's offer to reimburse us for that but we think reimbursement should be for all of our costs. What I would suggest for that condition of approval is rather than a straight condition of approval prohibiting reimbursement of soft cost, what we propose is that you require us to do the sidewalk and that it be reimbursable by the city but the exact terms of the reimbursement be resolved with the Public Works Director and/or the Chief Engineer. We think the place to resolve what those costs actually are is between the engineers. We want to work with the city, we are willing to do that but we are not comfortable making off-site improvements that aren't needed because of our development where we don't get fully reimbursed. I want to be as straight forward as I could about that issue, it is an important issue for us. This project has gone from over 300 lots to well under 300. We think we need to address the neighbors concerns, we are fully willing to do it but along with that reduction in lots the ability to do the things that one might like to see is reduced as well. The Mayor and Councilor Kight asked about the

homeowners association. At our meeting before you on November 12<sup>th</sup> we agreed, we have always agreed, that there would be a homeowners association and that homeowners association, as is the case with all West Hills Subdivisions, will maintain the front yards, those aren't common areas but they are areas that will be maintained in a uniform manor by the homeowners association. The thing that we offered to Council, and we asked you to impose, if you approve this application, is that homeowners association retain a professional management company for landscaping and maintenance purposes. That is what West Hills other twelve successful subdivisions in the area do and that is what we would want this one to do as well. The swale maintenance question was a good one. We are comfortable with the conditions of approval recommended by your Chief Engineer. One of the criteria in Chapter 7 of your Development Code says we have an obligation to show you that it is feasible to meet that standard, that we will be able to take care of water quality and quantity. No one has drawings at this point but I talked to Mr. Holts who is a registered professional engineer in the State of Oregon with LDC Design Group and he tells me that that area in the northeast corner is more than adequate in size. But as Councilor Rabe pointed out, if it turns out it is not then we have an obligation to increase the size. We understand that obligation and will comply with it. Councilor Rabe asked when the swale would be constructed. Condition of Approval #4E requires us to construct it during the first phase of construction. Councilor Daoust asked about the fence along 257<sup>th</sup>. We are comfortable with the conditions of approval that Ms. McCallum has recommended in her staff report. Our preference would be to do something different along 257<sup>th</sup>. I don't know if we can reach a variance on this matter. What I am going to propose is that we can live with the condition of approval, if during the development of the subdivision it looks like it makes sense to try and do something else we would come back to the city with a separate application. Councilor Ripma asked about the traffic signal, yes we fully intended to ask the city for a credit against that fee. We had volunteered to do the traffic signal, something like 19% of the capacity is generated by our subdivision. We will do the signal; we volunteered to do it. If the credit is available in your system development charge ordinance we wanted the opportunity to come back to you with a request in a separate proceeding. It wasn't my view Councilor Ripma that it was germane to the land use application; it is not a relevant approval criteria. We would request that you not impose a condition limiting our ability to at least discuss it with you at a later stage. But after having listened to your discussion tonight, I might not be too hasty to come back and ask for it but we may well do that. Regarding trees, in Condition 1C staff has recommended that the trees that are over 6" in diameter, healthy and not detrimental to the foundations and that are outside of the building envelopes on the following lots shall be preserved. Staff is only recommending that the trees on these lots be preserved. I think that we can live with that. The two sheets I have given you (copy included in the packet) show the lots, I am not sure which lots 6 – 10 staff is referring to. I think the trees that they are talking about are actually on the other property, not on our lots 6-10. In any event we can work that out. If that is all that staff was talking about we are comfortable with that condition. I don't think that Elizabeth was talking about the two rows of cedars along 257<sup>th</sup>. We are not able to preserve these trees. They are in the A-2 Zone where the smallest lots are going to be and there is simply no way to preserve the trees given their location relevant to the street layout. I don't understand staff's condition as requiring or recommending to preserve those trees. If this area were developed as apartments certainly all of those trees would go. What

we would be willing to do to offer as a compromise, is on a one for one basis, provide tree mitigation.

Councilor Daoust stated I didn't see where staff was referring to that line of trees.

