



CITY OF Troutdale

AGENDA

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

7:00 P.M. -- July 22, 1997

- (A) 1. PLEDGE OF ALLEGIANCE, ROLL CALL, AGENDA UPDATE
- (A) 2. CONSENT AGENDA:
- 2.1 **ACCEPT MINUTES** - Regular Session June 24, 1997
 - 2.2 **APPROVE BUSINESS LICENSE** - Month of June 1997
 - 2.3 **APPROVE LIQUOR LICENSE:** - Godfather's Pizza.
 - 2.4 **RESOLUTION:** A Resolution Accepting an Easement West of the Centerline of Vacated SE Kibling Avenue in the Southwest Quarter of Section 25, Township 1 North, Range 3 East of the Willamette Meridian, as granted to the City by Patricia A. Frick.
 - 2.5 **RESOLUTION:** A Resolution Accepting a Temporary Construction Easement at 1606 SE Beaver Creek Lane from Mary Ramsey.
 - 2.6 **RESOLUTION:** A Resolution Accepting a Temporary Construction Easement at 1614 SE Beaver Creek Lane from Jeremy and Karen Hoyt.
 - 2.7 **RESOLUTION:** A Resolution Accepting a Temporary Construction Easement at 2156 SE Beaver Creek Lane from Lisa Austin.
 - 2.8 **RESOLUTION:** A Resolution Accepting a Temporary Construction Easement at 2204 SE Beaver Creek Lane from Todd & Joanne Shird.
 - 2.9 **RESOLUTION:** A Resolution Accepting a Utility Easement at 1606 SE Beaver Creek Lane from Mary Ramsey.
 - 2.10 **RESOLUTION:** A Resolution accepting a Utility Easement at 2204 SE Beaver Creek Lane from Todd and Joanne Shird.
 - 2.11 **RESOLUTION:** A Resolution Declaring Certain Personal Property as Surplus and Authorizing Disposal.
- (I) 3. **PUBLIC COMMENT:** Please restrict comments to non-agenda items at this time.
- (I) 4. **COMMENDATIONS, AWARDS, AND PROCLAMATIONS:**
- 4.1 Years of Service - City Employees Mayor Thalhofer
- (A) 5. **APPEAL:** An Appeal of Storm Water System Development Charges by Gramor Development. Galloway
- (I) 6. **PUBLIC HEARING / ORDINANCE INTRODUCTION:** An Ordinance Amending Chapter 15.20 of the Troutdale Municipal Code Pertaining to Construction Debris Clean-up. Faith

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- (I) 7. **PUBLIC HEARING / ORDINANCE INTRODUCTION:** An Ordinance Amending Chapters 1, 2, 3, 5, 7, 8, and 15 of the Troutdale Development Code and Repealing Chapter 15.16 of the Troutdale Municipal Code. Faith
- (I) 8. **PUBLIC HEARING / ORDINANCE INTRODUCTION:** An Ordinance Exempting Certain Personal Service Contracts from the Formal Selection Process and Amending Section 2.24.240 of the Troutdale Municipal Code. City Attorney
- (A) 9. **RESOLUTION:** A Resolution Amending an Agreement with Reynolds Little League Lantz
- (A) 10. **RESOLUTION:** A Resolution Authorizing the Mayor to Sign an Intergovernmental Agreement with the Sandy Drainage District Regarding Pump Station Capacity. Galloway
- (A) 11. **DISCUSSION:** A Discussion Concerning the Results of the May 20th Sewage Treatment Plant General Obligation Bond Issue Election. City Attorney
- (I) 12. **DEPARTMENT REPORTS:**
- | | | |
|------|-----------------------|-----------------|
| 12.1 | Finance | <u>Gazewood</u> |
| 12.2 | Public Safety | <u>Berrest</u> |
| 12.3 | Community Development | <u>Faith</u> |
| 12.4 | Public Works | <u>Galloway</u> |
| 12.5 | City Attorney | <u>Sercombe</u> |
| 12.6 | Executive | <u>Kvarsten</u> |
- (I) 13. **COUNCIL CONCERNS AND INITIATIVES:**
- (A) 14. **ADJOURNMENT:**


 Paul Thalhoffer, Mayor

Dated: 7-16-97

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

July 22, 1997 - 7:00 P.M.

I. PLEDGE OF ALLEGIANCE, ROLL CALL, AGENDA UPDATE

Meeting was called to order at 7:05 p.m. by Mayor Thalhøfer. Mayor Thalhøfer called on Councilor Kight to lead us in the Pledge of Allegiance.

Deputy City Recorder Stickney called the roll.

PRESENT: Thalhøfer, Thompson, Kight, Regelein, Daoust.

STAFF: Berrest, Faith, Galloway, Gazewood, Kvarsten, Stickney.

GUESTS: Teri Sutherland, Joey Rickard

Mayor Thalhøfer asked if there were any agenda updates.

Kvarsten stated that we would like to strike agenda item #9, a Resolution amending an agreement with Reynolds Little League, we would like to present that at a future Council Meeting, most likely the August 12th Meeting.

2. CONSENT AGENDA:

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- 2.11 RESOLUTION: A Resolution Declaring Certain Personal Property as Surplus and Authorizing Disposal.**

Mayor Thalhoffer called this item and read the consent agenda.

MOTION: Councilor Thompson moved adoption of the consent agenda. Councilor Kight seconded the motion.

**YEAS: 5
NAYS: 0
ABSTAINED: 0**

3. PUBLIC COMMENT:

Mayor Thalhoffer called this item and asked if there was anyone here who would like to speak to us tonight.

Teri Sutherland, President of the Rockwood Reynolds Soccer Club stated she was under the impression that we had something on the agenda this evening, but it sounds like Reynolds Little League had an amendment.

Mayor Thalhoffer stated that these are two separate issues, Reynolds Little League has an issue completely apart from the Rockwood Soccer Club.

Sutherland asked is it going to be discussed tonight?

Mayor Thalhoffer answered no, it is not on the agenda for tonight.

4. COMMENDATIONS, AWARDS, AND PROCLAMATIONS:

4.1 Years of Service - City Employees

Mayor Thalhoffer called this item and presented the employees with their certificate and thanked them for their service to the City.

5. APPEAL: An Appeal of Storm Water System Development Charges by Gramor Development.

Mayor Thalhoffer called this item and asked Mr. Galloway to step forward.

Galloway stated the issue before you is an appeal of storm water system development charges by Gramor Development. As you are probably aware, Gramor Development is the firm that is making the commercial developments at the northeast corner of 242nd and Cherry Park Rd., a Safeway Store and other commercial sites are being developed there. With the development of that site an impervious surface is being created and storm water runoff from that property goes to a detention basin that was

constructed in the residential area of Cherry Ridge as part of that development. The basin handles the storm water runoff on the commercial site as well as a portion of the residential site at Cherry Ridge. From there the water goes down the hill and through a series of ditches and culverts and eventually it ends up at the pump station and is pumped into the Columbia River by the Sandy Drainage District pumping station. As part of the conditions of approval for this development they were required to pay system development charges in accordance with the City Ordinance and Resolutions. We applied the standard methodology that we use for storm water system development charges which is to calculate the area of impervious surface the development creates and apply a cost per square foot to that development. In the case of Gramor, they generated approximately 400,000 square feet of impervious surface area resulting in a system development charge in the neighborhood of \$130,000.00. At the time they wanted to pull their building permits to start construction, Gramor did pay the system development charges under protest so they could begin construction. They then asked for a more formal determination of the system development charges from my office. I have made that determination which was to uphold the original calculation and it is the appeal of that decision that you have before you this evening. Gramor's appeal makes four arguments for their appeal and I will briefly go over those with you and then give you a brief summary of our reason for disagreeing with them. The first of their arguments is the development has no impact on our storm drainage system and therefore they should be exempt from paying the storm water system development charge. We disagree with that. The detention facility that was constructed, as I mentioned earlier, was designed to ensure that the peak runoff from the site did not exceed the pre-development peak runoff. But they are creating an additional volume of water that has to be handled by the system, and additional water and a more delayed run-off which when mixed with other waters within the system could create a need for additional facilities in our system. So we believe that they do create an impact and we disagree with that argument. Their second argument is that we should have used an impact base method to calculate the system development charges. They believe they are a unique situation within their site and we should not have used our standard methodology, but should have used a special methodology for that particular site. We would disagree. We believe that we have developed a methodology which generally applied is a fair and reasonable one. We believe that carrying their argument to its logical conclusion, one could argue that virtually every site in the city had unique characteristics to it. In that case we would have no methodology, we would have a case by case situation. So we disagree on that basis. Their third argument is that the imposition of the system development charge creates an exaction, under Dolan vs. The City of Tigard, that there needs to be "an essential nexus" a rough proportionality between the governmental action, in this case the imposition of the system development charges, and the impact that the development has. I think first of all there is probably some legal difference of opinion as to whether the Dolan rough proportionality analysis even applies in the system development charge issues. But even if they do, we believe that we have met the rough proportionality test. The fourth argument pertains to a violation of the Fourteenth Amendment to the U.S. Constitution in which they argue that economic classifications must have a rational basis. In our case we have not established any classifications, we treat all impervious surface areas the same and apply the same rate to each. They argue we should establish some classifications. We don't feel that it is necessary or appropriate. In this case we believe there is a rational basis between the proportion of impervious surface area and the imposition of the system development charges that we have imposed, so again we disagree. In conclusion it would be the staff recommendation that the appeal be denied.

