

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. -- February 23, 1999

- (A) 1. PLEDGE OF ALLEGIANCE, ROLL CALL, AGENDA UPDATE
- (A) 2. CONSENT AGENDA:
2.1 Accept Minutes: Regular Meeting January 26, 1999
- (I) 3. PUBLIC COMMENT: Please restrict comments to non-agenda items at this time.
- (A) 4. MOTION: A Motion Adopting the City of Troutdale 1999 Council Goals. Kvarsten
- (A) 5. PUBLIC HEARING / RESOLUTION: A Resolution Recommending to Multnomah County Board Of Commissioners Specific Zoning and Land Use Designations for Land Within Troutdale's Urban Planning. Sanderson
- (I) 6. REPORT: A Report Concerning Encroachments onto City Property and Options for Correction. Faith
- (I) 7. COUNCIL CONCERNS AND INITIATIVES
- (A) 8. ADJOURNMENT


Paul Thalhofer, Mayor

Dated: 2-18-99

C:\AGENDA\022399CC.AGE

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

February 23, 1999 7:00pm

Meeting was called to order at 7:00 p.m. by Mayor Thalhofers.

1. PLEDGE OF ALLEGIANCE, ROLL CALL, AGENDA UPDATE

Mayor Thalhofers called on Councilor Kight to lead us in the Pledge of Allegiance.

Mayor Thalhofers asked for the roll to be called.

City Administrator Kvarsten called the roll.

PRESENT: Thalhofers, Thompson, Kight, Rabe, Daoust, Ripma.

STAFF: Galloway, Faith, Kvarsten

GUESTS: Christine Singer, Ernie Singer

Mayor Thalhofers asked are there any agenda updates?

Kvarsten replied we have none this evening.

2. CONSENT AGENDA:

2.1 Accept Minutes: Regular Meeting January 26, 1999

Mayor Thalhofers called this item and read the consent agenda.

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

YEAS: 6
NAYS: 0
ABSTAINED: 0

3. PUBLIC COMMENT: Please restrict comments to non-agenda items at this time.

No public comment received.

4. MOTION: A Motion Adopting the City of Troutdale 1999 Council Goals.

Mayor Thalhofers called this item.

Kvarsten stated the City Council met in a work session on February 4, 1999 to establish the Councils annual

goals. After discussion and deliberations the Council drafted the 1999 Council goals. The purpose tonight is to formally adopt those 1999 goals. It is our recommendation that the Council do so by motion.

MOTION: Councilor Ripma moved to adopt the 1999 Council Goals. Seconded by Councilor Kight.

**YEAS: 6
NAYS: 0
ABSTAINED: 0**

5. PUBLIC HEARING / RESOLUTION: A Resolution Recommending to Multnomah County Board Of Commissioners Specific Zoning and Land Use Designations for Land Within Troutdale's Urban Planning

Mayor Thalhofer called this item and asked Mr. Faith to come forward.

Faith stated in February of last year the City entered into a new IGA with Multnomah County concerning land use planning for the unincorporated areas within the City's urban planning area. We have approximately 650 acres to the north of us and approximately 85 acres to the south of us. The urban planning area agreement that we entered into with Multnomah County is part of an ongoing effort throughout the entire Portland Metropolitan region both by cities and counties to accommodate future growth to the extent we can try to maintain or contain the urban growth boundaries as much as possible. Multnomah County, just as the City of Troutdale, was given a housing capacity target for the unincorporated areas within the Metro region. The charge is to try to provide for the anticipated housing demand and job demand that we are going to see in the next twenty years. Under the Urban Planning Area agreement we have outlined some concepts on how this would be done. The County was faced with applying some new zoning to these areas that would get them closer towards accommodating their housing capacity target. Currently, for example, the area to the south of the City is in what is referred to as a holding zone. The zoning of this property, under the County's current code, carries a twenty acre minimum lot size. It is essentially in a holding pattern until these lands are brought into the City and receive urban services and can be developed at urban densities. In conjunction with the charge that Multnomah County has to re-zone the properties to be able to accommodate the anticipated housing, the concept that we have entered into with them is that the City would actually determine what kind of zoning we would like to see for these properties. These are properties that have already been identified as areas that are marked for City services and eventual annexation into the City. The effort that we are undertaking here and the proposal before you is for the City to make a recommendation to Multnomah County regarding what kind of zoning we would like to see for these properties at the time they annex into the City. The ultimate decision will rest with Multnomah County. Under the terms of our Urban Planning Area agreement the County intends to adopt the City's Development Code, its zoning designations and regulations, and then apply those to these properties and then actually transfer the administration of that to the City even before these properties come into the City. I will now let Sheryl Sanderson explain the specifics of the proposal.

