

MINUTES
TROUTDALE CITY COUNCIL - REGULAR MEETING
TROUTDALE CITY HALL
104 SE KIBLING AVENUE
TROUTDALE, OR 97060-2099

7:00 P.M. -- MARCH 26, 1991

ITEM #1: PLEDGE OF ALLEGIANCE, ROLL CALL, AGENDA UPDATE

Mayor Cox called on Councilor Jacobs to lead the pledge of allegiance.

City Recorder, Valerie Raglione, called the roll.

PRESENT: Cox, Fowler, Jacobs, Schmunk, Thalhoffer, Thompson

ABSENT: Bui

STAFF: Christian, Cline, Farr, Gazewood, Raglione, Wilder

PRESS: Web Ruble, Oregonian

Dave Pinson, Outlook

GUESTS: R.W. McMenemy, Mike McMenemy, Joanna Moyer, Sharon Nesbit

Mayor Cox asked City Administrator Christian if there were any agenda updates. There were none.

ITEM #2: CONSENT AGENDA

Mayor Cox called this agenda item and asked for Council comments. There were none.

MOTION: Councilor Jacobs moved to approve the consent agenda as written [2.1 - City Council Minutes 3/12/91]. Councilor Schmunk seconded the motion.

YEAS: 5

NAYS: 0

ABSTAINED: 0

Fowler - Yea; Jacobs - Yea; Schmunk - Yea; Thalhoffer - Yea; Thompson - Yea

ITEM #3: PUBLIC COMMENT

Mayor Cox called for any public comment to non-agenda items. There were none.

ITEM #4: RESOLUTION: Accepting Public Facilities and Authorizing Release of Retainage/Columbia Crest Subdivision. #885-R [Tape 1, Side 1 2:00]

Mayor Cox called this agenda item and called for declarations, challenges, ex parte contact. None were stated. Mayor Cox then read the resolution by title.

Wilder stated that the project was inspected by staff and the consulting engineer on March 25, and found it to be "substantially complete" [Reimann, David J. Newton Associates 3/25/91]. He stated that the normal 10% retainage of total construction costs that are held by the City would be payable to the contractor once the remaining tasks listed on the "punchlist" were successfully completed.

Councilor Thalhoffer asked about the amount of dirt piled up and thought it was a considerable amount along the roadside for the Columbia Crest project.

Wilder stated that the dirt was on the private property side and was for water and sewer lines which had been installed and tested. The asphalt was in and approved. The City portion of the project was complete.

MOTION: Councilor Thompson moved to adopt the resolution. Councilor Thalhoffer seconded the motion.

YEAS: 5

NAYS: 0

ABSTAINED: 0

Fowler - Yea; Jacobs - Yea; Schmunk - Yea; Thalhoffer - Yea; Thompson - Yea

ITEM #5: APPEAL/SDC Hearing per Ordinance 530 Section 11 [Tape 1, Side 1 4:29 - Tape 2, Side 4 19:40]

Mayor Cox called this agenda item and asked for declarations, challenges, ex parte contact.

Councilor Fowler stated that he had no interest in the project but he did know the McMEnamin's.

Wilder stated that as we do with any project or any development in Troutdale we calculate and require the payment of SDC's before permits are issued for development. This is done based on Ordinance 530 which superseded ordinance 566. SDC's have been an issued and involved requirement for development ranging from single family residential up through whatever is built constructed in Troutdale for many years, certainly greater than 12 years. Times have not changes, only the amounts have changed along with the contents of the ordinance.

Wilder stated that these were calculated and submitted to McMEnamin's for payment in accordance with applicable ordinances. They have chosen to appeal. Wilder wasn't certain if they were appealing the values and amounts, methods of calculations or the ordinance itself. Wilder stated he had called on Friday to try to arrange a meeting to try to ferret through those and Mr. McMEnamin suggested it

would best be done before Council tonight. He stated that he didn't have any detail as to precisely what the basis of appeal was. With that, that was the short introduction.

I would like to correct one statement immediately about the basis for the appeal. I was asked to submit a letter stating our grounds for the appeal. I sent that to the Public Works Department with a copy to the Mayor. I assumed you received that.

Mayor Cox, would you state your name and address please?

Yes. My name is Bob McMEnamin. I happen to be a lawyer part time and part time I do a little beer sampling for my sons. I am the father of Mike McMEnamin here, a man who is purchasing on contract from Multnomah County a group of buildings known as the Edgefield Manor. We have run into some serious problems with this matter. In dealing with the Public Works Department here I'm kinda reminded her of the philosophical Irishman who said, "If I knew where I was going to die, I would never go near the place.".

McMenamin stated, we have a problem with some system development charges and I have attempted to find out how they are charged, why they are charged and how the whole thing works out. I am at the present time looking at ordinances 280, 530 and 566 and I have not been really able to figure out exactly which ordinance we are working under. I have been informed by the Public Works Department originally that 530 was the applicable ordinance. When I read that ordinance, I found a provision in that stating that the applicability of the ordinance would go back to ordinance 280 and then also, reading further into ordinance 530 I find a reference into that 280 has been repealed and then after that says 12 and 13. Now, I don't know if they repealed sections 12 and 13 only, if they repealed the entire ordinance or if they repealed everything except those two. I must admit that I am somewhat unclear on that.

McMenamin: It is my understanding in dealing with cities and other units that in giving public services they have to be paid for. So, Mike has absolutely no quarrel with the fact that a city should be able to charge for a new development that goes in. Or, if there is a substantial change, which is the words used in two of your ordinances. If there is a substantial change then there may be some additional system development charges paid. I think we can all take it as a given that the buildings at Edgefield are not a new development. As a matter of fact, I believe Sharon told me that the main building, and some of the other ones have been there since 1913.

McMenamin: We might get down to whether or not there is a change but before we get to that point I would like to state what I know is the law in dealing with a chargeable ordinance of this type.

1. You can't have an ex post facto law.

That means a law after the fact. In other words, to simplify it, if a man spits on the sidewalk yesterday you can't pass an ordinance tonight and say it is illegal and tomorrow arrest him for spitting on the sidewalk yesterday. Both the Oregon Constitution and the Federal Constitution states that you cannot have an ex post facto law. The way that your bureau here is attempting to interpret one, two or three ordinances is ex post facto, very clearly. As a matter of fact, in the middle of trying to work out this

mess another ordinance is passed. Apparently signed February 25th which is what -- one month ago tonight -- This is after this matter is going on. And, I will have frankly no idea whether that ordinance supersedes 530 whether it amends it in some degree or whether it refers to only surface waters.

McMenamin: The start of it states an ordinance amending ordinance 530 and imposing storm sewer system development charges creating a storm sewer improvement fund and declaring an emergency. The plain reading of that to me means that you are referring only to the fact that you are setting up a storm sewer improvement matter. Now, I am not certain of that because one of the items in question here is the fact as to whether any system development charges should be paid because there has been a substantial change. You take this latest ordinance of 566 whatever it affects. Which I do not know and I defy anybody really to figure out what it affects. But, on page 4 subsection L) it states "substantial change" shall mean any change in use or occupancy. Now to me that violates logic, it violates the dictionary and it violates any law that I know of. It further goes on and says and/or any increase in measured use equal to or greater than 10% over the last established value(s). If no previous use and value had been established, "Substantial Change" shall mean any impact on the public facilities addressed in this ordinance. So, I would suppose if you had a 10% lesser use of a building that would be a substantial change under the ordinance. It is just a little bit difficult for me to understand that.

McMenamin: In ordinance 530, which I was originally advised by the bureau here that was the applicable one. Under that ordinance it talks about you would have to pay fees based upon ordinance 280. That reference is on pg. 6, paragraph 6. Then you go back to ordinance 280 and it states that the only time you pay these SDC charges is when you are hooking up to a new sewer or a new water system. That is what 280 says. Then 530 in addition to that, they come up with another little paragraph concerning any substantial change and they talk about if there is a change increasing utilization of city services pg. 8, section 7. Well, I can understand that if you have a building of say 20,000 ft and you are operating a business in it and you add to that building that increases your business. Very clearly, you may have to pay some additional charges. But, you go to the next ordinance, this 566 and they have added another paragraph to section 7. This new paragraph says, "No credit shall be extended to any development or property for uses, connections made prior to the imposition of any ordinance requiring the collection of any improvement fees or system development charges when such original use has been changed or terminated. In the case of storm water drainage, any change of use shall mean any increase in impervious surface area installed. And then it says the existing systems users who have not paid SDC's shall be treated as a new user and SDC's shall be collected when use has changed or when the prior use is abandoned. Of course that new paragraph is in direct violation of the first ordinance and also the second ordinance. So, that's why I say I am just a touch confused as to where we are.

McMenamin: Now, there have been some developments in the City of Troutdale and its very good. One of them was Burns Brothers and then there are a number of others. In 1987, I have some newspaper clippings here that indicated that people wanted to charge some SD, these sewer charges, system development charges to them because they were new development coming in and new hookups. So, according to the newspaper articles, it was found that the charges were greatly excessive and that there was some talk about the fact that the ordinance was unconstitutional. So, they said as far as Burns Brothers was concerned, that instead of paying \$300,000 in these system development

charges that they would only pay \$29,012. Then there is also a list of other new developments, Plaid Pantry, Swan's RV Park, several others with the original charges and greatly reduced charges. Now, these are new developments hooking onto sewer and water.