Councilor Kight asked under agenda item number 10 for tonight's meeting is to increase the size of the pump for the Sandy Drainage District. Is that particular pump system somehow servicing the Cherry Park Subdivision, including this particular development?

Galloway answered runoff from that portion of the city does eventually end in that pumping station and does rely upon those pumps to discharge into the Sandy River.

Councilor Kight asked what are the costs as a result of increasing the pump size and putting in a second discharge pipe?

Galloway answered the estimates on that are \$150,000 to \$200,000, we are asking council on a later agenda item tonight for authority to spend up to \$200,000.

Councilor Kight asked would you expect to increase the size of the pump if these developments (Cherry Park Subdivision and the development by Gramor) hadn't gone in?

Galloway answered I think eventually there would be a need to do that, I think this may have hastened it. I think to give you a precise answer would require an analysis.

Councilor Kight asked if there was no development up on the hill at all, would it be necessary to up size the pump and put in a second discharge pipe?

Galloway answered that area served by that pump encompasses about 1500 acres not all of which is in the City of Troutdale. So I think yes, eventually they would probably need to increase the size of that pump. I think development in the Cherry Ridge site, both residential and commercial, may have hastened that a little.

Mayor Thalhoffer asked what are some of the measures that have been taken to prevent storm water from going onto the premises of the Gramor Development from adjacent properties?

Galloway answered in that particular site I cannot think of too many off the top of my head. They have a corner facility so they are bordered by county right-of-way, which has its own drainage capability to pick up runoff from the right-of-way. It occupies a piece on the western border of the city.

Mayor Thalhoffer asked isn't that one of the points you make in your staff report?

Galloway answered I made that argument as an issue in general, I did not identify it in particular with that piece of property. It was one of the rational for (why back a year and a half ago when we had a consultant talk to us about the fees and address that particular issue) why he didn't feel we would necessarily as a general rule alter our fee basis, is because both benefits were provided to most properties.

Mayor Thalhoffer asked, it seems there was a case involving a detention pond a couple years ago do you recall that case?

Galloway answered I believe you are referring to Swift Transportation. They had a similar situation where they were detaining a fair amount of their water and they asked for some relief. After some discussion Council did offer them some relief. It was the backlash of that decision that led to bringing in a consultant and having a discussion about how we want to treat that in the future and the council decision was that we continue to impose the fees and not grant anymore actions as we did with Swift Transportation.

Councilor Daoust asked, with Cascade Communities Development North of Stark (Don Oakley) is there a on site storm water detention pond at the base of the development, and if so, what type of S.D.C.'s is Don Oakley paying?

Galloway replied there is a detention facility there and he will be paying the standard amount, there will be no reduction of system development charges.

Councilor Kight asked the storm water system that we currently have that services this particular area travels down to the Columbia River, who put in that infrastructure?

Galloway replied it is a combination of things, there is no one answer. Some facilities were put in by the City, some, where it crosses the freeway I assume were put in by O.D.O.T at the time of the freeway construction, where it crosses Hensley since it is a county road it may have been done by the County. Some of the additions and of course the pump stations are owned by the Sandy Drainage District.

Councilor Kight asked but don't we support that financially, as evidence of that, the item that is coming up tonight?

Galloway replied this will be the first occasion where we have gone in on a partnership with the Sandy Drainage District on a major project like this. I think our financial workings with them in the past have been to jointly fund the North Troutdale Drainage Study back in the 1989/90 time frame. Some residents of Troutdale who are both within the City and the Drainage District pay fees to both the Drainage District and the City. There is no direct city payment to the Drainage District.

Councilor Kight asked are the S.D.C.'s that we collect, part of that money goes to build that infrastructure that the City is responsible for?

Galloway replied that is correct.

Councilor Kight asked that over the life of that system, isn't that being maintained or at least our portion, by the City? For instance, if there was a break in the pipe and there was leakage in the system or a filter needing to be cleaned, isn't there ongoing maintenance to the system?

Galloway replied yes, that is one of the reasons a couple of years ago we initiated a utility fee to help cover the operation and maintenance costs.

Mayor Thalhoffer asked if detention ponds do not give people any type of S.D.C. relief why do they continue to build them?

Galloway replied it may be imposed as a condition of development by the City, generally that would be done by the Planning Commission. Another may be that it is a cheaper solution then putting in the necessary connections they need to make if there is a long run, for instance before they could connect to an existing city storm system. It may be either economic or it may be imposed by the city as a condition.

Mayor Thalhoffer asked the folks from Gramor to come forward.

Peter Mosow representing Gramor Development Northwest also with me from Gramor is the Senior Project Manager David Copenhaver. I think the key question and the whole reason we are filing this appeal is, because we have an onsite detention facility and it is designed to detain runoff water from the property and in an event as severe as the 25-year storm, keep the rate of discharge off the property and into the City's system at or below pre-development levels. Given that, it is our position that calculating our S.D.C. fees based entirely on impervious surface area without taking into consideration this unique factor is unfair. It's out of line with the City's own Ordinance and it violates Dolan. What we are doing is holding water on our property and not letting it into the system during storm events. The measure of a system's capacity is by how much water it can carry at a peak capacity during a storm. We are not contributing during the storm, we are contributing after the storm is over, that is the purpose of holding it on the property. Its like saying what is the measure of a high schools football field stadium capacity. You look to see how many people can fit in the stadium on game night. You do not look at it the next morning to see how many people can fit in the stands. That is the position that Gramor is in, we are coming the next morning and sitting in the stands, we are not putting any additional pressure on the City's system when it is most needed. That is why we are saying it is unfair to us, we are sitting in the stands the next morning with a \$130,000 ticket in our hands with no game going on. The storm water S.D.C. Ordinance is styled as a service fee, a use fee, it is a charge for services rendered as it says in the purpose section of the ordinance. In addition to just being fair, this factor is based on important Oregon Constitutional Amendment, which is namely that to the extent it is not a use fee that is being charged to the extent it is just a charge based on someones ownership of property, it is a property tax, and if it is it was not adopted in accordance with the constitutional provisions that we know as Ballot Measure 5, Ballot measure 47. So it's very important that this continue to be implemented as a charge based on use, based on impacts to the system. The Ordinance recognizes that there are special cases and that's why as a first cut it says we will look at impervious surface area and decide what the S.D.C. will be for storm water. But it also has two exceptions which have already been raised. One is 12.02.070-A-2 which says any change in use, conversion, re-construction, rehabilitation, alteration, addition or replacement that does not increase the use of capital developments will be exempt from the S.D.C. We are changing the use of this from a vacant lot to a retail development without increasing our use of the City's storm water system. Therefore, we should be exempt from charge based on the idea that we have this detention facility keeping the rate at pre-development levels. The second exception in the Ordinance is 12.02.040F which says that when in fact an individual development presents special or unique situations such as a calculated fee is grossly disproportionate to the actual impact of the development, in that case the Public Works Director can re-calculate the S.D.C. charge based on what would be a fair and equitable method for this unique situation. Considerable effort and expense, lost opportunity cost, where we have this pond now we could have had more development. We have constructed a facility that helps the City by reducing the peak demand from our property during storm events. We think that the fee should be re-calculated taking this factor into account. That's our real reason we are coming before you tonight, to ask that this provision be implemented in our case, and that the fee be calculated based on the actual impact we have on the system. So far no one has shown us any evidence, that given our detention facility, that we will have any impact, that we will create any additional demand at all. We are willing to see if someone is going to present evidence and suggest and alternative means of calculation. We are not ruling that out, but as it stands right now we just haven't seen any evidence that we are creating any additional need, therefore we can not see why we have been charged \$130,000. One thing that the director said was if you make an exception in this case, you will have to make an exception in every case, because every piece of property is unique. I agree, but what is unique about our property is there is a specific facility that has been designed with storm water in mind. I have gone into the Dolan argument as well, the Supreme Court decision, Dolan vs. The City of Tigard.