Robinson stated I don't think so either. It was my understanding that there might have been a concern on the Council about those trees. The off-site conditions found in Conditions of Approval #6, 7F2 and 7G. We are expecting to do the half-street improvements on our frontage on Hensley at entirely our cost with no reimbursement by the City. When we were at a higher lot count we had volunteered to do the half-street improvements around Fairfax Heights at no reimbursement from the city. At the November 12<sup>th</sup> hearing we told you that because of the reduced lot count we didn't believe we could afford that extra cost anymore and we have indicated that we would not do that half-street improvement. What your Chief Engineer has recommended is that we be conditioned to do half-street improvements, the city has said they would reimburse us for actual cost. But as with the sidewalk condition, the Chief Engineer has recommended that the actual cost reimbursement not include the soft cost. We are not sure what the cost will be but I can tell you that the highest street improvement costs are going to be more than the sidewalk costs. As with the sidewalk cost, we are happy to construct the street but we want our costs reimbursed. We are not interested in making a profit on the city, but we are interested in having our out of pocket costs reimbursed. If you are going to impose off-sites on us you need to find a nexus and there is no connection. There is no evidence in the record that we create the need, in fact the evidence is all but contrary. There is a September 25, 2002 letter from Mr. Kittleson that is in the record and on page two he states, "the projected traffic volume from Hensley Road is very low and can easily be accommodated based on the abundant available capacity that exists today." We are going the wrong direction in terms of the number of lots to ask for more exactions. Again if you would be willing to consider the compromise language that we have suggested, if this application is approved, the engineers can come to terms on what the appropriate reimbursements are. The last issue that I want to cover is the access way in Condition of Approval 13C. What staff has requested is that we do an extra access way between 257<sup>th</sup> on the west and our north/south street. They based that on the Troutdale Development Code 8.054B3, which requires for residential developments public easements or right-of-ways when full street connections are impossible with spacing of no more than 330 feet. This is a condition, its along the lines of frontage required on 257<sup>th</sup> that we would like you to consider deleting. The reasons are pretty straight forward. We met with the neighbors and we think we came up with a sight plan that they are comfortable with, I think your staff is comfortable with and if we have to do another accessway we lose another lot and every time we lose a lot it makes this project less financially feasible. I recognize that is not your problem it is ours. In this case the code does not require an accessway. The Code says that an accessway shall be provided in the following situations unless the city determines on the basis of physical constraints, logical development patterns and similar factors that construction of a separate accessway is infeasible or inappropriate. I think in this case you already have an accessway and two public street connections, that is three connections to 257<sup>th</sup>. I would think that is more than adequate and would ask that you consider not imposing that condition of approval and not requiring a fourth connection to 257<sup>th</sup>. Those are the only

conditions of approval that we are concerned about the others are acceptable to us. There is one more issue regarding setbacks and I am going to let Fred review that with you.

Fred Holts stated I want to review with you Draft Condition of Approval #15. With this complicated application we ended up having some confusion with some of the exhibits and some of the narrative that was submitted to staff. What we are requesting is some clarification in Draft Condition of Approval #15.

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

Holts stated we want to modify the house or unenclosed porch setback to 14' keeping the garage at 20' and modify the side yard setback on the cottage units from 5' to 3 ½'. We actually think that 4' is better than 3 ½'. The reason for this request is if you have a 30' wide home on a 40' lot with a 5' side yard setback on each side the house would have to be built so precisely in one spot with the 5' side yard setback. If we go with 4' then we have one foot that the house could actually move two to three inches one way or the other and not encroach upon this setback. Regarding the 14' setback for the home or porch, all of West Hills homes are designed with the garage back and the other half of the house or porch brought forward from the garage so you don't see the garages, what you see are the homes. They will be anywhere from 2' in front of the garage to 6' in front of the garage. What we are requesting is actually a 14' setback to the house or the porch so that the garages can stay at 20' and the homes will come forward a little bit thereby keeping your backyard bigger.

Robinson stated that is all that we have for you at this time. We would very much like to receive an approval from you with the recommended conditions of approval that we have suggested to be modified. We would like to be a part of the Troutdale community. We think in four years when this project is finished you are going to be glad you approved it.

Mayor Thalhoffer asked what kind of tree mitigation will there be with regards to the row of trees that have to be removed along 257<sup>th</sup>?

Robinson replied we will do one-to-one tree mitigation. We will plant an appropriate sized species of conifer at a location agreed upon between applicant and staff. Our preference would be to try and put them along 257<sup>th</sup> so they are in the same general area that they are now but if it turns out that there is not adequate room to plant them there we will work with staff to find other places to plant them. One issue that I did forget to cover is we agree with Ms. McCallum that Condition of Approval #1 should be amended to add that you require a professional property management company to be hired by the homeowners association.

Councilor Kight asked where do you stand on which storm water system you will be using?

Robinson replied we would prefer the UIC. I think from what I heard Travis Hultin say was the UIC is doable.

Councilor Kight asked are your homes owner or renter occupied?

Robinson replied they are intended to be owner occupied. Folks can rent them out but my guess is that you will find that these aren't really targets for rental properties.

Don Guthrie, General Manager for Arbor Homes stated our other developments are probably 99% owner occupied.