McMenamin: You take my son Mike, who has an existing building, existing buildings, and sewer was put in there back in 1972 and the sewer was totally paid for. One third by a federal government grant and two thirds by the owners that hooked up to that. So the sewer charges were paid for on that property in 1972. The water was put onto that property and what use was that property put to at that time. There was approximately 350 people in the main building; plus there were other people in side buildings; plus the jail - that sewer line and water line was a part of this property and ran through it. And they also had a laundry going for the people who were living there. The water was not hooked up until, I believe the date was 1984, 82 or 84, at that time what was the use of the property then. They had a major commercial laundry going that used a tremendous amount of water and used, kicked out, a bunch of wastewater. Also, there were several homes that were in occupancy on the premises there and again, the jail is up there and the water and sewer line ran through this property. So, if you are talking about a substantial change of use there has been no substantial change except for use of less water now than when those charges were paid. Incidentally, when the water line was put in there were, the County paid I believe it was \$53,000 for the system development charges at that time.

McMenamin: So, what I am saying is that we do not have a new development. The development paid, all these charges were paid. The street, this one really baffles me, I talked to your Director on Public Works and he said that you are going to pay some street charges on city streets. I said gosh, that's funny, I understood that there are no city streets here - they are all county or state. He said, Oh, that's right. But, he said, it might be that a car that comes to the place traveled on the city street or crossed a city street so therefore, you should pay some charges for that. Of course, there's been no change for many years in streets, they have always been this way. But, he said you may have to pay some charges for that but, we'll be good guys and we will give you probably an 85% credit on that.

McMenamin: Well, I thought that was really big hearted because if you don't owe anything to start with and they give you an 85% credit against it, I think that's a wonderful show of magnanimous. So, we have a little problem in that we have a public works department says they are not going to issue any permits to fix up these historical buildings that Mike wants to work on. Taking these eyesores and making them into something that is really nice, really a benefit to the city and what your public works department states is....so far on one permit they said I'd like to have \$10,000 and on another permit I'd like to have \$53,000 and very possibly by the time you work in the rest of your project we want fees in the area of \$150,000. Now, you have to remember this is not any new development. These are existing buildings who have been using city streets, using sewer and using the water this whole time.

McMenamin: Now, also these ordinances, two of them provide that if you don't pay these amounts that they become a lien on your property. The affect of that interpretation of the water works department, or whatever you call your public works, they're saying any change of any kind, any body moves in or out, any change of any kind -- you have to pay these system development charges all over again. Well, okay, if you have a house rented to a couple and a baby is born, they are going to wash some diapers -- that's a change in use according to your department. So, therefore they would have to pay some more system development charges. If you have a vacant house, if you have a house that's

going to be sold and its going to be vacant for a month, according to your department - according to the way they are going to interpret it, that would be a change of use or a cessation of activity or a termination, whatever you want to call it. So, therefore when the house is sold these units would have to be paid all over again. Then, of course, your ordinance provides that these charges are a lien upon the land. So what in effect your doing, with the interpretation given here, is putting a cloud upon the title of every piece of property in the City of Troutdale. You don't dare leave the house or you don't dare add a member to the family or you're likely to have to come in and pay some more fees or maybe start out all over again.

McMenamin: Now, in addition to the tests I have told you about, this ex post facto, which all three ordinance as far as I can tell right here because the fees were paid, have been paid, the places have been used. Now, ex post facto they are coming back and saying let's charge them all over again. Now, one of our U.S. Supreme Court Justices some years ago said that in law, in addition to all of the other tests that are set up, there is a very important one called a 'smell test' and this Supreme Court Justice indicated that if the whole thing didn't smell right there was something wrong with it.

McMenamin: Actually, in looking at this thing, every time I talk to your man in charge of public works, it kinda reminded me of the story of the mail man that was taking some mail up to a house and he saw a kinda of a vicious looking dog there standing next to a lady. And, he said lady does your dog bite? She said no. He took the mail up to the door and the dog took a big chunk out of his leg. And, he said -- he was very upset -- he said lady, you told me your dog didn't bite. She said it doesn't, that's not my dog. Well, every time I talk to your Director here, I get the -- he tells me its the ordinance. He said the ordinance does all this. He said I'll negotiate with you on the streets. He says I can probably give you an 85% credit or something. I said yea, but we don't have anything. He says yea, well I can give you a credit. He said I might be able to negotiate with you on the sewer a little bit. He didn't know until two days ago that the County had paid the amounts for the sewer and the federal government paid money for the sewer. But, he said By God, on the water rights I'm not going to bend an inch. He said, you're going to pay all that.

McMenamin: Well, as I indicated before, we've got the laundry was there using more water than Mike will ever use in the development he's putting together there. So, if you take the change of use again, as I say, you're going backwards, its less. So, I'm telling you folks that my son would like some building permits and he would not like to pay any system development charges because they have already been paid. And, the problem is just that simple. Frankly, I as a lawyer get a little bit perturbed when I'm in the middle of a negotiation trying to work something out and all of a sudden I see this new ordinance come shooting out. With the brilliant language in it, that part where, a substantial change shall mean any change. I mean, you know that's terrific, that is really helpful.

McMenamin: Now, I would be very pleased to answer any questions you may have to me on two simple clear grounds, nothing is owed. I think that I do not understand a person coming into your town and doing something right and boy getting it really pushed to them. But, as I say, any questions you have of me I would be glad to answer.

Mayor Cox, any questions of Council?

Councilor Thalhoffer, I don't have any at this time but I might have some later. I would like to hear the other side of it and maybe that will answer the questions.

Christian: Mayor, we have some issues here that are going to take more than just Greg's presentation. I have listed the issues here. First of all is the applicability and legality of the ordinances; the language within those ordinances; the process of amending those ordinances and I'm going to ask Jim Jennings to address those issues. Then after Jim has addressed those issues, Greg will make a presentation to you regarding how the existing ordinance [the one you amended in response to the request by Burns Brothers, under which we are all now operating.] That ordinance was crafted due to the Burns Brothers issue that we all agreed created a circumstance that needed to be addressed and the ordinances that were amended in accordance to Council's wishes. Also, Greg will present to you somewhat chronological history of the uses at the Edgefield Manor and the surrounding property which includes the jail and Children's Center. Which you all remember was one or two parcels of property that all was considered as under one ownership at that time, Multnomah County. We have finally, after a lot of digging come up with the 1969-19070 records of the City at that time the project was constructed and the assessments were spread throughout that project. What we are going to try to do is build sort of a chronological history of use. I think you have correspondence from Wayne George who represents the Property Division of Multnomah County in terms of the most recent negotiations with the City. If you recall there were back utility payments due as well as construction of a new water line and SDC payments at that time. We will try to recreate what we know of the utility uses on the property.

Jennings, City Attorney: Mr. Mayor, I asked to go before Greg before I think its going to be necessary to give you folks a legal framework to make the decision you're called on [Mr. McMenemy I'm sure would agree] to make a mixed decision of both the law and fact. First, what is the law and then you have to apply the facts. This is very common and very similar to what you would in front of a jury.

Mr. McMenemy raised the question of what an ex post facto law is. I would like to talk with you briefly about that before we get started. As Mr. McMenemy knows, Article 21 of the Oregon Constitution and the Fifth Amendment to the U.S. Constitution both say that you can't have ex post facto laws. In other words, a law which affects previously legal acts. But, I think Mr. McMenemy omitted telling you that prohibition against ex post facto laws relates only to criminal offenses. It does not relate to ordinance violation where the punishment is fine. There is a restriction, again on having laws which have retroactive application under the laws of, at least the State of Oregon when their application would be [and, I'm going to quote from a case]

"their application would be so wholly unexpected and disruptive that harsh and oppressive consequences follow."

Jennings: So, what you have to decide tonight, is whether with a series of SDC ordinances stretching back twelve years, an ordinance which enforces the collection of SDC charges would have surprised the McMenemy's and to enforce it would be harsh and oppressive. Only when you, and you only have due process problems. In other words problems with application when you find that you have this harsh and oppressive effect. Now, let me point out the chronology of what happened here. The statute, or ordinance 566 is the last ordinance in law. That was signed into law by the Mayor on

February 26th. The SDC process, or the application for these building permits and the whole building process was still going on when this ordinance took effect. It is not a criminal law so it can't have effect on an on-going process. There are numerous cases which talk about application of an ordinance which changes things in mid-stream. Let me give you some examples. There is an old ordinance in the City of Portland which changed a window size from one size to another. A fellow was in the process of building what he was going to build and they had him change that. The Supreme Court of the State of Oregon upheld that change. Give you another example: Somebody had land zoned a particular way for a while, that zoning is changed, that is an acceptable change.

For a long time, at least in this Council Chamber, we have heard of 'grandfathered rights'. There appears to be an assumption that is an inherent right existing somewhere in the Constitution that you have 'grandfather' rights to various property rights. That is not the case. You have rights where they are specifically preserved, you do not have inherent Constitutionally guaranteed property rights to have a certain status of property continue. I'll make that clear, because we have heard...I know this Council a number of times that is the case. That isn't the case.