Sanderson reviewed the staff report contained in the packet.

Councilor Ripma stated at the time this was brought to us, we as a Council directed you to inquire about R-10 zoning for the housing area to the south. Did you check with the County if R-10 zoning would be acceptable to the County in the southern area?

Faith replied I don't know that I specifically asked them if R-10 zoning would be acceptable. I informed the County that I had been instructed by Council to accept no more housing capacity than what would be accommodated under R-10 zoning. That is how we agreed upon the number of 205 dwelling units for this area. There was clearly an understanding that we were only planning to take enough housing that would be possible under R-10 zoning.

Councilor Ripma asked did the County agree?

Faith replied yes.

Councilor Ripma asked if we zoned it all R-10 to the south, that wouldn't be violating any promises to the County?

Faith replied as far as on a staff level.

Councilor Ripma stated I don't recall any conversation on neighborhood commercial, was there any County requirement to include neighborhood commercial?

Faith replied I do not recall that it was ever brought up.

Councilor Ripma asked if we were to zone it all R-10 to the south with no neighborhood commercial, would that be consistent with staff level discussions about this proposal?

Faith replied I would have to say yes it is.

Mayor Thalhoffer asked do you see any problems with having no neighborhood commercial areas in the southern portion since we do have the Thriftway store close by and some other stores close to that area.

Faith replied that the only down side to that is it removes an opportunity for some local convenient shopping to residents in the southern portion of the City.

Councilor Kight stated in the staff report it mentions "set aside for a 5 acre park". Is it possible that the City could make that a condition of development of that area?

Faith replied we currently do not have anything in our code that requires dedication of park land. Unless we put a provision in there that a dedication in place of system development charges or something of that nature, I don't believe we have the means right now to require that.

Councilor Kight asked was there any cost to the City at all by zoning it R-10 versus R-7 other than standard development costs?

Faith replied none that comes to mind.

Councilor Kight stated in your comment you mention that a flood hazard area doesn't preclude somebody from developing if they meet all the criteria for developing in a flood plain, have you considered approaching Metro's greenspace folks and seeing if that property couldn't be purchased as a greenland?

Faith replied I am assuming that is being done. In looking at the City's adopted Parks, Greenway and Recreation Plan in which we have identified rather extensive area along the Columbia River as future park land and greenways, and I noticed that one of the assumptions about this is that these areas would be looked at for acquisition by Metro. I have to believe that Metro is using the various City and County adopted plans as a guide to their acquisitions. In fact I know that some of the area adjacent to the Sandy River are lands that they have set as a priority for acquisition.

Councilor Rabe stated referring to the Metro Housing Rule, if we were to go with the R-10 in the whole southern portion, have you projected that we would or would not meet the projected densities?

Faith replied I don't know that we did an analysis if the entire area was zoned R-10 and if we estimated that we were going to have 205 dwelling units at build out, how that is going to factor into our total housing supply.

Councilor Rabe stated that would have a bearing as to which way I would lean with regards to the zoning recommendations.

Faith replied my hunch is if you look at table 4 of the staff report, there is our analysis but it was done based upon both R-10 and R-7. As it stands today we would not meet the 50/50 housing that we are required to meet.

Councilor Ripma stated this area is not coming into the City, it is simply a recommendation to the County based on an agreement with the County to take so many dwelling units of there share?