Councilor Rabe asked regarding the homeowners association or professional property management company, would they be subcontracted by West Hills?

Guthrie replied yes during the time that we are in the development process. When we turn the association over to the homeowners the homeowners would then be able to select a different professional management company if they choose to do so.

Councilor Rabe stated it is conceivable that the quality that is selected by West Hills for the developmental period could be at one level and after the development is completed the homeowners may choose a management company that has a lower standard, is that a possibility?

Guthrie replied yes, or it could be a higher standard.

Councilor Rabe stated my concern is not so much for the front yards as it is for the things that affect the community like the water quality facility. Over time there could be some degradation due to lack of maintenance of that area.

Holts replied with regards to the storm water facility there will be a specific management plan as far as maintenance, how the vegetation is taken care of, how it is planted and when it needs to be maintained. That will all be clearly defined upfront.

Councilor Rabe asked is there a greater liability than that of the owner who may inherit this or would that be the responsibility of the city to impose standards? Could we inherit the maintenance standards?

Robinson stated if you choose to approve this application a reasonable condition of approval might be more fully developed standards for the maintenance of the water quality area regardless of who maintains it. That is a reasonable condition of approval. I think those are objective standards and I am sure your staff and our engineer could easily develop.

Holts stated you could add to the condition of approval to require an operation and maintenance manual be developed.

Councilor Rabe asked what is the City's role in selecting a property management company?

Robinson replied the City's role is with the City's approval of the CC&R's and would also play a role if the city had evidence that the conditions weren't being fulfilled.

Councilor Daoust asked have you supplied city staff with all of the proposed changes you have suggested tonight?

Robinson replied not in writing, I have done them orally.

Councilor Daoust stated I have tried to keep up with each of your suggested changes to the conditions of approval and I could not keep up. On the 6' concrete sound wall, if we delete that condition of approval that requires the 42" fence would you revert back to the 6' concrete sound wall?

Robinson replied that was our original proposal. We would be happy to do something less than that, perhaps 6' or under that is more a traditional fence design. We would be happy to work with staff to come up with an appropriate design. I think the reason West Hills proposed the design that they did is that 257<sup>th</sup> is a noisy street and we wanted to provide the lots with some relief. We would like to do something more than 42" in height but we can work with staff to come up with an appropriate design that respects the plan you have for 257<sup>th</sup>.

Councilor Daoust asked Ms. McCallum, in the conditions of approval can we require the 6' concrete sound wall?

McCallum replied my preference would be that you wouldn't choose language that requires it. If you are moving towards giving them the option to do that or some alternative type of fencing that is 6' in height as sound buffering, you could delete the condition as currently written or you could rewrite it to prohibit the concrete sound wall but allow another type of sound barrier allowed to be 6' high within the required setback.

Councilor Ripma asked regarding the half-street improvements around Fairfax Heights and the sidewalks to the north, are you suggesting that you and the city would reach a deal on how much it is going to cost the city before the work starts and if both sides agree you will perform the work and the city will reimburse the agreed portion?

Robinson replied we would propose that before any drawings are approved or anything is constructed that we have an agreement with the city that explains what those costs are going to be. It is not administration and it is not the developers overhead, it is design and engineers overhead. I think the fair way to do this is to condition us to construct the improvements if that is the city's desire and secondly to have the city's engineer and West Hills reach an agreement on what the design and overhead costs are. If we fail to reach that agreement we would ask you to resolve it.

Councilor Ripma asked the changes you are proposing to the front yard setbacks are quite a change. Can you justify why you are bringing these changes to us at such a late date?

Guthrie replied the setbacks that are in the table are in discrepancy with our narrative, our narrative asked for 14' setbacks. There has been a tremendous amount of work done with a number of different planning groups and planning commissions in other jurisdictions to get rid of homes where the garage leads to the front so when you are driving down the



neighborhood road all you see are garages. All of our designs have taken that into account. Most of the setback requirements within the Portland Metro area have a 20' setback to the garage and because planning groups have attempted to architecturally get porches and front entries back leading to the street they have set the 20' setback for the garage and allowed some open porch, porch or entry structure to come forward of that so you get architecturally a better looking front to the home.

Mayor Thalhoffer asked is there anyone here to speak in favor of the development?

Johnnie Mansfield stated I have attended a lot of meetings and I have heard a lot of good and bad things said about the development. I brought in the petition from 71 neighbors to get the sidewalk on the north side. It is very simple. The City of Troutdale and Arbor Homes are arguing back and forth about who is going to pay what. That particular sidewalk has a very simple solution, all you have to do to get an answer to how much it is going to cost is for the City of Troutdale to go out and get three estimates for 580' of sidewalk. There will be a high bid and a low bid. Arbor Homes is going to come in and meet with Mr. Galloway and say what the cost for the 580' of sidewalk is. Mr. Galloway can say yes I will accept it or he can say no and then there could be some negotiations made. That is my proposal. The only thing I am looking for is the safety of people walking down the street and for the students of Reynolds High School that come through SW 15<sup>th</sup> Street.