Jennings: Let's talk about the issue of 'clouds of title'. Mr. McMenamain said in his February 19th letter to you, which I believe is in your packet. That to have an SDC ordinance like this would create clouds of title on every piece of property in the City of Troutdale because it could potentially create a lien. The fact of the matter is that a cloud of title would only happen after an individual had been given all the due process rights that are given to anyone else who has anything happen to them inside the City of Troutdale. They have a right to discuss the matter with staff; they have a right to have a hearing; they have a right to appeal that to the Circuit Court or Court of Appeals where appropriate. So, there is no automatic or immediate 'cloud of title'.

Jennings: Now, Mr. McMenamain - in talking about ordinance 566 told you that the ordinance says if there is any change in use that a new SDC could be leveled. I would submit to you that as triers of fact and law you are required to read the entire section of the ordinance. When you quote something out of context its a little easy to prove your point if you don't put it back in that context. The rest of the ordinance clearly says that if there is a change of use which has an impact of increasing use by 10% [I'm paraphrasing what it says] then it is possible that you could face a new SDC. This was something that was debated and discussed before Council. I'm sure that Council remembers the content of those discussions.

Jennings: Finally, I want to brief Council the supposition that we're dealing with and Council should deal with this appeal under Ordinance 566. That is the operative ordinance now and it is the appropriate standard by which to judge the actions in this case. Mr. McMenamain in his letter raised seven different issues which he believes Council should hear. I have taken the liberty of distilling Mr. McMenamain's letter and trying to paraphrase those issues which were most important.

The first is [and I tried to take these in the chronological, I mean the order in which they appeared in his letter] and remember the Council is limited to those issues which have been raised by Mr. McMenamain in writing.

The first is Mr. McMenamain said that he believed this ordinance was made for only for new development or additions to prior development. That was the issue be razed. Mr. McMenamain can correct me but, I do not believe that was an issue which he spoke to this evening. I am not doing this to cross-examine him but simply to put all the issues fairly before City Council tonight.

Second, Mr. McMenamain in his letter, said this is not a development that is being "added to".

Third, Mr. McMenamain said that there, that it would create a 'cloud of title' on every property in Troutdale.

Fourth, he said that there had to be a grandfathered right.

Fifth, and this is a factual list of which I'll let Mr. Wilder speak, that the water and sewer use that were presently in place were in excess of the plans for future use.

Sixth, that this ordinance is unconstitutional because it attempted to collect taxes for things previously paid for. Subsets of 6 are: (1) we were taking property without due process of law and (2) there was no formula for appropriately determining the charges or triggering the mechanism for charges.

Seventh, he brought up the Burns Brothers factual situation. Again, a factual issue.

Jennings: Let me drop back to six as being the only issue I don't believe was addressed by Mr. McMenamain. Due process of law requirements, as you know, in the State of Oregon require a) notice to the party; 2) require an opportunity to be heard; 3) require an impartial deliberative body; 4) require a ruling; and 5) require the opportunity to appeal. You will be charged with the responsibility of determining whether this ordinance affords those opportunities to Mr. McMenamain's client.

Jennings: As to whether there is a formula for determining charges or triggering mechanism for charges, I am assuming this is a challenge saying that the ordinance is void for vagueness and the standard for that is would a reasonable man ready the statute have an understanding of what his/her obligations would be at the conclusion of reading the statute. Again, if there are questions regarding either Mr. McMenamain's interpretation or mine, it would probably be most appropriate to hold those and ask both of us at the conclusion of Mr Wilder's factual presentation. What I want to do at this point in time is to create a context for Mr. Wilder to do his presentation so that you have a standard by which you would judge the remainder of the testimony.

Wilder: I would like to begin by stating that the impression that I think was given earlier is that I approached the calculation and handling of SDC's as somewhat cavalier, clumsy and possibly even reckless fashion. I can assure you that I am neither Irish, as was suggested earlier; nor am I Scotch. That is not the way I approach these matters. Mr. McMenamain met with me together with his son in the standard form and format that we've met with all of our developers in the past and I have never had a complaint like this levied that I've approached in this fashion. It is simply not the case. I'm going to go through these, not in the same sequence and not in the same order as Mr. McMenamain but, I'm nevertheless going to touch on each of them I suppose in my own word.

Wilder: The Burns Brothers issue I suppose is the one that comes to mind first because it identified serious errors in our ordinance. It was a painful recognition on the City's part that things had changed since the ordinance was originally established 12 and 14 years ago. We, as a result of the Burns Brothers contest, which you will also remember was a pleasant contest. It was a serious disagreement and serious amount of money and the amount that Mr. McMenemy ended up stating was finally paid is not the case it was something over \$100,000 that they finally agreed to pay on. But the matter and issues were the facts of the ordinance. Was the ordinance correct in the amount that it assessed people? It was not. We spent a lot of time in reviewing, analyzing, and studying other cities. Studying our own city. Measuring use. We found the ordinance was in error. It simply charged too much. That ordinance was re-written and not only did the Burns Brothers take advantage of the re-write and the financial advantages that it brought but also the McMenemy's. The ordinance that is in place is a reflection of that Burns Brothers appeal and that re-write. So their amounts calculated are substantially less than they would have been had we gone under the old ordinance.

Wilder: The discussion of the sewer project was actually built in the early 70's is also another issue but was put on the table as if by some magic someone had paid and there was some sewer reserves established that are somehow carried forward, grandfathered and still available. In fact, in 1970 CH2M Hill calculated that the County Farm, which at that time included the Manor itself, included the Children's Center, included the Pig Farm, included the jail and included all the development that we talk about in history at one time had calculated 128 equivalent residential units for that property. That is, if you want to talk about a grandfather issue, that was the amount that was established for the entire property and the entire complex in pretty much its full period of operation. Since that time, of course, some of those issues and items have gone away and some have been replaced by others. I will go through those in a minute and through a time sequence of them. But, what we have in the way of sewers at that point is that established 128 system development charges [they called them at that time single family dwelling equivalents] we now call them equivalent residential units. But none the case, it is important to remember the number 128 was established by the then City's consulting engineer of CH2M Hill.

Wilder: Wayne George has written the City a letter regarding this issue. He was corresponded with get his opinion and what the position of the Council on this matter. His response which can easily be paraphrased is that they purchased equivalent residential units for the water system for their own use. Whether it be for the jail, the children's center, the pig farm, or the Janis House or whatever. They purchased 91.43 equivalent residential units in 1987 for water. They have subsequently reached peak uses as considerably higher than that. Fact is, since the laundry use was discontinued but before McMenemy's did their development, their peak use has been 123.4 in excess of what was originally purchased in fact. That is very close to the 128 that was established some twenty years ago.

Wilder: [Passed out a chronology to members] I pass this chronology out to refer to the triangles on the board together with the bar that goes with it to see what happened when what was closed and what was opened; what was affected and what wasn't. As was indicated the Manor was built somewhere back around 1913. Mr. McMenemy stated Sharon stated somewhere in that period of time. In 1945 a TB Clinic or hospital was added which is now the Children's Center. Somewhere in this era, around 1945 to the mid 60's a treatment plant was built to serve that site by Multnomah County. That treatment plant continued in operation until the early 1970's. In 1963, at this point in the jail was built.

That jail, of course, continues to stay in operation today. The Manor was built, as indicated, and continued to operate until about 1982. The clinic or TB Clinic or hospital had a change in use and continued to operate at a period from 1945 until the use was changed in 1965. So, the clinic operated up until here [graphs used] at which point it became the Edgefield Children's Center or something to akin to that name which continues to operate today. In 1970, equivalent residential units were calculated for a sewer line to be built out to serve the property. The County's sewer system was failing had to be replaced. That sewer line was subsequently built and Multnomah County had a value established for them at that point in time of 128 equivalent residential units.

Wilder: In 1986, a water line was built to serve the property. That water line, of course, continues today. The water line incidentally, I think there was also a misleading statement about that. The City did not build a water line on the County property behind the Edgefield Manor. Multnomah county built the water line, the City supervised its construction. It is a private line, not a public line. It is owned and operated by Multnomah County. Currently, I might add, illegally providing water service to the McMEnamin development. That issue also has been addressed in a correspondence to the McMEnamin's. The County, in order to provide that water service, must maintain certified personnel, meet certain testing requirements, and so forth. Again, we have been extremely liberal and flexible in trying to work with the McMEnamin's to get a new meter installed and relocated. The laundry was closed in 6/89. The laundry was closed here. McMEnamin's bought the property in 7/90. So, we had this period of time before McMEnamin's bought the property that the laundry was not operating. During that period of time, and I have water records that were printed out today by the Finance department. Not under my control, jurisdiction or manipulation or whatever. Those records indicate, as I pointed out earlier, peak uses considerably greater than, in fact, Multnomah County paid for in the first place. One of the reasons for that is when Multnomah County negotiated with the City for the construction of a water line and the payment of system development charges is they indicated that the laundry was going to go away. It was not going to be there -- it happened to burn down but they were going to eventually do away with it anyway. There was a great amount of flexibility that was dealt with in that. It did not tie the County or the City to a restriction of future service at all for the water system.