That has created a small revolution in Oregon Law, and one of the recent cases really does open it up beyond simply the situation where someone is being required to dedicate part of their property for the City's use. The court of appeals in Oregon said they couldn't see any reason why that was the key feature. I think going back to what the Supreme Court said in Dolan vs. The City of Tigard, when the City, as a condition of approval is requiring someone to give up a protected property interest that they wouldn't otherwise have to give up, and when that requirement is not roughly proportional to actual impacts of the development. In addition to the Oregon Constitution, Dolan, and the Ordinance itself, that the final thing is that if the City really doesn't want people building these, I think that there should be an Ordinance that says we don't like storm water detention facilities. A lot of times the city seems to think that it is a good idea to develop these but gives no credit. The message that developers will get from decisions like the one we are challenging now, is don't bother. That is the message Gramor is getting now, and that is why we are here tonight to see if that is really what the City wants to tell us. I have one other really short thing which is the idea that we are being protected, that part of this charge is to protect us from storm water coming onto the property from other sites. My response to that is that for \$130,000.00, just give us the money and we will protect ourselves. We don't see anything that is being done to protect Gramor from water flowing on site, in fact water would have to flow uphill to get onto the site, it is Cherry Ridge it is on a ridge, there is not a lot of possibility for us being over run with storm water. The whole idea that we are paying partly to be protected from other peoples storm water is kind of double counting. The guy who's storm water we are being protected from already had to pay the S.D.C., so you are charging twice. I don't think that argument is a support for imposing S.D.C.'s. That is our presentation, I have a letter that I will submit into the record from Darren Welborn, who now is with WRG Design, describing his understanding of the purpose of storm water detention facilities and his belief that it is and either or proposition with S.D.C. and storm water detention facilities. Either you build the facilities and you get a credit against the S.D.C. charge, or you don't build the facility and you pay the full S.D.C. charge.

Mayor Thalhoffer asked isn't the overall impact on the system the same wether you have a detention pond or not?. The water does not just evaporate, it goes into our system, perhaps not during a storm or in large quantities, but it does go into the system. How do you answer that argument, that overall , the storm water wether you have a detention pond or not does go into the Troutdale system?

Mosow replied I understand that argument but it is the same as asking, why isn't it an impact in the football stadium when someone comes the next day and sits in the bleachers. You are using the system when it's not being needed. The capital improvement, the whole design and the cost is driven by how much peak capacity the system needs to deal with during the big storm. By using the storm water facility essentially when it is empty, we are not causing the city to develop any new system, we are not increasing the demand on the system. That is why I think it is unfair to charge us at the same rate. No one has presented us evidence along the line that you are describing. I would be interested in seeing that but it just has not been shown to us. Someone siting in the stands the next day, does put some pressure on the planks and there are some costs associated with that but it is trivial in comparison to the value of the use during the game. That's why you wouldn't charge someone a tenth of a penny that they are imposing by coming the next day.

Mayor Thalhoffer stated but you would charge them for using that seat in the stadium, for the wear and tear on the stadium, for the insurance to keep that stadium up and maintained wouldn't you?

Mosow replied I suppose it is possible, but again we haven't been presented with that. It sounds like in

the past the City has concluded that yes there are some costs, but they are not as big as the entire amount.

Councilor Regelein asked if someone is in the stadium the next day there are always security risks and liability risks. On the detention pond, was there a condition imposed by the City, or was it something you had designed into it?

Mosow replied it arose out of a negotiation with Multnomah County, having a down stream property from Cherry Ridge, they eventually came to require from us, that we construct this detention facility in order for Multnomah County to sign on and support that in the approval process.

Councilor Regelein asked without the detention pond would there be any additional expense to the developer as far as being capped into some sewer system? Is there an advantage to the developer by having the detention pond as opposed to not having it?

Mosow replied the advantage could be that they were to get credit along these lines that we are asking for.

Councilor Regelein asked were there any additional costs in putting the detention pond in?

Mosow replied the cost of construction and the space that the pond occupies is valuable space and it otherwise could be used much more profitably.

Councilor Kight asked were you aware of the flooding we had last year? It came off Cherry Ridge, part from where your development is going in. There was severe flooding along Halsey Blvd., the same system that your particular development is tied into which is part of Arata Creek. It flooded not only Edgefield Children Center but also homes on the North side of Halsey, in fact along where the park is a lot of the area was sand bagged. We tend to forget that because of the warm weather we are experiencing now. Part of that water, of course, and one of the reasons for the condition of your approval for your development, as well as GSL's, is to hold the water that is running off all the impervious surface, the roof, roads, driveways and so on. You are adding to that system even though you have a detention pond, is that not correct? You have 275,000 square feet of impervious surface. Are you telling me you are not adding to the system, you are not adding to the volume of water, not the rate necessarily but the volume of water?

Mosow replied no I am not saying we are not adding to the volume, we do add to the overall volume of water that goes into the system, I am saying we are not adding at a time when the system is being taxed, so we are not creating additional peak demand.

Councilor Kight asked how is the detention pond designed? Where is the discharge pipe in relation to the pond?

Mosow replied he would have to appolige for not having the specifics of the design of the pond.

Councilor Kight stated the reason I asked that question, is if it is similar to Strawberry Meadows the pipe is at the bottom of the detention pond, and as a result unless there is an orphis to allow rate or volume of water to go through the pipe to be lessened, we have had a lot of flooding not only in your area as a

result of the development but also Strawberry Meadows and across the Columbia River Highway where we had to put in a larger culvert to accommodate the larger volume of water. That was done at the City's expense and probably some of the fees you are paying as far as S.D.C.'s went to pay for that system. Maybe we need to talk about how your detention pond is designed.

Mosow replied if the Council is interested in going into the mechanics of the way the pond is designed we would be willing to present whatever evidence it is you would like to see. Again, I think that is partly something we would like, is a specific determination based on our facts, and we are happy to listen and make a decision based on any kind of problems that you feel like you have with the system and the way it is set up.

Councilor Kight stated I find it hard to believe if you have 275,000 square feet of hard surface, that you are not having impact on the storm water system. As you pointed out, before that was a vacant lot, that water perked down to the soil and to the aquifer down below.

Mosow replied I understand that, again it has been designed in a certain way. The design of the pond is based on the rate of flow off the property keeping it as it was when it was a vacant lot. The question of what overall burden are we putting on the City's system in terms of volume. The question you are raising is something that just hasn't been presented to us or shown in any way. Our main point for coming here is just because we feel we, given this facility that was constructed, at least deserve that kind of consideration, where we go through the specifics and we determine something.

Copenhaver stated that he represents Gramor Development as their Senior Project Manager and to answer your question, I guess we are kind of missing the big point. The purpose of this facility is to throttle down so we are not impacting the rate. The damage done during the storm is because of that peak volume, because of the run-off. What we are doing with the detention facility is retaining it and slowly putting it into the system, so we are not causing that grand flooding and erosion. We are not arguing that we are not increasing the volume over a period of time. From a civil engineer's standpoint the volume has some erosion capability but not to the degree that the initial damage from a storm has. That is the purpose of the detention facility, to actually throttle that down so you are not releasing more than pre-development. Now obviously because of the flood the soils have so much saturation, that's going to erode at this point, we are only supposed to meet the level of pre-development and that is what the detention facility has done and we can prove that via a different form with studies or bring the design that OTAK did for GSL. We are not arguing the volume, we are saying the fee is not fair and equitable because the S.D.C. is based on both rate and volume impact. We have provided a detention facility, therefore, we are not impacting the rate. The volume is going to impact the system to some degree, what we are looking for is some determination as to what that is. It surely isn't one hundred percent, therefore we do not feel we should be assessed the one hundred percent S.D.C. What we are looking to gain here is for the ability to meet with the City Engineers and come up with fair and equitable estimate as to what our impact really is based on volume.

Councilor Kight stated in other words, unless you are affecting both rate and volume you don't feel you should pay the full \$130,000.

Copenhaver replied that is correct.

Councilor Kight asked did you make that as a condition to approval for your building permits? Did you

bring this up before you started the development?

Copenhaver replied I wasn't the one who had the conversation with staff so I can not answer that.

Mayor Thalhoffer stated I understand that they paid the building permits under protest.

Councilor Daoust asked back in September "95" when this was before the Planning Commission, one of the conditions of approval was that Gramor would pay the S.D.C.'s in accordance with applicable City Ordinances, that was one of the findings two years ago. What was the understanding of Gramor at that time as to how they would be calculated?

Copenhaver replied two things; one it was not actually calculated at that time and second we knew we had a detention facility. We bought the property knowing that GSL had provided this detention facility so knowing that we only had to pay the volume. Knowing that under the Ordinance there is a option of providing a fair and equitable assessment based upon the impact.

Councilor Daoust stated two years ago when you were before the Planning Commission there was no discussion or assumption as to how it would be calculated. On the impact question, I assume the design of the detention facility was based on OTAK's hydrologic impact study of "94"?

Copenhaver replied that is correct, which took into fact that this was commercially zoned property and there may be a plus or minus on impervious surface. They took into consideration that this would be a commercial project, it was designed to accommodate this property.

Councilor Daoust stated I think OTAK assumed it would be 10 ½ acres and 65% impervious surface, but now it is 13.9 acres and 79% impervious surface, since the study that was done in 1994 which the detention facility was based on. It seems like the scale of the development, in other words the impervious surface has increased by 14%. So can you address that increase in impervious surface since the study on the design of the detention facility?

Copenhaver replied you are right we brought in more property that was not a part of that and therefore there is a fee that is relative to that property. But then again, what we are being assessed right now is basically 13 - 14 acres at one hundred percent S.D.C. But as you can see there are other factors here, one being that we have taken care of the rate discharge, and second we have added three acres. There is probably something less than \$130,000 that needs to be assessed.