Mayor Thalhoffer asked is there was anyone else that would like to speak in favor of the development?

No further testimony received from proponents of the development.

Mayor Thalhoffer asked is there anyone here that would like to speak in opposition to the development?

Bob Johnson stated I worked on the City's Comprehensive Plan years ago when we assigned all of the property with zoning and we had this property zoned R-5, R-7 and A-2. I am looking at this development and it has a lot of small lots and it just doesn't fit the comprehensive plan. Are you willing to set a precedent by allowing these small lots to be built in Troutdale? You are making a big change here. I do recommend the 6' concrete sound wall. I think that is an excellent idea. If you do underground the utilities on Hensley north of this development will you have to dig up the new sidewalk to do that? If you are going to underground the utilities you should do that before the new sidewalk is installed. The next item I want to address is the bio-swale. The lots are very small and they have very big homes on them. There will be a lot of storm water runoff from each lot because there is very little grass to absorb the water. There will be more storm water in this development than any other development in the city. The bio-swale looks really small. I think this will be a problem down the line. The traffic light on Hensley definitely needs to go in. Other than these concerns I think the development is good, I just don't like the idea of 30' wide lots.

Jim Luthy stated I am a resident on 19<sup>th</sup> Circle. I have some questions in regards to the legalities of a private storm water treatment facility. My understanding is that if you have a

water quality facility or a detention facility that is treating water from public streets, that facility has to be maintained by the city. The second item is the setbacks, I have not seen the new setbacks that were presented to Council this evening.

Luthy was provided with a copy of the setback table distributed to Council.

Tim Sercombe stated it is not my understanding or experience that a storm water treatment facility has to be publicly owned.

Luthy asked so that is the way the conditions will read, that it will be a privately maintained system?

Sercombe replied yes. We may need to work out the language of the condition about the homeowners association being responsible for any maintenance to the common utilities.

Luthy stated my concern is down the road when the developer leaves it in the hands of a management company and then the maintenance falls below an acceptable level and the only recourse that the city has is to go back on the maintenance company. What kind of language will there be to protect us from this happening?

Sercombe stated at this point what the objective would be is to put a condition in place that establishes the parameters of that, work that out and then this comes back for another approval which is that they have satisfied all of the conditions and at that point they will have to show that the instruments creating the home owners association and that security for the city in those instruments is sufficient.

Bill James stated I live on the east side of Hensley across from the proposed development. I was not notified by mail of this meeting so I am curious if there is anybody else out there who hasn't been notified. The developer has made it look as though this is a neighborhood plan; I don't feel it is. For instance, in the original plan they had rows 7,000' deep on the eastern part of Hensley for lots deep. When we gave them all of our input they revised the plan and they deleted those lots. I am wondering how many other things were deleted. This isn't exactly what we want. One concern I have is the parking on the south portion of Hensley. Any parking you put in there will be taken up by the apartment complex. On the north portion, I personally would not want to see parking because I just bought a house there and there is no parking there now. I would like to see the parking contained within the development.

Michele Hudson stated I am a resident in Cherry Park Meadows. My concern is with the water pressure. The water pressure right now is very low. By adding all of these houses what is that going to do to the water pressure, it will drop it even more. The other concern of mine is Reynolds High School and Walt Morey Middle School already are over populated. Where are all of these kids going to go? I live on a corner lot on 16<sup>th</sup> where the old subdivision ends and Cherry Park Meadows starts. We have a 30' easement plus we have a 20' easement, which is a conservation easement. If you take out the 30' easement and part of the 20' easement, you will be up to our deck and we would have no backyard. That is a

concern. On one of their original maps that they sent out that had a picture of our lot you can see right where the road goes and it is right to the corner of our lot. If they put in the walkway that is shown, you will be practically walking into our backyard, which we don't have without the easement.

Mayor Thalhofer asked is there any information that staff has regarding the water pressure?

Travis Hultin replied we maintain a minimum water pressure of 45psi throughout the city, which is above the mandated requirement. As far as how this development will affect that, there could be some loss of water pressure because of the increased usage in that pressure zone as more people draw water from the system. We designed and maintain our system to always be at 45psi or above in normal operating conditions.

Mayor Thalhofer asked is there anyone else here that would like to speak in opposition of this development?

No further testimony received from opponents of the development.