Wilder: So, their system development charges were reduced before the Council from 117 down to the 93 because of the laundry. When in fact, in peak uses it exceeds what they had paid for. There is no water, no water grandfathered, no water available, there is no pre-payments of water than can somehow magically be translated into an existing development. They belong to Multnomah County. They belonged to Multnomah County at a point in time... they purchased these for this tax lot and this tax lot [graphics]. Before they sold this property, this Property Division's in here...they were the existing facilities, the jail, the Children's Center, the pig farm, Janis were consumed that amount of water - the balance of the property. When they sold this there was nothing to go with it. There was no issue of transfer. The full amount was currently being used on their own facility. Wayne George states in his letter that it was never their intent to transfer their ownership to those rights, those payment of system development charges to anybody. That was never part of their sale.

Bob McMEnamin interrupts here...[**Wilder, let me finish please**] McMEnamin, I just hope that letter is to you because it has been miss-stated three separate things in that letter so, I hope you have the letter...[**Wilder, the letter is in the packet and if I can have the courtesy of finishing like I gave**

the courtesy to you, I would appreciate that. I didn't interrupt you with your miss-statements. So, if I made a mistake, I apologize.]

Jennings: Let me stop for a second. Council members, the letter is not in your packet but I'll read it. [Fowler: I'd like to have a copy of it.] It says

"You are right in your assumption that no ERU/SDC's were purchased and/or set aside for the new owner of Edgefield Manor."

McMenamin: Keeping on reading please.

Councilor Schmunk: Point of Order. Can we just let Greg go ahead and we'll get the letter in a minute.

Jennings: I think that would be appropriate.

Wilder: Again, also important to remember that back when this sewer line was built the City's consulting engineer, not the Public Works Department, not me, not whoever was in that position at that time, established 128 ERU's for that property. Almost, within a few percentage points, the amount that is still being used by the property. There is, but a few - if you want to call them 'grandfathered', there are but a few sewer grandfathered rights, if such a think exists, left to distribute. You may wish to distribute those. Multnomah County thinks that they belong to them.

Wilder: As indicated to you earlier, I have, we obtained from the Finance Department today, so that they would be current, printouts from the water facilities that are affected. And, again, that's the pig farm, MCCF and the Children's Center. Those all indicate that Multnomah County is currently using all of their established and paid for ERU's. There simply are none to spare.

Wilder: I did sort of a, just as a point of interest knowing that the McMenamin's have a development in Gresham - and they put that development in under an old Gresham ordinance - but I did compare it to their current ordinance. Which, I personally believe is not - will not statutorily stand the test once July comes for SDC ordinances. But, nonetheless taking that ordinance under consideration and applying it to only one piece of the McMenamin development, and that is the Brew Pub and assuming that brew pub is the same size as the one in Gresham - using their records - we come up with an assessment that they would have charged McMenamin's had they built their Highland Brew Pub today \$11,065/water and \$39,135/sewer. That's compared to, in this case a considerably larger development including a theater and up to 300 seats in total - \$14,000/water slightly more in the City of Troutdale and \$28,000/sewer - \$10,000 less than the City of Gresham for a substantially larger facility in Troutdale. That just gives you a point in comparison with the City of Gresham. They base their calculations at this point in time on water meter sizes, not specifically on strength of materials, as we do.

Wilder: Our ordinance was written to deal with SDC's in as fair and as equitable way as possible. We even went to the extreme of submitting it to the test of fire advise by letting the Homebuilders's Association review it. They could find nothing substantially that they felt needed changes. Our ordinance probably when it was written met the pending July requirements closer than probably any

other in the State. We do, and will be re-writing that ordinance to comply with the statutory requirements before July 1st but the reflection of the ordinance will be not substantial in words but will reflect more the dollar values in their assignments to capital expenses and their tie to capital improvement program. That will all be done by July. I can't tell you whether they will be more or whether they will be less. But, I can tell you that our ordinance was written with a doctrine of fairness in mind and if anything tended to be liberal and[Tape 1, Side 2 ended]

Tape 2, Side 3

Wilder: No body wants to pay system development charges. They certainly don't want to pay them in the tens of thousands of dollars but somebody has to pay for the system. Somebody has to pay for the capital facilities that could serve those people. And, if you want to, or expect the homeowners to pay for those - the bulk of our population - then I guess that's a policy decision that will have to be reached and dealt with. You should also know that the waiver or the vacation of charges if you will, here, only means that someone else has to pay them eventually, somewhere else. They are in balance and will become more in balance in July, with the capital needs to provide the services to the City of Troutdale. There is a substantial amount here at stake both money wise, policy wise and future service wise It is your task, as I think Jim indicated earlier to sort through and ferret through and make a political or policy decision based on the ordinance and the information that you have been provided.

Wilder: Public Works department, as indicated by Mr. McMenamain, hold up permits. We don't stop permits, the provisions of the ordinance are ours to enforce and we are required to enforce them. When we don't enforce them, or we enforce them too liberally we are, of course, accused of operating our own show. When we do enforce them we are faced with issues where we are too radical and strict in the interpretation. It is a tight rope we walk. Mr. McMenamain indicated that I took sort of a cavalier approach to street SDC's. The oh, I'll bargain here and I'll bargain here and I'll do this and do that. The ordinance is deliberately flexible in the case of streets because we are bi-sected by an arterial system owned by the County, a major east/west freeway owned by the State, frontage roads owned by the State and a City owned network that feeds that. And, the ordinance sets minimum points at negotiation. We can negotiate away approximately 85%, if they are located within certain locations established by the ordinance. Not established by me or the public works department. We tend to apply the negotiations liberally because most of the traffic tends to come from the freeway or on the County systems. The ordinance and the provisions state that there is a limit to that negotiation and it is 85%. Even more under some other conditions where there are improvements required on the road or it is adjacent to a State highway and so forth.

Wilder: Mr. McMenamain was advised that if he was uncomfortable with the street SDC's we would always take the word of a registered and licensed traffic engineer. If you don't agree with us on any of these issues, hire your own engineer. Contest us. The ordinance is liberal and has a specific clause that allows for that contest. If you don't agree with it hire your own engineer. Don't pay. Pay 25% deposit, let us measure it over two years and then we'll know exactly what it is. That provision is in the ordinance, the McMenamain's did not want to exercise that right. That's a very liberal, flexible right that no other ordinance in the State, that I know of, has in it. It was done just to give that benefit of doubt. There is always a doubt when you calculate a system development charge. It is not an exact science. Peak usage versus average usage. Peak usage calculated 10 years ago when a house might

have used an average of 160 gallons of water where now they use 260. Things change, things float. But, the doctrine of fairness always, I think applies and always has applied. It's, I don't have a lot to add except to tell you and assure you that this is not a cavalier process by any stretch of imagination and I you know, I hate to say this and I usually bite my tongue but, I feel personally insulted by the remarks made. Because that is not the approach I took at all and never have. thank you.

Councilor Schmunk: Greg, I have one question. You kept referring to the pig farm, is that the building the County uses for storage?

Wilder: The pig farm is where the horses are. There is a separate meter and a separate amount of system development charges paid for the water for this...why its is referred to as the pig farm I can't tell you.

Christian: Because the County operated it as a pig farm.

Schmunk: It was a pig farm. I thought he was referring to the storage in the building that they have used. That clears that up. Thank you.

Councilor Fowler: Do you have the amount of SDC's leveled for each? I'd be curious how many pigs makes an ERU.

Wilder: Yes, I do.

Mayor Cox: Any other questions?

Wilder: Did you want an answer to that Mr. Fowler because I do have the number...

Councilor Fowler: Yes I do. I am curious we are talking how many ERU's and how many there is on that piece of property at the present time or have any use.

Wilder: The Janis program and other facilities on a 3/4" water line is calculated at 1.05 ERU's.

Councilor Fowler: That's the Janis House?

Wilder: The Janis House. The MCCF potable water supply, the jail at 79.5; the pig farm at 3.45; the Edgefield Children's Center at 7.33. I'll put those into measured perspective with you as to what's actually going on there today, in the same order. The Janis House is operating at about its 1.1 ERU's; the MCCF potable water supply is operating between 83 and 86 ERU's the peak month without the laundry, since the laundry was put in but before McMenamin's were connected, was at 86.1 ERU's. County originally purchased 79.5. I think that's pretty close. The pig farm had purchased 3.45 the last twelve months of record they have been using 6.5 and had a peak of 9.2.

Councilor Fowler: What are they doing down there to use that much water?

Wilder: I couldn't tell you.

Christian: They water animals. They lease that property to horses.

Councilors Schmunk and Fowler: Discussion unclear.

Councilor Fowler: The Children's home was what?

Wilder: The Children's home is currently at a 28.1 ERU peak and they had originally been calculated at 7.33. Their average is 10.1 so again, Multnomah County's assumption is, as attested to by Wayne George in the letter that I've misquoted, greater than they had originally purchased. They belong to the County according to the County. I suppose that's for you to determine where in fact they do belong. The County does feel and has asked if they be moved or otherwise transferred that they also be extended a right of appeal. They let me know that today.

Mayor Cox: Any other questions of Greg?

Councilor Fowler: But, it was done originally on the building itself? On Edgefield Manor?

Wilder: Not on the water because the water line went in after the Manor closed.

Councilor Fowler: Okay. How about the City...The Manor was closed, there were not people actually living in it on water?