Mayor Thalhoffer thanked Mr. Mosow and Mr. Copenhaver for there comments and asked Mr. Galloway to come forward. You have heard the arguments of the petitioners and I am sure you have considered those. Other than the three additional acres, what do you say in the fairness issue in regards to the rate and volume.

Galloway stated from listening to both the gentleman, I don't think we have much disagreement on what has occurred, we may have a slightly different view on the impacts that they have. I don't disagree with the contention that having put in a detention facility does to some degree lessen the impact that they have. In general the greatest need for capacity enhancing improvements, and therefor, the basis for our system development charge, usually comes at peak flow times. Perhaps the one disagreement I might have is they indicate they have a detention facility, which except for the additional area that was added

to it, was designed to keep the post development peak flows down to pre-development levels doesn't look at the entire system it just looks at that one particular entity. I guess to use the stadium analogy, I think we might have a situation where yes there is a stadium and we are going to fill that stadium up, and obviously when you fill it up, it takes longer to empty it. And if at the time you are emptying it more folks come in for the next event. Yes you may create some new peaks. In a storm system they are putting a greater volume through perhaps at the same rate but its going to take longer period of time to process that water if additional water is coming in at the same time you are still trying to get rid of water from the previous event. You may create somewhere in the system additional peaks that require additional improvements to handle that. So perhaps we would disagree a little bit on the particular situation. It may get down to somewhat of a policy issue. I think we have established system development charges in all of our areas, storm water, sanitary sewer, water, transportation, that are general good approximation of the impacts that a particular development has upon the system using the various measurement tools that we have. I think in almost any of them, someone could come in a say in my particular situation using your approximations isn't quite fair and I ought to have a new look. We have one set rate for sanitary sewer for all single family homes, some one could argue that someone else has six or eight folks and shouldn't they pay a higher rate then someone who only has two folks in their home, they obviously create a greater demand on the system. Then the next person could say they are not in the home, we work all day and kids are in school we have less impact then those stay home folks next door so we should pay less. I think it becomes somewhat of a policy issue and there may be some legal implications that the City Attorney may want to address. I think we have a system that in general comes pretty close to approximating the impacts and could it be more fair, perhaps, can we handle the time the cost and the staff that it might take to do that detailed analysis of each site, probably not. I would say we probably stay where we are.

Sercombe stated I wanted to emphasize Mr. Galloways point, that the process that we have for this S.D.C. quibble, is almost unique to the city. Very few Cities allow individual contests for their system development charges. It is difficult to draw lines and make precise justifications on every single case. Our Ordinance allows it in an extreme case where the person is claiming that the way the impact is measured is completely off kilter because of a situation that they are doing, the characteristics of there development. For that we have a process that allows a contest before the Council. In that contest it is the burden of the applicant, the property owner or the developer who is paying the system development charge to show what the impact is, to show that there is this disproportionately that the way we measure the impact on the public works system in question is seriously wrong. It is not enough in my judgement for someone to show up and say we think this is unfair, or we think it is inaccurate. It is the burden of the objector to say not only is it unfair and inaccurate but here is the methodology that is appropriate, here is what measures what the impact is on the storm drainage system, or the sanitary system or the transportation system. That is a better measure for our development than the measure the City has. The first point is the burden of proof by Ordinance is on the applicant, it is not the City's burden to justify every single case. Secondly, issues came up in the Councils questions as to wether or not there is some benefit to the property owner by having a detention facility. There are some considerable benefits beyond any sort of duty or impact on the cities public works systems. Private property owners or developers have duties to adjacent property owners to make sure that storm water flow is not diverted improperly, or to make sure it does not leave there property at a rate so much greater then would normally leave the property that causes damages to adjacent property owners. That is a common law obligation, you can not flood your neighbor, you can't push water off so fast on your neighbor that it causes erosion. If you do there are common law liabilities that exist. One of the reasons people build detention ponds is to protect themselves from that kind of liability, it is just not a situation where they are

reacting to whether or not a charge should or should not be imposed by the City. In conclusion, the charges that we are imposing are those that are figured by methodology that was adopted by Council that's done after looking at the entire system and what the cost and impacts of new development as a whole on the drainage system and the improvement needed for it. There has been no proof here tonight that the Capital Improvements listed in our plans won't be needed or won't be used by this development.

Councilor Kight asked if we had another high water demand as we did last winter by them adding to that system, they are adding to the volume which increases. Volume has an impact on the system, is that correct?

Galloway answered that is correct.

Councilor Kight asked what effect does that have on the system?

Galloway answered there are a couple of things, they have erosion effects, obviously any facility I can think of, the more volume of water the more wear and tear. By obtaining that water they put a larger volume through the system, they do it not exceeding the peak, but putting volumes of water over a greater period of time. Doing that, often times matching with additional waters that are coming into the system elsewhere or a new storm is coming along behind it, can increase the peak flows we have elsewhere down stream in the system.

Mayor Thalhoffer asked Mr. Sercombe if they should be given the opportunity to come up with some kind of methodology that they think would be fair at this point and would still conform to our system?

Sercombe replied I think they have had an opportunity, they asked for a hearing and the time for presenting that methodology is at this hearing.

Copenhaver stated that we have to remember this S.D.C. charge that we are appealing is a charge that is based on capacity on the system. It is a fee that is based on paying for some portion of the systems capacity and that we are adding to this by virtue of our development. All the issues in regard to off site erosion are covered under a separate fee. The other point is, I do agree that this is a policy issue, but that the City has a general policy that has one method of calculating the fee which is based on impervious surface area. However, at some point applying a single method to all kinds of developments and in every situation is going to result in some unfairness, that is why the Ordinance has written in it some of these exceptions that we are trying to argue for tonight. In regards to the exception that allows the fee to be recalculated if the charge is grossly disproportionate to the impact that our development would have on the system. The burden under the Ordinance may well be on the developer, I think the burden under the Dolan case runs the exact opposite direction, it's on the City to justify why it is imposing this charge. I don't read in the Ordinance that we were suppose to have some negotiation with the Director and present all of our evidence up front. If this is something that you would like to see more evidence on, or you would like us to present a methodology to the director, we would be willing to do that, it is the opposite of our understanding.

Mayor Thalhoffer stated you are giving the Dolan case a real broad reach. Certainly this is not on course with the Dolan decision and you are applying it to this case. Can you explain to me in more detail how this comes into the Dolan decision?

Copenhaver stated it was based on the idea that a local government body imposing conditions of approval can not take or impose on private property interests, if there is not some kind proportionality between the taking that is being affected and the reason it is being done. In Oregon courts have, I am not saying that a court has decided that S.D.C.'s come under the scope of Dolan, but I also think that door is certainly open in Oregon, and I think that this is that kind of case. Certainly the fee being charged to Gramor is not proportional to what the impact of Gramor is on the City's system.

Mayor Thalhofer stated that this is the time for comment by Council. I will start by saying that it appears to me that the formula that the City has devised for S.D.C.'s has proved to be appropriate in the past. Whether it is perfect or not I don't know, but it is the one we have applied and it seems to work fairly. You have good arguments, you are reducing the rate, no question about that, but the volume is still there and the volume puts a strain on the system. That volume alone with all the other volumes that come into our storm drainage system put additional volume on our facilities. Although you have reduced the rate the volume is still there and will always be there. I understand the arguments that you make and we have heard them before and it's not an easy question. But in my opinion the S.D.C. formula that the City uses is appropriate until we are proven otherwise, which hasn't been shown tonight, at least in my view. I would say the City has an appropriate formula for determining S.D.C.'s and that the determination of S.D.C.'s in this case is appropriate.

Councilor Daoust stated I have a series of points that are leading me to the dismissal of this appeal. First, our S.D.C.'s are imposed on all new development in the city, it's not a case by case decision. It says that in the Troutdale Municipal Code, that S.D.C.'s are based on the average and typical conditions. I also don't buy the argument that Gramor Development qualifies as a "change in use" of the property. It also seems to me that the scale of the development has increased since the detention pond was designed, and the fact that 80% of the site is covered with impervious surface has got to have an impact on our system. There are a whole bunch of things that have come in my head that would lead me to dismiss this appeal, because everybody pays the same ticket price in a stadium regardless of when they show up.

Councilor Kight stated one of the other items that I mentioned in my question tonight is we are looking at increasing our pump size down at the Sandy Drainage District. This is a direct result of development of Cherry Ridge, the residential as well as the multi-family as well as Safeway and other stores being built up there. 275,000 square feet of hard surface is going to increase the volume to the system. As a result of that, you are adding, like everybody else is to that system. There is going to be erosion, we saw evidence of this last winter when we had flooding. As a result of that we are going to have to have additional costs to correct. Once your development is completed, even though the rate of water going through that system is going to be at pre-development levels, which I find hard to believe when you are adding that much hard surface, there are still going to be costs involved to the City to correct that problem with everybody else adding into that system. And as a result of that I also am going to turn down this appeal.

Councilor Regelein stated my position is to reject the appeal also. Whether the storm water comes through in two hours or two days there is still a volume that is going to affect the system. I agree with Mr. Sercombe that the burden is on you not us to prove and to show that the charges are not fair. You mentioned about coming back and showing it later, well this was the time to do it. I don't see any change has been made and I don't see that it is grossly unfair. I go along with rejecting the appeal.