Mayor Thalhofer stated the applicant can now offer rebuttal testimony.

Don Guthrie stated I would like to address some of the concerns that were brought up. Mr. James was concerned that this wasn't the neighborhood plan and maybe there were deviations to that plan and he was pointing out the change that was made on Hensley. The first draft that we brought in had these particular lots fronted on Hensley. The driveways would come off of Hensley. The neighborhood group, at the first meeting, suggested that they wouldn't care for these lots to front Hensley. They preferred that they fronted the development with driveways facing the interior of the development. We moved that row of houses to face the interior of the development and that reduced the lot count due to putting the road on the interior of the development. The other change that the neighborhood group asked for was they felt that the lots to the left side, which we had as carriages, would be better served if they were 40' lots since they backed up to neighbors that have cottages on 40' wide lots. Those were the two major design changes that they asked for. When we finished the second meeting I addressed the fact that we would be willing to go back and make additional changes if they felt there were changes that needed to be made and we had an unanimous approval that they liked these changes and they did not ask us to go back and make additional design changes to the plan. Regarding the pressure zones, under Condition 8C it reads, "The majority of the site is connected to pressure zone 1, but the northernmost part of the site is shown connecting in pressure zone 2. Install PRV(s) in SW 16<sup>th</sup> Way line to place the entirety of the development in zone 1." This means that we have too much pressure.

Mike Robinson stated at the Planning Commission hearing we had 40 citizens testifying against us. At our hearing before you in November we had several folks, including Mr. Maydew, supporting this application. Tonight we have had 4 opponents testify. Somewhere along the line something has gotten straightened out. Mr. Johnson raised a couple of points regarding the swale and whether it is too small. This is not a reason to deny a planned development, it should be a criteria of the development. If we have not satisfied the city, you

can impose a condition but I think the condition that is included is satisfactory to assure that before we build anything it is going to be built to the standards that the city knows will work. It will be the right size to accommodate this development. With regards to setting a precedent, I don't think as a legal matter that anything you do in this application sets a precedent for future planned developments. Mr. James raised a question regarding parking. The on-street parking is nothing we have anything to do with. We are providing adequate on-site parking. Your code requires one off-street parking space per dwelling unit. Lastly, Michelle Hudson voiced concerns regarding school capacity. This is something we heard a lot about at the planning commission hearings. It is not a criteria for approval. The school capacity is not a reason for acting on an application. Another point is that we are just barely 20 units above the 80% density requirement. We are far below what we had originally proposed. Even if this application weren't approved you are still going to get something that comes in that has just 20 units fewer. The last point Michelle made about her lot regarding the easements. This is a dedicated right-of-way that runs through here. If I am not mistaken, this is a half street 30' right-of-way that is unimproved. We are going to connect an accessway that is going to go up to our property boundary, continue on in that dedicated right-of-way that is unimproved and get the street connection that goes out to 257<sup>th</sup>. My guess is that we would be willing in the course of our development, if you choose to approve this application, to talk with Michelle to see what we can do in that area.

Councilor Daoust stated Mr. Mansfield stated that there is 580' of sidewalk on the north end but our conditions of approval only stated 500'.

Robinson stated I heard 500 and 580. Maybe the easier thing to say would just be the gap in the sidewalk that is approximately 500' to 580'.

Councilor Kight stated Mr. Luthy brought up the issue of the maintenance of the storm water area. What oversight do we have to make sure that the storm water detention area is being properly maintained? Is there someone from the city monitoring the maintenance of the detention pond?

Galloway replied if you want that guarantee, then we should take on that facility and we should maintain it. There are still a couple of different proposals being considered as to what the facility is going to look like. I don't believe that we have received anything that has specifically asked to have it dedicated to the city or says that they want the facility to remain private. I think those are issues that still need to be resolved. The best way to make sure that it is properly maintained is probably for us to do that.

Mayor Thalhoffer asked why didn't Mr. James receive a notice of this meeting?

McCallum replied it is our understanding that he has only lived there for three months. We made our notification based upon a list that was received at the original application date.

Robinson stated it is a function of Statute 197.763, which says that the notice list is compiled by the most recent tax assessor's roll. So if he has recently purchased the home he may not be on the assessors roll and the Title Company wouldn't have picked it up.

Mayor Thalhoffer closed the public hearing at 10:50pm.