Wilder: Yes. When the water was put in there was no issue of grandfathering [and I hate that word because it always reminds me of my grandfather and you get this warm, fuzzy feeling about something that, in this case, isn't warm and fuzzy at all.] But, the water line was put in significant period of time after the Manor closed.

Councilor Fowler: After some body dropped the, pumped down a well?

Wilder: Yes. The well failed for one reason or another. The other reasons, Councilman Fowler, was that the state fire marshal required a higher degree of fire protection for the facility and the only way they could get that protection was to construct that water line, I might add to the tune of another \$200,000+ Multnomah County paid to build their share of that water line, in addition to the system development charges of some \$63,000 as I remember. They have in essence paid their fair share both in construction and in system development charges.

Wilder: There is one other thing that this sort of circuitous conversation gets us to and that is the assumption here it seems to be if you pay for a piece of water line in front of your house or in front of your property that mysteriously none of the rest of the system applies and you don't have to pay anything because you paid for that 12" water line. What I think always has to be kept in mind is that the bulk of the capital investment in the water and sewer system isn't in the line that someone might pay to extend either through an LID or through their own costs -- its in storage, in pumping, in treatment, in pumping stations for wastewater, in a lot of capital besides the line that's right in front of your house. Our ordinance, again, especially in the street section, has some flexibility in even dealing with that. Allowing certain credits in the case of road required improvements to be credited against

street SDC's. That flexibility was included and discussed with you because again of that primary emphasis on County and State arterial systems within the City.

Councilor Fowler: So we have about 90 units of water here, if I am adding it right....

Wilder: We have 91.43 calculated.

Councilor Fowler: Okay. None of those were ever purchased by the County?

Wilder: Yes. They were all purchased for water by the County.

Councilor Fowler: And none of that water was used on the property that McMenamain has...the meeting wasn't on that...

Wilder: They used some of the water for the laundry but you have to also remember that they were not charged SDC's for that because they had planned to make the laundry go away. It would have been 117 instead of 93. The laundry did go away by an act of nature or some vandal, I'm no sure which but, the laundry did go away. An important fact, I think, to remember is that the use is greater even with the laundry gone than Multnomah County had purchased. They consider that use theirs.

Wilder: In the case of sewer, nobody has paid sewer system development charges, not even the County.

Councilor Fowler: Water here, just again here. On the Children's home, if you were to check the ERU's for water on that on population and so forth, what kind of a calculation do you think you'd come up with. We have an average of ten and a peak of 28 -- 2.8 or what's that?

Wilder: 28.1 ERU's on a peak.

Councilor Fowler: On a peak...

Wilder: Its hard to say because we haven't gone in and done a bed count, or a head count in sometime on that facility. In fact, its probably more fair to say that when we review excesses or changes in SDC's, this day and age - we tend to do it from record data rather than from calculated data. If we've got a print out that can show us based on actual water consumption or based on sewer flow by metering it what that charge should be, we base it on that, after the fact. Its only when a development is new in coming into place that we at all use calculations, we always try to use factual data.

Councilor Fowler: But we're looking at something here at that point from 10 to 28 from one month to another month or one time to another that it went back to 10 or some other combination that could be a great, massive leak of water or something.

Wilder: But, it isn't. If you look at it over a period of years, which we do have here if you would like to see that, Edgefield Children's Center... the year that I'm talking about is calendar year 1990, July they used 222,000 gallons - August they used 156,000 - then its starting to drop off. The prior year during

the same 3 summer months they had a higher use. Summer brings a higher use. It also brings a higher demand on our capital facilities and a higher demand on our pumping costs to provide that need. So, peak use is what you tend to design for, not average use. So, every year they go through, like a lot of us that water our lawns [or some that don't in my case] you go through a period of time when you have a higher use.

Councilor Fowler: Okay. So you say that water was never an ERU on there except that it was not actually used under this system on the water itself.. In other words, the Edgefield Manor property of McMenamin's was not...[?] of the water other than the laundry?

Wilder: The laundry, that's correct. The only consumable water.

Councilor Fowler: Where it wasn't included it was somehow or other either escaped or whatever.

Wilder: It wasn't included because there was no use. It was abandoned. The County had approached the Council to raze that facility. They wanted to be done with it, no one was living in it, no one was using it. It served us no purpose to calculate system development charges on a piece of property that wasn't being used and that the County wanted to raze.

Councilor Fowler. That wasn't the question. My question was basically when these ERU's were connected to their own water they were also furnishing a laundry in that period of time now the laundry is out because of that...

Councilor Schmunk: No.

Councilor Fowler: The laundry was gone at that time?

Wilder: And the laundry was not included in the original calculations.

Councilor Fowler: But, it was being used.

Councilor Schmunk: They had a well.

Wilder: The laundry went through a period of time when they were using water from the City of Troutdale that they did not have a water payment or a reserve for. That's correct. But, by the same token, the amount of water that they were using over on the whole site...Remember calculations have a degree of error because they are based on 1) what the developer tells you. He tells you I am going to have 38 seats in my bar and he might put in 60 and I can tell you there's a lot of cases that this happens, closer to home than not -- and, we believe the developer in the beginning. We take his word for the truth. He supplies plans that have seats and seating arrangements and whether he stacks up extra tables in there or not, we won't know for a year or two until we have a measured period of use. Multnomah County is the same situation. We calculate, we hope to be accurate in the calculations based on the ordinance. If we're not, we catch up with it in a year or two and try to set it straight. Such is the case here. In the case here, Multnomah County's actual use without the laundry is greater than they paid for. There is nothing let over to pass on to someone else.

Wilder: If I could spend just a moment discussing on this same vain the sewer line issue. The sewer has never had system development charges assessed against Multnomah County -- for the jail, or for any of their other facilities. The assumption, I suppose, and its not an assumption that I'd make but it is an assumption that history has made, I guess for us...is that they had 128 ERU's floating out there based on some agreement and some construction program entered into in the early 1970's with Multnomah County and a federal grant to build a sewer line out to serve that property. That is currently all being used, all except a matter of a few [3 or 4] actually I have the exact amount - all but 4.6 are currently being used by Multnomah County for their existing facilities. Leaving if you want to refer to that grandfather statement again. 4.6 ERU's that are floating out there that Wayne George still says are his.

Councilor Fowler: Didn't you just mention the fact though that the water use/sewer use and so forth in the last 10-15 years has almost doubled and therefore what we were talking of at the time that the sewer system that was put in [what year did you say that was put in?]

Wilder: I don't remember ever using the word doubled on anything.

Councilor Fowler: No, no, no. I'm asking what year was that put in?

Wilder: Which, the sewer line?

Councilor Fowler: Yes.

Wilder: 1970-71

Councilor Fowler: 70-71 -- roughly twenty years ago. And the water consumption in the average dwelling in Troutdale...

Wilder: No idea. I through that out as hypothetical.

Councilor Fowler: Wait, I'm trying to say something. And the water consumption in Troutdale or the sewerage use in Troutdale has not increased per dwelling any at all? Over that period of time?

Wilder: It varies, and I can't tell you what it was at that point in time. I can't tell you all of it at that point in time. I don't even know what kind of records were kept at that point in time. I can tell you that again...

Councilor Fowler: There was sufficient sewerage at that time to cover everyone of those buildings, including Multnomah

Wilder: There were, sufficient sewer lines designed to serve 128 ERU's.

Councilor Fowler: No, no. Those didn't come in till 10 years later.

Wilder: I'm sorry, but that...no. Sewer at that point in time, they had the Edgefield Manor was in operation, the jail was in operation, the pig farm was in operation, the Children's Center was in operation and I think the Janis facility was in operation. They together were consuming 128 ERU's or, they had assigned to them that amount.

Councilor Fowler: Of sewer? water?

Christian/Wilder: Sewer. Sewer. There was no water at that point in time.

Councilor Fowler: What, sewer? And they were assigned that much? Over the whole works?

Wilder: Yes. Yes. Over the whole works.

Councilor Fowler: Then there should be an equal sharing of the whole works. Divide up the most at the point it was then.

Wilder: Well...

Councilor Fowler: And increase your assessments on the jail, on the pig farm, on the Janis home and the rest of it.

Wilder: I guess that's up to you people to decide how you want to distribute that whether it be...

Councilor Fowler: There was enough from that time 1971 to cover all those places, then a portion of it must have been going to the Edgefield Manor.

Wilder: A portion of it was going to the Edgefield Manor.

Councilor Fowler: Then that one should still have its share of that proportional amount.

Wilder: You also have to remember that when the Manor went away, as it is now, the amount of sewage discharge to the system is almost equal that without the Manor even being there. Multnomah County was the owner of that property, a single tax lot, they were going to raze that building...burn it or otherwise dispose of it. It was going to go away and they would still have that 128 ERU's available to that single piece of property that they own. If you want to talk about the logic of dividing it up...they have some 250 acres or whatever it is, of which 10 acres have been sold or twelve to McMEnamin's

Councilor Fowler: I'm not talking that subject, I'm talking the 128 units on the sewer again is that what you're telling me from 1971. It served all those pieces of property, all those buildings, all those structures whatever happened to be on there in 1971?

Wilder: It served them yes.