Faith replied there is no certainty that it will come into the City.

Councilor Ripma stated therefore it really has nothing to do with our compliance of the Metro Housing Rule. This isn't being annexed or adopted in anyway by the City.

Faith replied this would hold true if the entire area were brought into the City at one time and we had to build that into our inventory of lands.

Councilor Ripma stated the point is, the issue of the Metro Housing Rule is not relevant to this particular area.

Faith replied I would have to agree.

Councilor Daoust stated regarding the flood hazard and the water quality overlay district, I assume that stops currently at the City limits and I am assuming that we have to map the 100 year flood plain.

Faith replied we rely on the FEMA maps.

Councilor Daoust stated so we don't really know where the 100 year flood plain line would go, there are certainly more restrictions within the 100 year flood plain then a 50 foot setback isn't there?

Faith replied the fifty foot setback is not really a flood protection regulation, it is a water quality issue. It is trying to create a vegetative buffer or a no disturbance zone between the man made improvements and the body of water that we are trying to protect. So really that fifty foot setback is not really related directly to flood hazard.

Councilor Daoust stated if a current business wanted to expand, what I am hearing is the overlay district would almost have regulations the same as an open space, am I close?

Faith replied close but still a long ways away in that the open space zone actually restricts or prohibits most development. It doesn't even give you the opportunity because they are not listed as permitted uses. There is not even the opportunity under open space zoning to build a house, an industrial plant or build a commercial use, all of those are prohibited outright in that zone. They are not prohibited outright in the general industrial zone even if they fall under the overlay district but there are development restrictions and regulations that would kick in in order to protect the resource. We talk about the impact that this might have if we were to do this, but what we are perhaps overlooking is that these uses are probably already under very tight restrictions under Multnomah County's Ordinance. I am not familiar with the County's Ordinance but I have to believe that they have a resource protection zone or regulations of some type that would apply to these sites that may be even more stringent than what we have.

Susan Muir a planner for Multnomah County stated the clarification of the flood plain development, we do have a flood hazard overlay currently that we require compliance with or permitting before any development occurs in the flood hazard overlay. I am not familiar enough with your ordinance to know if they are the same although under the FEMA base guidelines I am sure that we are at least close in terms of the minimum amount of protection that we are required to have.

Councilor Ripma asked would the County care if we went with industrial park versus general industrial in the northern area?

Muir replied I rely on your staff for a response to that.

Councilor Kight asked what is your response to along the northern portion to having that open green space along the Sandy River.

Muir replied we are looking to demonstrate compliance with Metro Functional Plan. If we can do that while making use conforming with the code that would probably be ideal in terms of implementing it. I think that there might be some folks here tonight to testify that may be affected by that.

Gordon Davis stated I represent Tide Water Barge Lines who are the owners and operators of the Sundial facility that is on the Columbia River and is within part of the area that is under consideration tonight. The Sundial Marine facility is a heavy marine construction and repair facility that has been in that location in excess of forty years. It has been conducting its operation continuously since it was zoned for heavy industrial use in Multnomah County in the early 1960's. It has year round about 35 full time employees and in the peak time has 80 to 85 employees. It is a major heavy marine construction facility. It builds barges, it repairs barges and tugs. It is not a glamorous facility but its operation is as much a backbone to the regional economy as we now enjoy with some of our newest employers in this area. For forty years it has repaired and built the equipment that goes up and down this river and carries the petroleum and grain and other products that are so essential. It is one of those backbone industries that we have that isn't very pretty but is very essential to the continued strength of the economy that depends a great deal on the river itself. We do have an application with the County right now to expand that facility and this would include the development of a major aggregate receiving and shipping facility. The designation of this as open space would really preclude Tidewater and Sundial from any expansion of their facility. The County's general heavy industrial zone is the appropriate zone for this type of facility. It would be our hope that the City would view the continuation of this type of use as being in the City's interest even though the facility is in Multnomah County and we don't know at what time it would annex into the City. I think there is one additional point to be understanding of when you think about this facility. This is what we call a water dependent use. That is you can't locate this in an industrial park in the middle of Troutdale or any city, it must be on the river. We hope you will take this into consideration.