Mayor Thalhoffer stated it appears that with the certain conditions of approval that we could approve this application. There are a few conditions that we need to discuss. I for one am not sold on the fact that there should be a swale there at all. To me we just need to convey the storm water through our facilities and get it to the Sandy River. We could argue whether or not the swale is going to work or pollute the ground water. I think we should be able to work out a situation where we could have an attractive 6' sound barrier wall. The people that will be living there will be subject to a lot of noise, with a 6' sound barrier that would alleviate a lot of the noise. Regarding the sidewalk to the north, I think we should leave that up to city staff and the developer to work out the cost sharing agreement. This is not a question of whether we do this project or nothing, it is a question of whether we do this development or we have apartments.

Councilor Kight stated I think the accommodation for the setback as pointed out by Mr. Guthrie is reasonable. Regarding the light on 257<sup>th</sup>, you made a good case that you are only adding a very small fraction to the traffic count, however, if it weren't for your development a light would not be warranted at this intersection. You are asking for a reimbursement from the city, unfortunately I think that is a cost that should be absorbed by your development. I feel comfortable with your proposal that you will retain as many of the native trees as possible. My hope would be that you would keep the native trees to the degree that you can. If you are going to do mitigation for those trees that are removed that you use the largest trees possible. We have had a lot of discussion regarding the detention pond; my proposal would be that it would be maintained by the City. I want the assurance that it is properly maintained. We have had testimony from several folks that the types of development/homes that you build are very attractive and very well built. That brings me some comfort. We are constrained by Metro's density requirements and we could have apartments on this site instead of homes. I do not see that as a plus to the community.

Councilor Rabe stated I support most of what I just heard. I would suggest that the water treatment facility be required and it should have a capacity that meets the state standards or the equivalent and be based on staff's evaluation and approval. I do want to see an on-site water treatment facility, whether it is integrated into our system or whether or not it goes to a local drainage system. I would like to see it constructed and maintained by the developer for the first four years. Thereafter it would be managed by the city. The approximately 500' of sidewalk to the north, I would like to see the cost negotiated between staff and developer, but I would like to see that constructed.

Councilor Daoust stated Condition of Approval 1(a); we are talking about adding a professional management association to that language. Also on 1(a), we should add mitigation for the trees removed on lots 28-38. Condition of Approval 1(e), the landscape buffer along 257<sup>th</sup>, I would like to see the condition of approval that is being proposed deleted. In other words, don't require the 42" fence. It needs to be re-written to work with staff to design a 6' sound barrier with conifer vegetative screen in front of it. Conditions of Approval 6, 7(f)(2), and 7(g), all three of those refer to cost reimbursements. For all three of

those instead of having the existing language, replace it with language that says the cost reimbursement would be negotiated. Condition of Approval 13(c) where we were asking for a second pedestrian bicycle accessway, I tend to agree with the applicant to delete that condition. I heard the applicant say that the one pedestrian accessway in the middle of the development by 257<sup>th</sup> is adequate. Condition of Approval 15, the setback table, I am fine with the changes proposed by the applicant. Condition of Approval 4(e), the water quality facility, the language I wrote down was to require an operation and maintenance plan agreed to by the city. I don't know if that addresses the rest of the Council's concerns or not.

Councilor Smith stated I agree that we need a taller sound barrier along 257<sup>th</sup>. I like how the proposal looks. There is no way that I would want apartments. People that own property have a right to develop it the way that they want to. The school situation, Troutdale has the largest high school in the state. It seems the school board awhile back got the idea to bring in students from out of district and the state will give the school district \$5,000 per student to bring them into our school district. Now the state doesn't have any money and we have these kids in our schools. Who is paying for them? The taxpayers. I think the citizens need to start attending the school board meetings.

Councilor Ripma asked are we planning to draft the amendments to these conditions tonight?

Mayor Thalhofer replied based upon the direction from us, staff would bring back the amended conditions of approval for our adoption. Mr. Sercombe do you have any comments on that?

Tim Sercombe replied there might be a slight logistic problem with a new Council taking action on this without having attended the public hearing. We have a changeover of three Council members. I would encourage you to try and take action tonight.

Councilor Ripma stated in general I agree with what has been said by the other Councilors. Condition of Approval 1(a), I agree with what Councilor Daoust said. The sound wall, does anyone realize that the applicant isn't even asking that we do anything with that condition? I think that is a debatable point. The idea of our 257<sup>th</sup> plan is to avoid it looking like a trench like Stark Street does in Gresham in some places. I realize for the citizens who live there we want something attractive that blocks the sound. I think the applicant was saying they could work with the way the language was to accomplish that. By going to a concrete sound wall even with conifer vegetative screen, remember a lot of the look and feel of 257<sup>th</sup> isn't a very pretty site anyway and the idea was to try and make it as attractive for future generations as possible. I urge the Council to remember the applicant didn't request a change to this condition. I am willing to go along with what the other Councilors have stated regarding the water quality facility. Councilor Rabe had the most detailed suggestion and I agree with what he said. On the half street and sidewalk reimbursement, the trouble with leaving it be negotiated, remember that we had 71 residents who want this sidewalk built. The way the conditions were written for the north sidewalk was that the developer would build it and it would be a good deal for the city and admittedly a cost to the developer. If we back off from that point to leaving it up for negotiations it may not get built. It is off-site and it was a generous offer by the developer.