Councilor Fowler: It served them. Now, the others have increased in use if the Edgefield Manor has went out of there. So those are the ones that have increased the use out of here. Edgefield Manor should still have a proportionate use of what it had initially.

Councilor Schmunk: One thing you must remember, even though the sewer did go in 1972 or 73, they phased the Manor down. Otherwise it was the whole building was in use. I don't know exactly how much of the building was in use in 1972-73 when the sewer line was put in. But, I know that they were at that point in time phasing out the use of the building because their intention was to close it down. And, when it closed there was only a small portion of it being used at that point in time. So, in 1972-73 when the sewer went in, and I'm assuming this - I don't know for sure, they probably did not look at what the whole Manor would use because they were in the process of phasing that out and parts of the building were already empty.

Councilor Fowler: I have some 82 figures - the home closed in 1982 and that's from the map on the wall.

Jennings: Mr. Mayor, if I might for a second. It is becoming apparent that an issue is what's left if anything of ERU's to be divided up between the McMenamins and the County. I hear Councilor Fowler saying that and I see other people here being concerned with it. I'm wondering why on earth it should be up to the City of Troutdale to negotiate that. Why don't we send this matter and send the McMenamins and the County and say sit down at a table and you folks come back to us with a discussion of how many ERU's of the 128 - I mean Council's still going to have to make a decision on the spreading of this, but, why not send them back and say you folks tell us how much of that 128 resides with whom. If the McMenamins negotiated for some of it, fine and good let them finish the negotiation with the County and come back to us with an agreement and then you folks have a number to work with -- If you chose to work with it. Now, understand you aren't bound to do that.

Councilor Fowler: But, it would decrease the other one so you're not ending up getting hurt.

Jennings: Alright. Now, there is a second issue. There are other, if I'm not - I'm going to ask for some help from Mr. McMenamins - there are some other SDC's to still be leveled. There are a winery, I believe is unclear - the winery and

McMenamin: There are several other things to be straightened out.

Jennings: I'm wondering if it makes any sense to have all of these issues decided. I don't mean to make you folks come back again, I don't want to slow down the process -- but have all of the issues that SDC's spread as to the rest of them and have the Council decide all at once if there's going to be any appeals - I don't know whether there's going to be any appeals on the others.

McMenamin: Well, if I might speak for a moment. I think we're looking at the wrong issue. First of all your ordinance says that these SDC's go with the land. When Mike bought a portion of the land those SDC's went with it. But, and Sharon here knows better than I do, its my understanding at the time the sewer went in there were some 350 people in that Edgefield Manor and so therefore there was a considerable use. Its my understanding that any use that Mike would make of it would be less

than that use. I want to make a couple of other points, Jim was basically correct on the law of the ex post facto except that I would carry that a step further than he did and say that those apply here. I'm not certain from what Jim said as to whether he says that the 3rd ordinance applies or whether the 2nd ordinance applies.

Jennings: Ordinance 566 applies, that's the last ordinance in line.

McMenamin: Okay. Then, if I heard correctly Jim I understood you to say that you can't change an ordinance in the middle of a deal.

Jennings: No. I didn't say that. As a matter of fact, the case log clearly says that's the opposite.

McMenamin: Okay. I would just like to make a point - its kinda like changing the goal post in the middle of a football game and being told it is the right thing to do. I want to apologize if my Irish got up tonight, you know, I feel rather strongly about this and I don't mean to indict anybody but I think we're sliding off the point that there were use being made of sewer which was paid for; use being made of water that was paid for - Mike is buying this from the County and I don't think we should get into this percentage, etcetera. I don't think its part of the game here. I know that if we're talking about there's not enough of these SDC's or not enough that the County is using more then obviously its a problem between the City and the County. And, like the man says, I got no dog in that fight. I mean if the County was using more than what they were paying for then obviously its a matter for the City to get together with the County and get that straightened out. But, I just think like I say that we're sliding off here and you know, 2 1/2 units there and 17 units here and 18 there...I don't think that's the issue. I think we're really loosing it. All this time on that Manor there are two houses there being taken care of that laundry was on that City water system for what, two years or three years? Now, if there wasn't sufficient charge made for it that's a problem for the City to charge the County for it but the use was being made and so when Mike buys this property, you had all that use being made by that laundry so he has the advantage of that. There's another very important thing, there's been a sprinkler system there the whole time which needs the City water to operate. That sprinkler system has been there and in use continuously the whole time. So, I just - as I say I don't want to get my Irish up but you take your own ordinances....

McMenamin: My last thing, and Jim brought this up and I'm really happy he did. Because he is talking about due process and he gave you some of the elements of due process and the most important element of due process when you're looking at any charge for the City or any tax is that it should be clear and specific and exactly laid out where you are, who you are and what you have to pay. Now, I would really like you people to sit down with those three ordinances and see if you can figure out where you are, what it is and what people should pay. If you feel that it complies with due process, do you really know under which ordinance people should be charged and what they should be charged and if there is a grandfather clause? Why shouldn't Mike have the advantage of the use that was on that property before he bought it? Its something to me that is very important and I just, if you're telling me - if it is said that there's a new ordinance, comes out last month in the middle of this whole thing that's going to change everything and the thing that Mike was trying to do, put a deal together out here - make a beautiful piece out a new building and you're going to say oh, we changed

the ordinance on you and now you're going to pay a lot more money. Ladies and Gentlemen I just can't buy it. I think that 'smell test' it really does.

Wilder: It would not matter under which ordinance this issue were applied to, the amount of dollars and the amount set aside in that ordinance is just the same. The only thing changed in the ordinance was the addition of storm sewer SDC's, since they're not adding any additional impervious area at this point in time there would be nothing applicable there. And, the issue of grandfathering, which I think has been demonstrated, is really not an issue. The water was built and finished --- [Tape 2, Side 4 -- Tape change] 128 ERU's per sewer was set back in 1970. The amounts of these things have already been set. It doesn't matter whether you apply ordinance 530 or 566 its going to come out the same.

Wilder: The issue of having a fair representation of costs up front in the ordinance is difficult. I can tell you in this particular case with the winery and with the brew pub we have no basic data to go from. We rely on the developer to provide us with that information. We got, I can tell you, little more than hand written notes and sketches as to what the BOD loading and suspended solids loading what the PH of the material generated and left over from the wine was going to be when it was dumped into the sewer system. We got material that does not and we have a situation that does not allow a straight forward house type calculation. Its not in the ordinance as an outright use, specified and calculated previously. There aren't many of these facilities around. You have special cases of meat packing plants, you have fruit processing plants, you have strange uses that you can't tie into an ordinance. They're separately and individually calculated. We gave the McMEnamin's, and the opportunity still exists, to have their licensed and certified engineer submit the actual data and facts. That's what we base the first few years on. They have the opportunity under that same ordinance to pay 25% and let it be measured over time. There's ample opportunity over the next two years to deal with the actual use rather than some calculated use. Its simply not possible to put in the ordinance like it is with how many retail workers are at a factory outlet store -- that's easy to calculate. There's plenty of standards to go by. Its not so easy when you've got a brew pub or when you've got a winery, or when you've got a specialized use. It's unusual to expect that would occur in an ordinance, in fact. It simply cannot.

Jennings: First let me -- and we don't want to go on forever -- First let me say, let me outline what Councils' options are. This is an appeal. The Council has as many options as it chooses to exercise. Let me give some of the range of options. (1) Grant the appeal entirely as to the SDC's which have already be levied. I believe Greg has in Greg's letter of February 19th it specifies some \$58,000 worth of SDC's. (2) Deny the appeal - which would have the affect of levying those \$58,000 worth of SDC's. I want to hasten to point out that there are still two other areas: a brew pub and a winery apparently where SDC's have not been levied. I'm sorry, there are two other areas where SDC's have not been levied, isn't that true?

Wilder: The winery and future uses [gallery, guest rooms and other facilities] have not been calculated.

Jennings: In addition, the Council has as many options in between those two extremes as the Council cares to exercise. The Council can defer a decision asking for more information to be brought to it [i.e., if the Council believes it an appropriate understanding between, as I suggested, Multnomah County and the McMEnamin's as to the apportionment of the 128 sewer SDC's. Both parties are right.

Mr. Wilder is correct and Mr. McMEnamin is correct that the statute says that the SDC's run with the land. So, it was incumbent upon the two parties - Multnomah County and the McMEnamin's to negotiate, just as one would...The analogy that comes to mind for those of us that live in a rural area is well rights. You've got to negotiate on that. It may be incumbent on them to bring back to City Council - City Council can better make its decision an agreement as to what they bought and what was sold, if any. It may not, the City Council may feel it has enough information now to make a decision. In addition, the City Council can ask for whatever other direction it wants from staff, from an outside engineer, or from Mr. McMEnamin and any of his representatives.

Jennings: Now, I've tried to give you a range of options that are available to you. You understand that it is an extremely elastic standard. If there are any questions of me, I think it would be appropriate now to ask them. If there are any questions of Mr. McMEnamin, it would be appropriate to ask him. Any questions of anyone else that Council wants to ask a question of.