Councilor Ripma stated you have expressed yourself clearly on the open space problem, does it matter to you whether we zone the parcel industrial park versus general industrial.

Davis replied I have not studied your ordinance so I am not sure of all the provision. I know ordinances in general and I would anticipate the kind of things that are likely to be in the industrial park provision. And what I would expect is the types of uses that we are doing here and the types of uses that we might wish to come before you and propose to do would probably not be compatible with an industrial park designation.

Councilor Ripma stated isn't it true that you probably would have to struggle even with general industrial doing the kinds of things you do?

Davis replied only in the since of the specific developments standards related to setbacks and environmental issues. Not with regard to the question of whether the kind of use we wish to make the property is allowed.

Councilor Ripma asked your current use would continue as well as your current application regardless of what we do and I guess what I am asking you is does it really matter to you the use that would be put to the entire rest of the County area that we are talking about.

Davis replied I don't represent the other properties so in that sense it doesn't matter. I think that you have a number of existing uses out there, starting from scratch, which would probably not be allowed in your

industrial park zone.

Christine Singer stated I am a resident on Troutdale Road and part of the proposed change. I am not sure what the advantages are at this point to change the zoning from what it is now. My concern is what the zoning would do to our property because we have raspberries on our property and if it is zoned residential and our neighbor annexes, would that affect our being able to spray our berries and using tractors and taking care of our farm land? I am also not sure how that affects our taxes. I also wonder if this is just another way for Multnomah County to expand the urban growth boundary.

Mayor Thalhoffer replied that Multnomah County is spinning off all of the unincorporated areas close to the city. They are giving the cities the opportunities and the charge to zone these properties even though it is not part of Troutdale at some point this probably will be annexed into Troutdale.

Councilor Ripma stated the urban growth boundary takes in your place, it is actually just to the south of you and it has been that way for many years. In fact I think it was originally drawn and it included you and Florence Baker's place across the way. This doesn't change the urban growth boundary and has nothing to do with the recent expansion of the urban growth boundary and this is not a county program to make you urbanized in any way. You are in the urban growth boundary and we, many years ago, drew up an urban services district agreement with the County that we would serve the land in your area with urban services at such time as you wanted to urbanize and come into the City. The area up Strebin Road where they built some houses is the first area to come into the City under that agreement. Until you want to urbanize you will not be forced into the City, unless the law changes.

Singer asked will that affect our taxes?

Sercombe replied I don't know that answer. I don't think that it would until the land is developed.

Singer asked if our neighbors sold their property would we be restricted from farming in an R-7 or R-10 zone?

Councilor Ripma replied if they sold and their property came into the City under R-7 or R-10, that still would not bring you into the City.

Councilor Rabe asked with this open space and general industrial boundaries, why did the designation include Sundial in the open space but excluded them from the general industrial?

Faith replied when this came up for discussion at the CAC, they thought that an open space zoning seemed to be a logical and appropriate kind of zoning adjacent to the Columbia River. There was really no thought given or discussion given to what uses are there now and how will it affect those uses.

Councilor Rabe stated so we are not restricted, in this proposal the lines can be moved.

Faith replied let me clarify, the proposal that is before you is the recommendation of the Planning Commission which does not include open space whatsoever. We wanted to bring to your attention the origin or the sequence. The current proposal would be no open space zoning. Your suggestion of drawing the line for open space somewhere to the east of these current industrial users is an option.

Councilor Kight asked the open space, under the recommendation of the CAC, is immediately to the east of Gresham Sand and Gravel. Isn't that the location of the superfund site for Reynolds Metals?

Faith replied that would include what is referred to as company pond or company lake which is owned by Reynolds.

Councilor Kight stated so isn't a fairly large section of what they have identified here as open space in fact a superfund site?

Faith replied that is correct. Under our adopted Parks, Open Space and Greenways Plan we referred to that as a future park site.

Councilor Kight asked are there funds set aside for clean-up of that site now?