Councilor Thompson stated I also am in favor in rejecting the appeal. As Councilor Daoust pointed out it would be impossible to do the S.D.C.'s on a case by case basis. The methodology that we use apparently works fine in most instances.

Nelson stated that he recommend that the Council direct staff to prepare findings reflecting the deliberations that occurred as well as the public works decision and come back for decision only to adopt that as a formal decision with written findings.

MOTION: Councilor Regelein moved to direct staff to come up with findings of fact and decision regarding dismissal of the appeal of this case. Councilor Kight seconded the motion.

**YEAS: 5
NAYS: 0
ABSTAINED: 0**

Mayor Thalhofer called for a break at 8:28 and reconvened the meeting at 8:40pm.

6. PUBLIC HEARING / ORDINANCE INTRODUCTION: An Ordinance Amending Chapter 15.20 of the Troutdale Municipal Code Pertaining to Construction Debris Clean-up.

Mayor Thalhofer called this item, recessed the City Council Meeting and opened the public hearing at 8:41 pm and asked Rich Faith to come forward.

Faith stated each winter we experience problems throughout the city with our winter winds and construction debris scattered about the city. This has become a major concern with the Planning Commission. Last winter they discussed what could be done to address the problem. One measure that they came up with was to entertain amendments to the Troutdale Municipal Code that would require builders to place a commercial dumpster on the site to secure the construction debris or in place of that perhaps construct some kind of enclosure in which the construction debris would be secured to prevent it from being blown about. This idea was presented to Council at a joint work session with the Planning Commission Meeting on May 21, 1997. At that time staff was directed to bring this proposal forward for consideration. If this Ordinance is adopted it will require each builder to place a commercial dumpster on a site that is under construction for the purpose of depositing all of the debris that could be carried away by the wind. As a alternative to that the builder could construct an enclosure of sufficient size and strength and secure there debris so it will not be carried off site by winds. Although these amendments to the Municipal Code are not put before the Planning Commission for their consideration, they have been initiated by the Planning Commission who has given there support to this Ordinance. It is therefor the Planning Commission and the staffs recommendation that this Ordinance be adopted.

Councilor Kight asked if they are using a commercial dumpster, will the dumpster have a lid? There is no point having a dumpster if you have light weight loose material and high winds in the Chicago of East County, otherwise known as Troutdale.

Faith replied that is the intent, and of course the Ordinance is only as good as how we monitor it and enforce it and that will be one of the key provisions that will go with this requirement, that they would have to have a lid and it would have to be kept closed to contain the material.

Councilor Kight stated that leads nicely into my next question which is enforcement. Is there a penalty for those people who, shall we say, could care less?

Faith replied the penalty in some ways is already contained within the Municipal Code in chapter 15.20, which does pertain to construction debris and clean-up. Under 15.20.020 which does authorize the building official upon finding debris being scattered from construction site to issue a stop work order on that site. There are no monetary penalties that are incorporated into this provision but we do have the means to shut the project down until they correct the problem.

Councilor Kight commented I think this is an excellent Ordinance and is long overdue.

Councilor Daoust stated I also support it, I can personally attest from this last winter from the Hampton Point Subdivision having to stop my car and pick up large sheets of black plastic that were blowing across 257th and returned them to the construction site. I think this is a very good idea to control that.

Councilor Regelein stated I am thrilled about this Ordinance, since I was on the Planning Commission. My question is identifying debris, any law is as good as its enforceability. How do we enforce this?

Faith answered I think the key will be in monitoring the construction sites to be sure that while a building is under construction that the dumpster is being used, that the lid is closed, that they are putting material within the dumpster or any enclosure that they may be constructing. If a building inspector, building official, code compliance officer drives by a site on a windy day and sees that there is material coming out of it then obviously it would be their responsibility to stop and remind the builder they are part of the problem if they continue to leave the lid to the dumpster open. We just have to keep an eye on it as we go about our daily business.

Councilor Regelein asked when you start construction do you have to have an enclosure on sight?

Faith answered yes, it will become part of the permitting process.

Mayor Thalhoffer stated that this is the first reading of this Ordinance, we will have another reading at the next Council Meeting on August 12th. He asked if there was anyone who wished to speak on the issue. There was none. This will be set over to the next Council Meeting for a second reading.

Mayor Thalhoffer closed the public hearing and resumed the City Council Meeting at 8:55pm.

7. PUBLIC HEARING / ORDINANCE INTRODUCTION: An Ordinance Amending Chapters 1, 2, 3, 5, 7, 8, and 15 of the Troutdale Development Code and Repealing Chapter 15.16 of the Troutdale Municipal Code.

Mayor Thalhoffer called this item, recessed the City Council Meeting and opened the public hearing at 8:57pm and asked Rich Faith to come forward.

Faith stated that before you is an Ordinance that would incorporate quite a number of amendments to the Troutdale Development Code. They cover a wide range of topics. Most of these would fall under the category of house keeping amendments and they are being presented to correct discrepancies that now occur within the code, or they clarify the meaning or language in the code. They also eliminate some provisions that are currently outdated and no longer applicable. They also bring our Development Code

in conformance with state statutes. We have a few of the proposed amendments however that are more substantive in nature and actually add entirely new provisions to our code from what currently exists. The general topics that these amendments pertain to are the following; accessory structures, clear vision areas, fences and windscreens, street side sales, home occupations, bed and breakfast inns, solar access regulations, design standards for local streets, procedures and submission requirements for land use applications, and final action by city council on Type IV proposals. Of these ten general topics listed, two of these fall into a category of substantive changes, which are bed and breakfast inns, and procedures and submission requirements for land use applications. The amendments proposed for bed and breakfast inns were in response to a request by a citizen of Troutdale who was interested in opening a bed and breakfast in his residence. He came forward at a Planning Commission Meeting in September to make this case for a change in code that would allow for this. Under the current zoning of R7 he would not be allowed to have this. Bed and breakfast inns in the City of Troutdale are now only allowed in the central business district as a permitted use or in the R20 district as a conditional use. The amendments being proposed will allow for bed and breakfast inns within all residential districts under certain conditions. We have a number of standards that are being offered that would restrict the operation of these. The standards pertain to the size, appearance, duration of stay, and parking in order to allow for those but they also need to be compatible with the residential neighborhood. The other substantive change has to do with how amendments to the comprehensive plan, the development code, and the zoning district map are handled by the City Council. Under our current procedures, amendments to the comprehensive plan, both in terms of text and map as well as the development code text and map are required to be adopted by Ordinance. Therefore they need to go through two readings before the City Council. Sometime ago the City Council directed the City Attorney to look at ways to streamline the process. It was at the City Attorneys direction that we are entertaining some changes that would allow for these amendments to be adopted by Order as opposed to Ordinance. So when we are looking at quasijudicial or legislative zone changes, these would not have to go through an Ordinance, but could be done by Order and could be handled at one hearing. In conjunction with that, there are some changes that will have to be made in the language in the Development Code to accommodate that change. It will take the zoning map and establishes it as something separate from the Development Code. All of the proposed amendments do comply with state wide planning goals and the goals policies of the Troutdale Comprehensive Plan. It is our opinion that they would have no adverse effect on health, safety and general welfare of Troutdale residents and in fact would streamline things and improve upon the Development Code as its currently being administered and enforced. Therefore, it is staffs recommendation that these be adopted. The Ordinance was taken before the Planning Commission for a Public Hearing on June 18th, and they are forwarding these to you with a recommendation to adopt the Ordinance.

Mayor Thalhoffer stated it is okay to streamline the process but I don't want to streamline the process to the point where people are not given the opportunity to appear before us. If we just have one hearing and make a decision sometimes a person might miss that one hearing but perhaps be aware of the second hearing we have. I am a little concerned about one hearing and gone type of process. I am not sure I am concerned about it enough to vote against it. The one thing this City Council has done is to hear peoples concerns. Has that been discussed at all?

Faith replied the Planning Commission did not address that, it does not affect them and the procedure they follow. The City Attorney may have some additional comments regarding that. It is important to point out that the language that is being introduced here, on page 19 of the amendments, does make it optional, it does not say it shall be done, but it says it may take final action on a proposed amendment to the zoning district map by Order rather than by Ordinance. I think normal procedure staff would

follow would be to bring it to you as an Order that could be dealt with at one meeting, and then if the Council prefer that it be done by Ordinance, would we then need to come back with two additional readings.

Nelson replied let me clarify that the reason this was proposed. It was to allow you to have some control over the process. You may find yourself in a situation of having a zone change before you on the 119th day, this is one of the things we are struggling with is to meet our obligations under the state statute to take final action on land use decisions within the 120 days. What this does is under our Charter you have to have two readings for an Ordinance adoption, this allows you some flexibility so you won't get stuck in that situation. Keep in mind this a land use decision, it will be noticed, people will receive mailed out notices of the hearing, it will go before the Planning Commission before it comes to Council. There is a very deliberate process involving the public.