Councilor Thalhofer: [Tape 2, Side 4 5:39] Mr. Mayor. Well, I feel that we don't have enough information, at least I don't have enough information to make a decision tonight. I think if I were a judge in a court of law or court of equity I would say to the parties go settle this case. I'm sorry that there's developed some anger amongst the parties to this because we all have been so excited about McMEnamin's coming to Troutdale and its been something that we feel is one of the greatest things that's happened to the City of Troutdale. To save the old Edgefield Manor building and I hate to see it develop into a ...I won't use the word that I normally would use into a you know what contest. And, that's what I was hearing tonight here and I'm sorry to see that happen because we truly want to work as best we can with McMEnamin's and we always have from the very beginning.

Councilor Thalhofer: However, if we have ordinances that have to be enforced that's another thing. Second to telling the parties, if I were a judge in this case, in a court of law -- court of equity as second to telling the parties to settling the case, I would ask for a memorandum from the parties setting out in detail, in writing their positions so that we would have some more time to study this and compare their respective positions. I don't think I can, sitting here tonight, take in all this information and arrive at an intelligent decision. I also think that the City Attorney's suggestion that Multnomah County and McMEnamin's get together and see where these 128 sewer ERU's go. How many of them stay with the Manor itself, and I think that some of them should. I think that ought to be worked out the McMEnamin's and the County and then I think it ought to come back to us when its a little more clarified. That's how I see the situation. I want to see it resolved without any further rancor or without any further ill feelings because we truly want the McMEnamin's to stay in Troutdale and to succeed and we want to be a part in helping them do that. However, we have our ordinances to enforce and we have our job to do in that connection. So, that's my position. [Tape 2, Side 4 8:21]

Jennings: Let me make clear that when we talk about the County and McMEnamin's negotiating or reaching an understanding about how many SDC's were purchased, that doesn't solve much of the problem. Because, as I understand Mr. McMEnamin's position, he's saying that this ordinance doesn't apply at all, I don't owe a dime. I just want to point out that there's going to be, even after you have this information Paul, there's still going to be a real tough threshold question. [Thalhofer: Oh, I understand] That is, do I have to pay a dime? What this facilitates is if you make that decision, whether there's any money to be paid or not, he's saying there is some money to be paid then you look

at this as how much offset is there now based on what those two parties negotiated. So, if there's any understanding that this is somehow going to solve all the problems this isn't.

Jennings: The reason that I say that is I've had two pleasant phone conversations with Mr. McMenamain in the last two days and I'm confident that we have agreed to disagree on, and since its been long distance we haven't been able to engage in that type of match or contest you've been talking about. But, we've agreed to disagree and I don't think we're going to come to an agreement on whether the ordinance applies or doesn't apply. But, we can certainly narrow the factual issues so we are down then to a legal...Now, what I'm wondering Bob is what I hear Paul asking for is a written closing argument, do you agree with that?

McMenamin: Yes. I see no problem.

Jennings: That is a common procedure and if they come back to us and say we can't reach an agreement with Multnomah County then we will just have to submit it all to you folks in the form of written closing argument. Give us a deadline to do that. Put everyone's feet to the fire, saying thirty days we want written closing arguments submitted and we want everything else done and then the Council can make a decision at whatever the appropriate... upcoming... Well, Pam does raise one other question and its a tough one. The statute, or the ordinance, provides that no building permits will be issued until the SDC issue is solved. In this case the City already issued building permits on this inadvertently. So, they're going ahead. The question of upcoming permits to be issued really puts a press on everyone so if you're going to give us time limits please make them fairly short because there's a lot to be done and we don't want to hold up the McMenamain's process while we're arguing over the rest of it.

Thalhofer: Mr. Mayor?

Mayor Cox: Yes.

Thalhofer: I didn't for a minute think that this was going to solve the problem of the distribution of 128 sewer ERU's but, it could help solve part of the problem, a small part perhaps, and perhaps gives the parties time to maybe iron out whatever other differences they have. Time sometimes has a way of solving problems. But, I think this ought to be a short period of time because we don't want to hold you up, you know, for a long period of time. So, you tell us how long it would take for you to get this back to us and give us time to study it then that's the time we'll do.

McMenamin: Two weeks, Jim?

Jennings: That, that should be fine. Yea, I didn't want to be the grinch that stole Christmas and if everyone thought that the negotiation thing would solve the problem.

Thalhofer: No, I don't think it can.

Christian: But, is that? Can I ask, is that two weeks that you come back to the next Council meeting or is that in enough time to get it out in the packets so you have, I mean because if you get the information the day of Council then you're going to want time to read it. So, I want to clarify that.

Thompson: Well, it seems to me that we have to clarify an issue here first. That's the matter of the sewer ERU's. It isn't going to do any good for the McMenamins and the County to negotiate if there is a new system development charge that is in fact owed. Isn't that correct?

Jennings: Well, no I...

Christian: Yea, there were never SDC's paid on the sewer.

Thompson: For the water there is no question because there were never SDC's paid on McMenamini property for the water.

Jennings: To tell you how narrow the issue is, Bruce. If you decide that the allocation, if you will, of the 128 ERU's on the sewer system in 1970, whether they were paid or not, if you decide that allocation was valid and there is some sort of grandfathering now...then what you would have -- and I admit, it's a bit of a reach -- then you would have an option of offsetting against present sewer SDC's whatever you thought should be allocated to Edgefield Manor.

Thompson: What you're saying is that if it was determined that, for example, there were 100 ERU's for the Manor itself and in the past maybe they were allocated 25, the 100 would still be due and we could give them a credit for 25

Jennings: If you chose to do so.

Thompson: If we chose to do so.

Jennings: Greg, am I correct in that analysis that is essentially what it is.

Wilder: Yes.

Jennings: Yea. But then again, essentially you have to, if possible -- if possible -- that issue should be solved between Multnomah County and the McMenamins. If it can't be solved the McMenamins have to come back to us, or Multnomah County has to come back to us and say we never contemplated it, we can't reach an agreement on it, we're dumping it all in your lap now to make a decision. Should we, or should we not, charge any SDC's? If we should - how much? One of the issues we are now going to have to wrestle with is we're going to have to apportion some for Edgefield Manor if we think that's appropriate.

Thompson: Just to be really clear about this, however, isn't your testimony Greg that the County is currently using almost all their 128 ERU's and therefore, if let's say they apportioned 50 to the McMenamini's property, the City would fall short of 50

Wilder: An we would attempt to collect ERU's from Multnomah County..

Thompson: Which the rest of the City would have to shoulder unless Multnomah County in its largest agreed to pay...

Christian: Or, a new development.

Jennings: Whatever their agreement is remember isn't binding on you, it just gives you some direction.

Thompson: Alright.

Jennings: I think that should be good.

Fowler: One other point I thought I heard earlier here that the federal government put up about 75% of that money - would that have been possible put out the County Farm [?] and would that leverage that came from the County stretching?

Christian: The grant was to the City of Troutdale.

Fowler: To the City, but was any help from the other? I mean

Christian: The grant was to the City of Troutdale, that's all the record shows.

Fowler: That's all the record shows

Christian: In 1970, that's all the record shows.

Fowler: I'm sure somebody can lean on somebody else from Multnomah County to get that information. They're the only reason we went out there.

Christian: I know.

Mayor Cox: Would a month, would that be too long a time for you?

Jennings: Mr. Mayor, can we take a few minutes so I can explain the timing and let us maybe take a 5 minute recess?

Mayor Cox: Okay.

RECESS: 5 Minutes

McMenamin: Mr. Mayor, Council and I have agreed that we will have statements in to you a week before the last Tuesday of April so that we can have it a week before your meeting in April and we'd like to get on the docket on that date.

Raglione: So, you would have the materials, April 16th to us for the April 23rd meeting by 5:00 p.m.

McMenamin: I would like to make one final point and that is that the sewer, when it went in there was no such thing as an ordinance concerning SDC's. That sewer was totally paid for by owners of properties and by the federal government. So, therefore, I don't think we should be worrying about these EDC's on the sewer because there was no - there was no such law in existence and you can't really apportion out something that wasn't there. But, it was totally paid for. Obviously there are different systems paying for something. Paid for through user fees, Bancroft Bonds, whatever way you want to go. In that particular instance, paid for by government funds and by [?] fees. Alright, we will see you in one month. Thank you.

Thompson: I would like to make one point before you leave. One of the things that I would like to see you address in that, what you are going to present to us, and that is you mentioned before that you don't feel that there was a change in use of the property. Is that right?

McMenamin: Uh huh.

Thompson: I would like you to address why a nine year vacancy of that Manor and now its being used, does not constitute a change in use.

McMenamin: Alright. Because, well [Thompson: In the written..] I'll cover that.

Mayor Cox: Alright. Thank you.

Jennings: Asked to be excused. [Tape 2, Side 4 18:20]

Thalhofer: Mr. Mayor.

Mayor Cox: Yes.

Thalhofer: Before Mr. Jennings leaves - don't we have to make a motion to this? Do we have to move...

Jennings: With, alright. That's a really good point, Councilman Thalhofer. I would suggest that the Council now move that this matter be continued to the meeting on the 23rd for further deliberation and decision.

MOTION: Councilor Thalhofer, I so move. Councilor Thompson, second.

YEAS: 5

NAYS: 0

ABSTAINED: 0

Fowler - Yea; Jacobs - Yea; Schmunk - Yea; Thalhofer - Yea; Thompson - Yea

Raglione asked a question for clarification stating that she didn't know if Councilor Fowler voted because she knew he had stated something about a conflict at the beginning and didn't know if he had actually voted.