Faith replied I don't know where that stands.

Mayor Thalhoffer stated that Reynolds Metals has been cleaning up the site for some time now. I would assume it would include this site.

Councilor Rabe stated that we could find out from them what stage they are in of this clean-up process. I think that would be something we would want to know with regards to any kind of designations we have going on down there.

Faith replied we could get some answers to that.

Councilor Ripma stated I favor using this as a park and having it be open space, but zoning it open space doesn't acquire the land. Can we get away with zoning any of this open space?

Sercombe replied there is not a clear answer to that. The issue of what kind of taking issues are presented by zoning property open space depends precisely upon the uses that are allowed by the open space zoning and whether or not that allows for a reasonable return based on what the property law of the state and the owners expectations would suggest for a return. Open space zoning has been allowed against constitutional attack in prior decisions both at the state and federal level. As you know there has been a resurgence of property rights by the United States Supreme Court. There are risks in zoning open space. There are also some risks if in fact the City were to designate part of this area for a future park and were to down zone the area to an open space zoning, that might be found to be an anticipatory zoning for the City's future acquisition of the property for a park and constitute a taking for that reason.

Councilor Ripma asked would open space be compatible with the Gresham Sand and Gravel operation?

Faith replied that would not fall within the allowed uses. The permitted uses under the open zone would be; park or playground, picnic, wild life and nature preserves, nature trail and or bikeway or other uses similar in nature.

Councilor Daoust asked did Metro identify this same piece of land that we are talking about as a Metro Greenspace?

Faith replied I know that they had identified some property in this vicinity, I am not sure which one it is or if it is on the banks of the Sandy or the Columbia.

Councilor Daoust stated I recall that it might stretch to the same piece of land that we are talking about and that Metro would look at it as a greenspace if someone were to sell there property. Staff might want to check into it, if it is a Metro greenspace we need not call it an open space on our part. If we do amend the flood hazard and water quality overlay district, how would that affect our new sewage treatment plant?

Faith replied the flood hazard and water quality overlay district does allow for public utilities. In the general industrial zoning it would allow a sewage treatment plant as a conditional use. The use is permitted, then we would have to deal with the flood plain area and we would have to contend with additional regulations that pertain to development within a flood plain. In terms of the fifty foot buffer or development within that

fifty foot buffer area, that we do have the exception to allow for a public utilities.

Councilor Ripma stated I recall that when Reynolds was build during World War II there was a special State law that prohibits Troutdale from annexing them. It doesn't really effect the question before us in a way but it does affect our decision of what we recommend to the County. Are you aware of a state law that prohibits Reynolds from being annexed to Troutdale?

Faith replied I have heard of such law, I don't recall the specifics of the law but I believe you are correct.

Sercombe stated that there is a law. The law says for industrial property that exceeds 7 ½ million dollars in value and has its own infrastructure is immune from annexation without consent of the owner.

Mayor Thalhoffer closed the public hearing and reconvened the City Council Meeting.

MOTION: Councilor Ripma moved to adopt the resolution with the following changes. That the southern area be zoned entirely R-10 and that the northern area be zoned entirely industrial park. Seconded by Councilor Kight.

Councilor Ripma stated that R-10 is the designation that provides the lowest number of housing units that is acceptable to the County. The area has already begun to develop R-10 and very successfully. I also strongly oppose any kind of small neighborhood commercial in the midst of a subdivision like that particular where it is so close to the existing neighborhood commercial. In the north, my feeling for the industrial park is based on a slightly less intensive use of what I think is a potentially attractive area for industrial development that the existing heavy industrial uses would be able to continue as they do now very successfully as non-conforming uses and it wouldn't matter to there continued operation. Expansion of heavy industrial into the rest of the area wouldn't be as good for the City as the slightly less intensive industrial park designation. I strongly favor working on our overlay zone for the shoreline to include the columbia course and include a wider setback and other restrictions.