Councilor Kight asked in reference to page 14, bed and breakfast inns may have a maximum of two non-resident employees and the next item number 6 states the maximum of four bedrooms shall be used as part of the bed and breakfast accommodations. If they have four bedrooms and one car per bedroom, that is at least four vehicles, and you have one employee plus you have a resident, you could have up to six or seven automobiles in a residential neighborhood on one lot. Where are they going to park all of the cars? Isn't that going to have an impact on the neighborhood?

Faith replied I think you stated it accurately, where are they going to put the cars? They aren't going to have room for the cars, consequently they could not meet the off-street parking provisions and therefore they would not be permitted to have a bed and breakfast. The key is in number 8, they need to meet the off-street parking requirements for a single family dwelling, which is what the principal use is. In addition to that they have to have one additional off-street parking space for each guest room and required off-street parking shall not be located in a required front or side yard setback area abutting a public street unless located in front of a garage.

Councilor Kight asked who is going to monitor that?

Faith replied this goes through a site and design process, which is a requirement, showing us the entire layout for this, where there parking is going to be and the signage.

Councilor Kight asked lets say they go through the whole process, and they get approval from the City to have there bed and breakfast. Once they have approval from the City, who is going to monitor that they are in compliance?

Faith replied the neighbors are the best people to monitor. If it is not in the good favors of the neighbors they will let us know and then we will send out our Code Enforcement Officer to investigate it and if they have violated the terms of the land use permit they could be subject to penalties.

Councilor Kight asked could we pull there license?

Faith replied a violation of the conditions and terms of the site and design approval will be cause for revoking that permit and would also trigger revoking their business license as well.

Councilor Kight asked how many people come before the city and ask to establish a bed and breakfast?

Faith replied this is the only one I have encountered in three years.

Councilor Kight stated I am a little nervous about opening it up to every residential neighborhood and subdivision to have a bed and breakfast.

Faith replied the Planning Commission discussed that and came to the conclusion that it is not realistic or feasible to do it in your typical subdivision. The only sites within the City that could accommodate this kind of use are those on large lots that are remnants of perhaps larger farm pieces but are not within your typical seven or ten thousand square foot subdivision.

Councilor Daoust stated that he visited some bed and breakfasts in the City of Portland that are in the R7 and R5 in the old Irvington Neighborhoods with big houses on the small lots. They did have requirements for vehicles parking on the streets, the streets are the only place cars can park in Portland. They have requirements for hours of operation, you can't be too noisy at night. It seems to work just fine, they are well established bed and breakfast inns right in the middle of residential neighborhoods in Portland. It seems to me the neighbors will complain if there is a problem. I think what we have written up here is adequate, and I feel comfortable opening it up to any residential neighborhood because it is only going to be a select few homes that people are going to want to open up to a bed and breakfast.

Frank George of 2611 S. Troutdale Road stated I have the large old yellow farm house in front of Fujii farms, we are the ones that made application for the bed and breakfast. I feel that the proposed amendment that has been presented by the Planning Department is written well. The mission statement in Portland is a bit different then we are addressing out here. They were trying to preserve the large old homes in Portland. I don't think we face that out here, there are very few homes that would fit within the guidelines of this proposal. I think it is an addition to Troutdale and the development to Troutdale to have an alternative lodging. We have a large enough lot to handle the six or seven vehicles and not be within the setbacks or certainly not be a nuisance to Mr. Fujii.

Mayor Thalhofer closed the Public Hearing at 9:08pm and reconvened the City Council Meeting and stated that this would be placed on the next agenda for a second reading and action.

8. PUBLIC HEARING / ORDINANCE INTRODUCTION: An Ordinance Exempting Certain Personal Service Contracts from the Formal Selection Process and Amending Section 2.24.240 of the Troutdale Municipal Code.

Mayor Thalhofer called this item, closed the City Council Meeting and opened the Public Hearing at 9:10pm and called on Mr. Galloway to come forward.

Galloway stated that this may look somewhat familiar to you as you recall a couple of meetings ago I came before you with a similar item. The issue is to try to streamline the procedure that we have for the selection of bond underwriter and financial advisor who will render and expert opinion in the case of negotiated bond sales when we get to the point of going out for bonds specifically for the sewage treatment plant. When we came to you before we made an error, we requested documentation that be an exemption to the competitive bidding provisions of the public contracting ordinance. The City Attorney pointed out that was the incorrect place to locate this within the City Code. We were talking about personal services contract as opposed to the public contract, therefore what we should really be asking for is the authority to place this in the category of informal as opposed to formal personal service contract.

Mayor Thalhoffer closed the Public Hearing at 9:14pm and reconvened the City Council Meeting and stated that this would be placed on the next agenda for a second reading and action.

9. RESOLUTION: A Resolution Amending an Agreement with Reynolds Little League.

This item was pulled from the agenda.

10. RESOLUTION: A Resolution Authorizing the Mayor to Sign an Intergovernmental Agreement with the Sandy Drainage District Regarding Pump Station Capacity.

Mayor Thalhoffer called this item and asked Mr. Galloway to step forward.

Galloway stated back in 1990 the City of Troutdale joined with Multnomah County, The Sandy Drainage District and the City of Wood Village in doing the North Troutdale Storm Drainage Study to look at the drainage infrastructure that we had and that we would need in the future in the northern portion of the city. In the drainage district there is a drain that goes to the Sandy Drainage District pumping station and the water is dispatched into the Columbia River. At that time it was recognized that eventually there would be a need to increase pumping capacity of the district pumping station. This need was more clearly illustrated during the February 96, December 96 and the January 97 storm events we had. At the time the study was done back in 1990 there were some informal assumptions or determinations made about cost sharing for some of the projects. When it came to the pump station improvements the informal arrangement at that time, which was not adopted by any jurisdictions, was that 78% of the costs would be shared by the City of Troutdale and about 20% by the Sandy Drainage District. It was based on the assumption that most of the increased runoff that would be occurring that would cause the need for the increase in the pumping capacity, would come from development that would be occurring in the City of Troutdale. The project that is being proposed is the replacement of an existing pump with one nearly three times as large, going from about 7500 g.p.m. to about 20,000 and adding a second discharge pipe so that the pumps can work closer to their maximum efficiency. Estimated cost of the work is not to exceed \$200,000. In addition to the cost sharing arrangement mentioned earlier, in discussions we have had with the Sandy Drainage District, we believe it would be more appropriate and beneficial to both parties if the City were to pick up the initial construction cost as opposed to the 78% - 20% split and have certain impact services and certain long range services provided by the drainage district. The drainage district would pick up the initial cost of planning, design, contract administration, construction management that they want up front before the construction occurs or as construction occurs and then pick up the long term maintenance repair of the pumping facility over its life. This benefits the City because, I don't think that is anything we want to get into, and it helps the district out because they are still suffering under some of the compression effects of Measure 5 and coming up with the initial cash outlay would be rather difficult for the district. We have an intergovernmental agreement in front of you which we think is a good deal for both agencies and would recommend approval.

Tim Hayford manager for Sandy Drainage District and Larry Maderis President of Board of Supervisors for Sandy Drainage District. Hayford stated Mr. Galloway summed things up. We are dealing with a new circumstance here with volume of water and also run-off rate. Rate is one thing, volume is another factor, the reality is the Drainage District is at the end of the line. Volume still has to be handled through and operation and maintenance factor as well as rate. You can slow down the rate, you are still going to have to pump the volume. The events of the last two years however, kind of throw the curve out the door in that the rate and volume exceed design criteria for even detention facilities. Once you exceed

that you still have the possibility of flooding out those low lying lands that are within the floodplain area. Drainage District design standards are for 100 year storm event to contain and hold that event versus other designs for detention, which are basically based on a 25 year storm. The Drainage District is really designed to provide o and m of existing facilities and primarily agricultural properties, which we have been doing since 1919. The last improvements were done back in 1949, federal funding was made available to increase the capacity and reliability of the system. We have been dealing with a system that is very old but we have been maintaining it, pretty much like trying to keep the old chevy running down the road. The old chevy ran out of horse power, and I think as a cooperative effort between the City of Troutdale and the drainage district we have reached an agreement that will help provide for the increased demand on the system.

Maderis stated the cooperative nature between the City of Troutdale and the Sandy Drainage District in allowing for this agreement allows us to continue to provide the services that benefit not only the property in the district that are not in the city, but substantial portions that are in the City of Troutdale. The Sandy Drainage District and the properties that are comprised of that, they have every intention of continuing to provide those services. The advantage of this is it gives the City of Troutdale and the Sandy Drainage District a hand link, in that the equipment that is purchased remains property of the City of Troutdale, but a long term agreement gives management responsibilities, maintenance responsibilities to the Sandy Drainage District.

Councilor Daoust asked what would you call the February 96 flood in frequencies of years? Was that a 25 year flood or closer to a 100 year flood?

Hayford replied when you look at the rainfall it was between a 50 and 75 year event. On the other hand the elevation of the Columbia River reached was a 100 year event. When you have a dike or levy system with a pump station we battle two fronts. One is the amount of water coming down into the basin and the ability to evacuate that water. The other is the ability of the levies to hold out the Columbia River.