Councilor Daoust stated I don't think anyone was proposing that it not be built. The only condition of approval was just the reimbursement paragraph not the rest of it. Are you proposing to leave the language the way it is written?

Councilor Ripma replied we could leave it for the north sidewalk, and for the half street improvements we leave to negotiations. I think the sidewalk is more important, especially since it had all of the citizen support. I agree with Councilor Daoust on deleting the extra access out to 257<sup>th</sup>, which is Condition of Approval 13(c). On Condition of Approval 15, setbacks, I agree with the proposed amendments to the table.

Councilor Smith left the meeting at 11:15

Councilor Thompson stated I agree with most of what has been said. Condition of Approval 1(a), the homeowners association with professional management would solve that problem. With regards to the sound wall, I don't care if it is a 6' concrete wall or a sound barrier of some kind, but it should be something that mitigates the sound and I would leave it up to the developer to make it attractive. With regards to the storm water, I agree with what Councilor Rabe proposed. The sidewalk and half street improvements, I don't think the developer has a choice about doing it or not. The question is how much do we reimburse him. If it is a condition of approval they have to do that. I think we can leave it up to the city staff and developer to negotiate the reimbursement. I have no problem with the setbacks and the deletion of Condition of Approval 13(c) the second pedestrian accessway. My only concern about this whole development is the size of the lots. But I look at the alternative of apartments and I think it is probably better to have owner occupied houses on small lots than to have rental properties or apartments. I think with the homeowners association, Mr. Robinson is probably correct; it would enhance the value of the property because it will be taken care of. Although I have some concern about the small lots, I am in favor of the development.

Mayor Thalhoffer stated regarding the negotiation of the cost reimbursement for the sidewalk and half street improvement, if the parties cannot come to an agreement it could be brought to the City Council for decision.

Councilor Ripma stated if that is the way it would work, I am satisfied. Mr. Sercombe, could it work that way?

Sercombe replied I would like to clarify if you want to have an option discarding the city's obligation to pay for the construction work as well or are we just talking about the soft cost, engineering cost? My understanding is that the staff is recommending conditions that would allow for reimbursement for construction work and the issue was whether or not the city would be obligated to pay or the developer would pay for the engineering or soft costs?

Councilor Ripma replied yes.

Sercombe stated if you wanted to leave it in a situation where we agree to pay for the construction work and any soft costs that we agree to later on to pay as a matter of negotiation. We could write the condition that way and if there was a dispute about it then the developer could bring it to the council on appeal. The language that we could use could be, reimbursement shall be for construction work, any additional reimbursement for design, administration or developer's engineers overhead may be reimbursed if agree to by the city.

Sercombe stated there has been discussion about a homeowners association and it being created. I have crafted some language to recite to you to see if that is generally acceptable to the applicant and to you. The language would be something like; instruments creating a homeowners association shall be reviewed and approved by the city prior to final approval of the planned development. These instruments shall be recorded with the plat and provide sufficient security to the city for maintenance of the common elements and utilities of the development consistent with standards of the city. The instruments shall require a professional management company to administer the obligations of the association.

Councilor Kight asked does the word utilities include the detention pond?

Sercombe replied yes, but there is another suggestion I have with regard to that. That would be with respect to condition 4(b), which talks about the vegetated swale. I would suggest that we change that to say the design shall conform with state mandated requirements and city standards, an easement shall be provided to the city to allow municipal maintenance of this facility. That would allow us the right to enter into it and maintain it if for some reason the homeowners association is not maintaining it. The other suggestion that I have, hearing the Councils discussion, was with respect to condition 1(e), this is on the landscape buffer. You could consider striking those two conditions about the 42" fence and the concrete sound wall and restate it that the development may propose an up to 6' sound barrier with conifer vegetative screen as a minor modification to the planned development. That would allow for it to be processed at the staff level without further public hearing and it would create the ability to tinker with the 257<sup>th</sup> design standards.

Mayor Thalhoffer asked Councilor Daoust if he could summarize the changes.

Councilor Daoust stated Condition of Approval 1(a) change to read as the City Attorney stated.

Council agreed.

Councilor Daoust stated in addition to 1(a) add mitigation for the line of trees that are going to be removed on lots 28 thru 38.