Councilor Fowler: I didn't recall - voted or not [?]

Councilor Thompson: You did. He didn't mention that he had a conflict he said that he knew the McMenamins'.

Jennings: That was just a declaration. Remember let's talk briefly again. All you have to do is declare whatever contacts you've had. It doesn't mean that you have a conflict of interest at all. As long as you disclose, you have fulfilled your responsibility. [Tape 2, Side 4 19:40]

ITEM #6: DIRECTION/MOTION: LID Request - Stark Street/Methodist Church
[Wolsborn] [Tape 2, Side 4 19:42]

ITEM #7: DIRECTION/MOTION: LID Request - Public Facilities/Old Sweetbriar Farms
Addition [Smith & Gary]

ITEM #8: DIRECTION/MOTION: LID Request - Public Facilities/Fleur DeLis II
[Burlingame]

Mayor Cox called this agenda item.

Wilder stated that items #6, #7, and #8 all fit into the same field. There were three requests for LID's. Item 6 - Multnomah County agreed to finance these improvements for a 3-year period of time, however, the Church would like a longer period of time.

Item 7 was a public facilities request for the Old Sweetbriar Farm addition a 13 lot subdivision adjacent to the Farm.

Item 8 was a 64 lot subdivision for Fleur de-Lis Subdivision 2.

Wilder stated there was a serious cloud on the City's ability to sell bancroft bonds and he didn't feel it was a viable source to build these projects from any longer. There was an ordinance obligation to forward the requests to Council. Wilder asked that Council provide some direction as to whether or not to explore other funding resources; 2) make LID's go away for a while; 3) local funding from City funds, if available and small LID's...et cetera.

Wilder stated there may be development bonds or other sources of funds that hadn't been researched in the past with a higher interest rate than General Obligation Bonds or Bancroft Bonds. He asked if the other funding sources should be explored and returned to Council for direction.

Christian stated that Council direction on what the City limitation of 25% would be in order. Gazewood had prepared a report based on factual data - Wilder stated that as of today, the City had

\$33,985 available to fund LID's based on the 25% limitation. If the LID's are retired in a normal schedule, in October, 91 there would be \$416,000 available.

Wilder stated that Cline had prepared a spreadsheet indicating the percentages of building that had taken place within each subdivision. [Cline reviewed for Council information, Status of Subdivision Development - March 1991 available in Council packet materials 3/26/91.]

Thalhofer asked what could be done until there was enough money to amount to something?

Wilder stated that staff was asking if Council wanted other funding sources researched?

Thalhofer stated that City shouldn't be concerned with it yet, until there was additional monies available. If staff had time, research other funding methods.

Christian recommended that establishing any further LID's be held off until October, 1991. The City must make the payments on the bonds already sold. That would be a good indication of where the City was in terms of development, payment schedules, and the legislature would be adjourned and issues that are currently unresolved might possibly be settled.

Council agreed. Fowler stated that he didn't see where the City should be further obligated for construction of subdivision lots until the current large inventory is completed.

Council Thompson stated that it would be prudent to investigate funding sources that might be available, as staff has the opportunity.

Christian stated that in October, 1991 staff would be back to Council with information regarding available monies.

ITEM #9: RESOLUTION: Accepting Public Facilities/Community Park Step Sewer System 886-R [Tape 3, Side 5 1:07]

Mayor Cox called this agenda item.

Wilder stated that the Community Park Step Sewer System Project was complete and had been inspected by staff and the consulting engineer. The resolution accepted the project into the City's fixed asset system and requested release of retainage to the contractor.

MOTION:Councilor Schmunk moved to adopt the resolution. Councilor Fowler seconded the motion.

YEAS: 5

NAYS: 0

ABSTAINED: 0

Fowler - Yea; Jacobs - Yea; Schmunk - Yea; Thalhofer - Yea; Thompson - Yea

ITEM #10: RESOLUTION: Accepting a Non-Exclusive Emergency Vehicle Access and Utility Easement from C&S Properties (Tax Lot 166, Section 25, T1N, R3E, W.M.) 887-R

Mayor Cox called this agenda item, called for declarations, challenges or ex parte contact. There were none stated. Mayor Cox then read the resolution by title.

Wilder gave basic information stating that this required a public easement dedication for public facilities and for emergency vehicle access on a private road under which the utilities are located. An agreement for public facilities was needed to serve developing properties along Frontage Road which would provide services to Taco Bell and Shari's Restaurant, as well as future service to properties along and adjacent to a private road.

MOTION: Councilor Fowler moved to adopt the resolution. Councilor Thalhofer seconded the motion.

YEAS: 5
NAYS: 0
ABSTAINED: 0

Fowler - Yea; Jacobs - Yea; Schmunk - Yea; Thalhofer - Yea; Thompson - Yea

ITEM #11: RESOLUTION: Authorizing Budget Transfers for FY 90-91 888-R [Tape 3, Side 5 3:14]

Mayor Cox called this agenda item and called for declarations, challenges or ex parte contact. There were none stated. Mayor Cox then read the resolution by title.

Christian stated this had been discussed in the Budget Meeting.

Gazewood gave background information and stated this was within the existing appropriations. The first group dealt with specific limits of appropriation from contingency to line item department and fund accounts. Section 1 dealt with transfer between departments. He asked for questions. There were none.

MOTION: Councilor Thompson moved to adopt the resolution. Councilor Fowler seconded the motion.

YEAS: 5
NAYS: 0
ABSTAINED: 0

Fowler - Yea; Jacobs - Yea; Schmunk - Yea; Thalhofer - Yea; Thompson - Yea

ITEM 11.5: Request for Auction - Ritchie Bros. [Agenda update]

Mayor Cox called this item.

Christian stated that Cline would address this issue. The request was received directly by the Mayor and there were no materials in the packets.

Cline stated that contact had been made regarding use of Diebold Lumber property [zoned industrial] for a temporary event. They had stated they were concerned with going through the appropriate procedures in notifying the City of the auction. They were told that this would have to go through Council, as a temporary use. The procedures were outlined and they were to come back to staff for a pre-application process and information gathering meeting. A site plan, hours of operation, security issues, sanitation issues, et cetera. Cline stated there were several concerns: this was an unpaved piece of property i.e., steam cleaning of equipment to be auctioned; equipment placed on property in excess of 1 month.

Cline stated no information was submitted to staff for the purposes of clearing issues outlined, prior to Council action. Information was submitted to the Mayor and the letter to Council. Cline stated that was all the information at this time that he had.

Thalhofer asked if the procedures were outlined but not followed?

Christian stated there was a procedure as Cline outlines. Staff didn't have the authority, even if a proposal was submitted, [Development Code didn't address short-term uses] it would normally be before Council but with a complete packet of whether it responded to existing ordinances. That had not happened.

Mayor Cox stated a tape and the folder was left at his home.

Thalhofer stated the procedure outlined was still not followed.

Christian stated she had tried to reach the local representative with no response.

Thompson stated he felt no reason to take action without a proposal submitted. Schmunk agreed. Thalhofer agreed. Fowler agreed. Jacobs agreed.

ITEM #12: COUNCIL CONCERNS AND INITIATIVES

Mayor Cox read the resignation of Sharlyn Jacobs from City Council. She had moved outside the City limits and no longer could retain her position as a member of the Troutdale City Council.

Discussion ensued regarding the filling of the vacancy. Christian stated that the options for this process were open because there was no specific process in the Charter. Options were to accept applications and set interviews; appoint an Advisory Group as a selection committee to review interested parties; pass a resolution calling for an election.

Councilor Thalhoffer stated that he had no problems with the process used in selecting Planning Commission members. He favored setting a notice in the papers stating the vacancy, calling for applications and set a Selection Committee.

Councilor Thompson asked if the committee could include the entire Council.

Christian stated that if the entire Council, it would require the process to be held as an open meeting. Since there were considerable meetings scheduled for the Budget process, it was suggested that this be held until those meetings were completed.

Christian asked if possible, a work session be scheduled as soon after the Budget meetings were concluded as possible. She stated that City policies couldn't be implemented without Council direction and there were considerable issues to be discussed. Christian stated that the DLCD periodic review acknowledgement was in process and there were a number of items that she would like to schedule for the work session, quickly.

Council consensus was that it could be set during the month of April and a specific date could be decided on in April.

Councilor Thalhoffer expressed his appreciation for Jacobs involvement in the Council and he was sorry to see her leave.

ITEM #13 : ADJOURNMENT

Mayor Cox called this agenda item.

MOTION: Councilor Schmunk moved to adjourn the meeting. Councilor Thompson seconded the motion.

YEAS: 5
NAYS: 0
ABSTAINED: 0

Fowler - Yea; Jacobs - Yea; Schmunk - Yea; Thalhoffer - Yea; Thompson - Yea

The March 26, 1991 regular City Council meeting was adjourned at 9:40 p.m.

Sam K. Cox, Mayor
Dated: _____

ATTEST:

CITY COUNCIL MINUTES
MARCH 12, 1991

Valerie J. Raglione, CMC
City Recorder

F:\MINUTES\032691CC.MIN