Councilor Kight asked do you also maintain the dyke?

Hayford replied we also maintain the levy system encompassing the drainage district.

Councilor Kight asked what condition is that currently in?

Hayford replied the levies have been and continue to be maintained to the Corp of Engineer standards, they go through annual inspections by the Corp. For the last ten years, standings have received an "A" rating. The levy systems themselves are in very good condition and now that we have withstood these large events plus the sustained high water, which we were above flood stage for over twelve weeks, the amount of seepage coming through the levy was minimal.

Councilor Kight asked is there another funding source? You mentioned originally the Federal Government spent the money to put in the pump station.

Hayford replied the Corp of Engineers and the Flood Control Act of 1949 made available federal funds for a lot of the drainage district and facilities. Federal funding has become very tight, especially for construction projects that have to do with reclamation of wet lands.

Maderis stated he wanted to clarify something stated earlier. When we stated that there had been no improvements, that may not have been stated correctly. There have been a number of improvements to the pump station itself, there has been no added capacity.

MOTION: Councilor Kight moved to authorize the Mayor to sign an intergovernmental agreement with the Sandy Drainage District regarding a storm drainage pump station capacity. Councilor Regelein seconded the motion.

**YEAS: 5
NAYS: 0
ABSTAINED: 0**

ITEM 10: DISCUSSION AND ACTION CONCERNING THE RESULTS OF THE MAY 20th SEWAGE TREATMENT PLANT BOND ISSUE ELECTION.

Mayor Thalhoffer called this item and asked Mr. Sercombe to come forward.

Sercombe stated the item that this concerns is council options on election litigation. As the Council knows Measure 50 and 47 require a double majority turnout of electors to pass a bond measure. There have been some implementing legislation, Senate Bill 1215, creating a new election contest remedy for people who are dissatisfied with the determination of the election clerk. The legislation allows a contest on the size of the elector, on the double majority calculation. It allows that contest to be brought by any elector who is dissatisfied with the election clerk's determination on the size of the electors. The new remedy operates retroactively to allow for some contests to be brought on elections that occurred before the adoption of the act, specifically the elections in March and May of this year. The way this all works is that there is a case that is filed against the election clerk and it is noticed and published in the newspaper. The purpose is to determine whether or not the calculation of the size of the elector is correct. The City can not file the case itself, only an elector can. There are two roles for the City that are possible. The first is as a provider of information to the election clerk that the election clerk can use in litigation to testify or report or talk about what the proper size of the elector might be. Second role of the City is to assure the information is correct and accurate. The litigation can proceed very quickly, as I mentioned there is a time line of 40 days after the law has been adopted within which to bring a lawsuit. If there is a challenge to the results of the May 20th election on the Troutdale Sewer Treatment Bonds, they will have to be filed before the end of August, 40 days from July 14th. Because this case can proceed very quickly once it is filed and because the quality in the information is important, the City may want to consider playing some role both before and after a potential election challenge is filed and the Council may want to because your next meeting is not until August 12th, consider at this meeting what role if any the City should play. The legal aspects of this go to a question of, are there legal restrictions on the role of the City in either of those capacities, are there statutes, common law or constitutional constraints that effect or say the City can not play these roles. We have looked at those and concluded that it is a lawful thing for the City to do, to play a role in this if you choose to do so. In two respects of gathering information, first in terms of the City as a utility provider has information about address, where people live and how long they have lived in a particular locations and that information might be useful in calculating what the correct size of the elector is. One potential role of the City is to compare the voter list against public records that show the addresses of voters and give that information to the election clerk for purposes of using it in this litigation or perhaps in the recertification of the election results. The second is if an action is filed to conduct further investigation, beyond using the City records to verify what the voter list are or

what the proper addresses of voters might be. The other role might be to use staff or resources in collecting further information about the elector by going out and sampling or interviewing or getting information about whether or not people truly were qualified electors and so called participants by default in the election that occurred on May 20th. This would involve contacting former residents and determining their status. The purpose of this investigation in either capacity would be to provide assistance to the County Clerk. Statutes make the County Clerk a participant in this litigation if it is filed requires a election clerk to testify and provide testimony to the court based on the investigation about whether the size of the elector should be recalculated or not. The role of the City would be to provide that information to the clerk and to assure that the clerk is operating with the best available data in making that calculation. It would be our recommendation that if the Council chooses to gather information that the information be provided to the clerk no matter what it shows, so that the City would be acting as a provider of information not toward any particular result but just to assure that the calculations were done on the best available data. With this kind of role our opinion is that this is a lawful expenditure of public funds, it will not expose the council, mayor or city staff to any legal liabilities because the City chooses to gather information and provide it to the clerk. The question and what my staff requests is that the Council should decide whether to authorize the City Administrator to review city records for the purpose of reporting on residency of status of elector counted in the May 20th Election and if litigation is filed to begin efforts to verify the status of voters. If the litigation is filed the staff will come back to council and talk to you about how the City could participate in that litigation. I think there are different issues about whether and if you play a role as a intervenor in the case as opposed to a provider of information. That is the legal summary of where the election contest process is. We think that an election contest is likely to be filed so the information gathering would be preliminary to that.

Mayor Thalhoffer asked Mr. Sercombe to frame the Motion.

Sercombe stated the motion would be to authorize the City Administrator to review city records and other data for purposes of reporting on the residency of status of the elector counted in the May 20th Election on the City of Troutdale Sewage Treatment Bond and secondly if litigation is filed to begin efforts to verify the status of voters.

Councilor Daoust asked who can file this litigation?

Sercombe replied it can be filed by the election clerk or by the elector (any voter).

Councilor Regelein asked that as I see it someone else will file the suit and we are simply providing the information, is that correct?

Sercombe replied the role that we are talking about now is doing an investigation of the size of the elector through first using city records and then second through other means and to provide that information to the election clerk and to the court.

Councilor Regelein stated I want to make it clear that it is important to validate the count for any election, as long as we are stuck with this double majority provision, it is not just a self serving issue for this council on this particular issue but on any issue.

Mayor Thalhoffer stated this is a situation where we need to make sure that both voters and non-voters are eligible voters and eligible non-voters. That would be something I would like to see us assist in

determining who are eligible voters and non-voters are. If it shows we have eligible non-voters that caused this election not to attain the 50% threshold, that's the way it's going to have to be. I would be in favor of the motion that you drafted.

Councilor Kight stated he would be in support of the motion for one thing I think the legislature has not come up with implementing legislation relative to fifty percent double majority. In other words throughout the entire State of Oregon the election board does not have a clue as to who in fact is an eligible voter. It is extremely important to find out the truth, find out who was in fact the eligible voters, not count the people who were dead or not living in Troutdale at the time of the May 20th Election.

MOTION: Councilor Thompson moved to authorize the City Administrator and the staff to review City records for the purpose of reporting on the residency of status of the electorate in the May 20th Election on the Troutdale Bond Measure, and further if litigation on contest is filed on that election to begin efforts to verify the status of voters through other means. Councilor Kight seconded the motion.

Mayor Thalhoffer asked if there was any discussion on the motion.

Leslie Sykes stated that, not accusing any wrong doing here, I understand your approach, I just am on the other standpoint that it seems to me in an election there is probably some standard percentage of people that are registered but really don't live in the city anymore and an equal percent of people who live in the city who have not registered yet.

Councilor Regelein stated it is easy to register to vote, it is not easy to un-register to vote.

Sykes stated my intent is not to say what you are doing is wrong, I feel like we have pushed this a very long distance. I should have started at step one and I stand opposed to the sewage treatment plant at the cost of tax payers. That is my basis for being here and questioning you. We have gone through three different processes of polling the public in some form of questionnaire, and it has not made the cut each time, it seems like the City is putting a lot of money into this when it's not going to be of any benefit to the tax payers.

Mayor Thalhoffer stated this has been designed to be an even handed approach to any election. The legislation which passed implementing legislation for Ballot Measure 50 applies state wide it is not just in Troutdale. The reason it was necessary is since we have a new requirement now, of the double majority of qualified electors, we need to find out who was qualified at the time of the election. We need to find out who was eligible to vote and who was eligible to be a non-voter. Then the double majority is applied and if after the appropriate investigation of this, if it fails to reach the double majority of qualified voters and non-voters, then I am in favor of enhancing the treatment plant where it is and no more elections. We do have an obligation to the city to make sure that each person who was either a voter or non-voter, because non-voters have more impact on the election now sometimes than no voters.

Councilor Daoust stated I think the uneasiness that a lot of people feel is that the City of Troutdale is riding the crest of the wave, the forefront of wanting that question to be answered. If it were later and the county was asking the City to please verify our registered voters I think people would feel a lot more comfortable.

Sykes stated it feels like no doesn't mean no any more.

Councilor Thompson stated to us it feels like yes does not mean yes, with 62% of the voters voting yes. Both elections were "yes" votes, the measure passed. There was a new requirement that came in for the 50% majority, which requires something in which we had no process to verify, that is the number of eligible voters.

Sykes stated it just doesn't feel right doing it after the vote.