Councilor Kight stated one of the things we have to look at is when you talk about higher density in reference to the southern portion of the City where we are looking to designate it R-10, we have to look at the immediate impact to our community. In the next few years the Reynolds School District is looking at an impact of over 1700 students. As a City we have to look at those designations that have the lowest impact on the schools. For the property to the north, I wish we could designate most of it open space. I think the lowest impact would be the industrial park. We need to protect our rivers from heavy industrial commercial development, I don't have a problem with the current property owners that have been grandfathered in.

Councilor Thompson stated I am not sure what the effect would be on the current land owners if we were to zoning that industrial park.

Faith replied I would have to conclude that the existing industrial uses are non-conforming uses in the industrial park zone. They are grandfathered in and are allowed to continue. In order to expand their operation there are provisions in our code under a non-conforming expansion that allows for that under a type 3 process. Even with that there are still certain restrictions and limitations.

Mayor Thalhoffer stated I am not prepared to vote tonight. I would like to get some more information, one of the items would be concerning the Reynolds site. I don't see that there

is any rush to do this. I am sorry the motion was made before we had a chance to discuss whether we wanted to do this tonight or not. We can do it tonight because it is a Resolution, but I would prefer a second public hearing on this matter when we had more information. I think we are rushing to judgement. One thing that concerns me is taking general industrial and saying that the folks that are here can stay in business but you may or may not be able to expand. There is a reason that we want general industrial, one was for job creation. I think we have to consider the river area, we all want to protect that, and we can do that with wider setbacks. I am very hesitant to make a decision tonight to eliminate general industrial in the City of Troutdale. It bothers me a great deal that we are going to act on this tonight without further deliberation and information. I know I would like to do some information gathering of my own before I voted on this issue. I would like to see us hold this over.

Councilor Ripma stated I am impressed by your argument, could I ask Rich, would this virtually eliminate general industrial in Troutdale?

Faith replied the proposal that you are voting on is land that is currently outside the City limits, it has nothing to do with the current general industrial lands within the City.

Mayor Thalhoffer stated that is true. I am talking about the land that is in the unincorporated Multnomah County. Those lands we virtually shut down general industrial.

Faith replied you are dealing with approximately 650 acres, clearly not all of that would be developable because of flood and wetland issues.

Councilor Ripma stated don't we have general industrial in the City now?

Faith replied yes.

Councilor Ripma stated Mr. Mayor on the issue of putting it off, I am just wandering if we knew something more about the superfund site, what difference would that make about going forward with the industrial park or not?

Mayor Thalhoffer stated that is one of the pieces of information that I would like to have, what is in the superfund site, to what degree has it been cleaned up. That is where much of our potential general industrial will go. These are items of information I would like to have before voting on anything pertaining to this property. The sundial operation, I would like to see more information from them about how many trucks they are going to have when the barges come in to load up the aggregate and what are they going to do about roads.

Councilor Daoust stated I am not ready to vote on this tonight. During the testimony we asked staff to bring information back to us, and now all of a sudden we have a motion to vote on it before we even get that information.

Councilor Ripma stated I would be prepared to withdraw my motion, is there any reason we have to do these two areas in one resolution? Can't we just do the southern part and send that to the County and hold off on the northern part. If that is agreeable I will withdraw my earlier motion.

Councilor Daoust stated it sounds like you want to withdraw half of the motion, but let me finish with information that I was looking for. The first thing would be the Reynolds superfund site, the second thing is whether Metro greenspace has that designated already and the third thing was an analysis of jobs created in an industrial park. We didn't have any

analysis on totally zoning that southern part as R-10, whether we would be able to meet that 205 housing capacity.

Councilor Ripma stated yes he did answer that.

Councilor Daoust asked and the answer was?

Faith replied yes it would meet it.

MOTION WITHDRAWN: Councilor Ripma stated I am not in a rush on the northern part. I would like to withdraw my motion.

MOTION: Councilor Ripma moved to adopt a Resolution only dealing with the southern part and that be zoned entirely R-10. Seconded by Councilor Kight.