Sercombe stated so that could read tree mitigation shall be required for the trees removed along 257<sup>th</sup> Avenue. That would require at least a one-on-one-mitigation. That would be added to the existing language in Condition 1(c).

Councilor agreed.



Councilor Daoust stated Condition of Approval 1(e), delete the existing language and add the language from City Attorney.

Sercombe stated that language would be the developer may propose an up to 6' sound barrier with conifer vegetative screen along 257<sup>th</sup> Avenue through a minor modification amendment to the planned development.

Councilor agreed.

Councilor Daoust stated Condition of Approval 4(b), pertaining to the vegetative swale. I would suggest going with the City Attorney's proposed language.

Sercombe stated that language would add the words "and city standards" at the end of the last sentence. The next sentence would read, "An easement shall be provided to the City to allow municipal maintenance of this facility."

Councilor Kight asked does that obligate the city to do the maintenance?

Sercombe replied no.

Councilor Kight asked is there any commitment in your language where the city is committed to doing the maintenance?

Sercombe replied the city is not committed to do it but if the city chose to they could.

Councilor Kight stated Mr. Galloway stated if you want to have assurance that it is maintained properly, then the party that needs to do that is the city.

Sercombe stated my suggestion is that if the city has an easement that allows them to go onto the property and maintain it, you could choose to do that. Initially it would be the obligation of the homeowners association. If you wanted to preempt that, you could do that at any time.

Councilor Kight asked what happens if it doesn't happen? Once we are through here, unless it is set out in specific language and everyone knows what their responsibility is, then nobody does it.

Sercombe stated so you would give direction to the city to exercise that easement and go in and maintain it. You can give the direction to staff to do that. As a condition on the developer, they just need to agree to allow the city to come onto the property to maintain it.

Councilor Kight stated so there are two issues. One is access to the detention pond for the city which is a condition on the developer and secondly, we give direction to staff that we want them to maintain it once the development is completed.

Mayor Thalhofler asked is everyone clear on this issue.

Council and City Attorney replied yes.

Councilor Daoust stated the Condition of Approval 6, which is the undergrounding cost, 7(F)(2), which is the reimbursement for the half street improvements and 7(G) is the reimbursement for the sidewalk costs. I suggest that we use the City Attorney's proposed language.

Sercombe stated what I am suggesting is that the language in each of those conditions would read, "Reimbursement will be for construction work. Any additional reimbursement for design, administration or developers engineers overhead may be reimbursed if agreed to by the city." If the developer is dissatisfied with the results they would have the option of applying for a minor modification.

Councilor Daoust stated Condition of Approval 13(C), the second pedestrian bicycle accessway to 257<sup>th</sup>, that condition would be deleted.

Mayor Thalhofler asked is everyone in agreement with that.

Councilors replied yes.

Councilor Daoust stated Condition of Approval 15, regarding the revised setback table that was handed out tonight. Accept the developers proposed changes with the one change from 3 ½ feet to 4 feet.

Councilor Daoust stated Condition 11, which is the traffic signal, is the only one that I was not clear on.

Councilor Ripma stated the applicant is satisfied with that condition, they did not ask us to change that.

Sercombe stated this condition obligates them to pay for the traffic signal. It does allow them the discretion in the future to apply for a change in our plan that says what is eligible for system development charge credits. That is subject to a future council process.

Council agreed to leave that condition as written.

Mayor Thalhofler asked staff if these changes addressed all the concerns with the conditions of approval? Can you think of anything that we left out?

McCallum replied it covered everything that I noted.

Mayor Thalhofler asked the applicant have we addressed all of your concerns?

Robinson replied we are comfortable with the discussion that we have heard.

**MOTION:** Councilor Ripma moved to adopt the Findings of Fact and Final Order for the Arbor Heights Planned Development as set out in our packet and as modified tonight. Seconded by Councilor Thompson.

Mayor Thalhofer asked is there any discussion on this.

No further discussion.

**VOTE:** Mayor Thalhofer – Yes; Councilor Kight – Yes; Councilor Rabe – Yes; Councilor Daoust – Yes; Councilor Ripma – Yes; Councilor Thompson – Yes.

Motion approved 6-0.

**6. PUBLIC HEARING / ORDINANCE (Introduction):** An Ordinance repealing Ordinance #703. (Regarding Measure 7 being declared unconstitutional by the Oregon Supreme Court.)

This item was set over until the January 14, 2003 City Council meeting.

**7. COUNCIL CONCERNS AND INITIATIVES:**

None.

**8. ADJOURNMENT:**

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

Meeting adjourned at 11:43pm.

**Paul Thalhofer, Mayor**

**Approved December 10, 2002**

**ATTEST:**

**Debbie Stickney, City Recorder**