Councilor Kight stated that North Clackamas School District had a yes vote, in fact they had the majority of people vote in favor of expansion of funds for capital improvements in there school district. There folks got together and went door to door knocking on doors asking them did you vote in the last election. They have found 4,000 people that were listed as registered voters that no longer live in that district. If they can find another 1,000 people then that measure will have passed in Clackamas County. We are seeking the truth, we do not want people counted that are no longer living in Troutdale. It is about fairness, not yes or no, it is finding out who in fact was the eligible voters living in Troutdale on May 20th.

Mayor Thalhfer asked if there was any further discussion on the motion. Please call the role.

YEAS: 5
NAYS: 0
ABSTAINED: 0

| | |
|--------------------------------|-----------------|
| 12. DEPARTMENT REPORTS: | |
| 12.1 Finance | <u>Gazewood</u> |
| 12.2 Public Safety | <u>Berrest</u> |
| 12.3 Community Development | <u>Faith</u> |
| 12.4 Public Works | <u>Galloway</u> |
| 12.5 City Attorney | <u>Sercombe</u> |
| 12.6 Executive | <u>Kvarsten</u> |

Mayor Thalhfer called this and asked Mr. Gazewood to start.

Gazewood stated that the revenue figures provided in his report on pages 2,3 & 4 are not complete in that while this refers to June 30, 1997 figures, the year end revenues that are received in the months of July and August are not all in at this time. We expect in excess of \$200,000.00 to come in yet. Attached to the report are three pages of schedule requirements that the auditor makes an annual request of us.

Berrest stated I have attempted to summarize the first six months of 1997 to give you some idea how we stand statistically compared to 1996. We have started our motorcycle program and hopefully that will deal with a lot of our traffic concerns and improve our visibility in the neighborhoods. We are training Officers to deal with some of the gang and drug concerns in the neighborhoods.

Councilor Kight asked when do you expect to have the new lieutenant on the force?

Berrest answered August 6th.

Faith stated I would like to first report back on an issue that was raised at the last council meeting by Councilor Thompson who had expressed some difficulties with the Manufactured Homes in the Tower Estates Park, specifically the fact that they were already occupied and did not appear to be completed, there were no rain gutters or down spouts. Councilor Thompson had specifically asked if these were not required, and I erroneously informed him that yes I am sure that they are required. I have since done more investigation into the issues and in the State of Oregon down spouts and rain gutters are not required for any structure. However, if they are put on the structure they do have to be drained properly. In terms of the issue of occupancy of those units before they appear to be completed, our hands are tied in terms of allowing occupancy before the final inspection. There has been an administrative ruling put out by the state building official that reads - a local jurisdiction can not deny occupancy of a manufactured home prior to completion of the accessory improvements to the site. That is the reason you see occupancy to these homes without the skirting, steps, driveway being poured, down spouts and gutters and perhaps other things.

Councilor Kight asked even though it is not required for down spouts and rain gutters, can we as a City require that on manufactured housing?

Faith replied I would have to look into that.

Councilor Kight asked him if he could do that please.

Faith replied yes.

Councilor Kight commented on the excellent job on Mayors Square.

Faith stated that a FEMA Flood Insurance Study Meeting will be held next week. FEMA has been in the process of revising the City's Flood Insurance Study. They have completed the study, and the FEMA representatives will be conducting a meeting next Wednesday, July 30th at 1:30 here at City Hall, to inform the public about the national flood insurance program and to answer questions about the maps. All property owners within the City of Troutdale that appear to be affected have been notified of this meeting.

Galloway stated that several members of the council have been following the tire removal effort or lack there of, out at the former RMAC site off Marine Drive. The joint efforts of DEQ and ODOT have resulted in all the tires being removed from the site. They do have some additional testing they want to do to see if there is some ground contamination. On page five of my report, I would like to emphasize to you that at the top of page five I have an entry titled Drainage Projects. We had in our budget for the 97/98 fiscal year monies to make improvements to two outfall areas, one near Kiku Park and one near the Southern End of Beaver Creek Lane, both of these locations we have situations where a storm drain pipe simply discharged water near the top of the canyon wall and over a period of time there has been a lot of erosion. We have received very favorable bid results and sufficient funds remaining from that appropriation in the budget to do an additional project and that is to make some more permanent repairs to an area along the east side of Beaver Creek just south of Jackson Park Road. We did some temporary repairs about three years ago and they did not come through in the storm events of February 96 as well as we had hoped and we think it is appropriate to go back and do some additional work. Unless there

is a strong objection we will use those additional funds to do this third project. The last item is in the paragraph entitled SE Dora Ave. We are following up on the Mayor Square Project and trying to get one more block of the downtown streets brought up to the standards. That would be the portion of Dora between Columbia and 2nd street, adjacent to the east side of Mayors Square. We would make a reduction of the pavement width of the street from 38 to 36 feet, and we would utilize that to increase the sidewalk width by 2 feet. The Mayors Square will increase the pedestrian traffic and this will help. This will be going out for bid this summer and hopefully completed by late summer or fall.

Councilor Kight asked is there was anything in the future as far as marking a crosswalk across Columbia River Highway?

Galloway answered yes there is, this issue has been addressed several times by the Downtown Business Community and the Chamber of Commerce. Columbia River Highway is a county road so we have passed these concerns on to Multnomah County and they are developing a plan to make at least three crosswalk areas to connect the south side to the north side wherever there is an obvious entrance to the parking area on the north side. No exact time line on this project.

Mayor Thalhoffer asked the chief if there was anything we could do to express our sympathy or condolences to the Portland Police Bureau.

Chief Berrest answered that the City Administrator and I can talk about that tomorrow. There are several funds being set up. Services are being set for Friday morning.

Sercombe stated this is John Nelson's last council meeting, he has done a great job for the City.

Nelson stated that it has been a pleasure working with the City.

Kvarsten stated on behalf of all the department heads and city employees, we are very grateful for John's service. His intellect, integrity and good humor will be missed.

13. COUNCIL CONCERNS AND INITIATIVES:

Mayor Thalhoffer called this item and stated that Mayors Square is beautiful. The Summerfest was a huge success this year. Councilor Daoust was selected as Citizen of the Year.

Councilor Thompson stated he had nothing to add.

Councilor Kight stated on August 4th exit 16A is going to close and on August 5th exit 16B is scheduled to be closed permanently. At the same time we will have our one-way couplet on north and south Frontage Road. I have been talking with ODOT to get the reader boards up and running before they close these exits. I was at a meeting today for JPACT, they are looking at putting there own measure before the voters, a transportation package. Washington County is going to go out on there own no matter what Metro does, so do we want to follow the same momentum that Washington County has. Gresham City Council has passed a Resolution supporting that Metro take this measure to the voters in either the November, March or May Election. They have asked that Troutdale do the same, we don't have to pass a Resolution but the Mayor could send a letter with the Councils support supporting Metro going out with this particular measure to the voters. So I ask the council now what direction do we want

to take?

Mayor Thalhöfer stated he would be in favor of a transportation package being developed and I would be in favor of one being developed by Metro. However, I would support it with this provision that if the Governor has a special session of legislature and that special session provides statewide transportation package, that we drop the Metro plan completely; so we have a statewide approach to this. In the interim I would support the regional plan and sign a letter stating the Troutdale City Council supports the Metro effort to come up with a regional transportation funding package.

Councilor Thompson stated he would support the Metro plan.

Councilor Regelein stated he had nothing to add.

Councilor Daoust stated he attended the little league all star play-offs at Columbia Park, I am amazed at the involvement in this community. I want to thank the little league volunteers who have put the fields together at Columbia Park. We really have some first class fields now. The Chamber of Commerce along with a lot of other people did a great job on the Summerfest, they added a lot of new activities this year. The vendors in the park sold two to three times the amount of food or product compared to last year. I would like to help staff check into our tree ordinance that we have related to development. I have a concern over certain peices of property in the City that may see some development in the near future that have trees on them now. I am thinking of some areas above the bank of the Sandy River that may see some development of houses. I would like to review the tree ordinances to see what kind of language we have in there regarding development, how many trees developers can remove, how many do they have to leave or if we even cover that at all. I would like to look at these now, while we have a chance before future developments cut down more trees then we wish.

Mayor Thalhöfer stated we had the first annual Mayor's invitational horse shoe pitching contest which was won by a ringer, I came in second.

14. ADJOURNMENT:

Mayor Thalhöfer adjourned the meeting at 9:05 P.M.

Councilor Thompson moved to adjourn the meeting. Councilor Kight seconded the motion.


Paul Thalhöfer, Mayor

Dated: 8-13-97

ATTEST:


Debbie Stickney, Deputy City Recorder

--PLEASE COMPLETE THE FOLLOWING--

| NAME | ADDRESS | PHONE # |
|-----------------------|-----------------------|-----------|
| Jim Galloway | City Hall | 665-5175 |
| Rich Faith | " " | " " |
| Bob Cozewood | " " | " " |
| Mark Berrest | Police Dept. | 1065-5175 |
| Teri Sutherland, RRSC | 550 Main St, Fairview | 406-3031 |
| Joey Rickard, RRSC | " " | 11 " |
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DATE 7-22-97

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