Councilor Thompson stated that the advantage of the 10,000 square foot lot I think is to attract a higher upscale home. I think we definitely need some areas to do that, but I would be more interested in finding out how it would affect the density of the City. I think there are still some questions to be answered in regards to the southern most part of the answer to. I am not prepared to vote on that tonight.

Councilor Ripma stated the reason for zoning it R-10 is to accept the number of dwelling units that the County and the City have agreed to at staff level to accept. It actually has no affect on our Metro housing rule because it doesn't come into the City and it could be fifty years before it does come into the City and if we accept any density higher than R-10 and more housing units it reduces our flexibility down the road for future Councils, maybe ten to twenty years from now, and at that point we could agree to accept higher densities there no problem, but if we once accept higher numbers of housing units now we could never go back and that is why I strongly favor acting now in favor of the R-10. It actually can't hurt us and could help.

Mayor Thalhoffer stated if other Councilors are in favor of waiting on the southern part, I would be in favor of waiting on that as well. However, as for the southern part I am prepared to vote on it. Making it R-10 makes a lot of sense to me. We need some up-scale housing in Troutdale.

Councilor Rabe stated I support Councilor Ripma's proposal. I am particularly concerned with the impact that it would cause to the schools. One thing I haven't heard is that any kind of residential construction that we put into that southern area is going to have an impact on Beaver Creek, most likely it will be a negative impact.

Councilor Daoust stated I am ready to vote but I would like to clarify the motion just to make sure that your motion was to drop the neighborhood commercial?

Councilor Ripma replied yes.

YEAS: 6
NAYS: 0
ABSTAINED: 0

Mayor Thalhoffer asked Mr. Faith do you have enough direction as to information that we are seeking on the northern portion?

Faith replied yes.

6. REPORT: A Report Concerning Encroachments onto City Property and Options for Correction.

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

Faith review the staff report contained in the packet.

Mayor Thalhoffer asked what is meant for many years?

Faith replied I do not know when the guest house or smoke house were built. According to the County Assessors records the primary residence on this property was built in 1948 and just based upon appearance I would assume that the guest house was built around that same time period or shortly after.

Councilor Kight asked how long has the City had this greenway?

Faith replied the greenway was dedicated to the City through the recording of the plat of the Sandee Palisades Subdivision in 1979 and was actually accepted by Resolution in December of 1981.

Councilor Kight stated basically if the guest house was built around 1948 those structures have been on there for some thirty-three years. Did at the time the City took ownership of that tract, did they notify the neighbors that this property was being encroached upon?

Faith replied we have checked the file on the Sandee Palisades Subdivision and could find no reference in there about this encroachment. I don't believe that it was known or disclosed if it was known.

Councilor Kight asked was there a survey done at the time the City took this property over?

Faith replied there was certainly a survey done, but understanding the topographic difference in the property where we have the subdivision on top of the bluff and then we have the hillside that drops down to the Wilhelm property, we can not determine from the record if the property survey included the common boundary line between the Wilhelm's and this Tract "H". There was certainly a legal description provided of the property and certainly survey work that was done in conjunction with the platting of the residential lots up above but there is no way for us to know if an actual boundary survey was done down below.

Councilor Kight asked if that is the case then when did we do the boundary survey?

Faith replied we didn't do it.

Councilor Kight asked then how do you know that he is encroaching upon the greenway?

Faith replied that is due to Mr. Wilhelms' word.

Councilor Kight stated so you are saying that Mr. Wilhelm is the one who divulged that he is encroaching on City property.

Faith replied that is correct. The map that accompanied the staff report that shows the guest house was provided by Mr. Wilhelm.

Councilor Kight stated so the City has never done a survey.

Faith stated no, we are taking his word that there is an encroachment which he learned from the previous

owner when he bought the property.

Councilor Kight stated but it sounds like these structures have been on the property for over three decades. Couldn't a case be made for adverse possession?

Faith replied yes I would have to say that burden would be on his shoulders to do so.

Councilor Kight asked Mr. Sercombe what is the law for adverse possession is that ten years, seven years?

Sercombe replied the law requires an open notorious and hostile possession of property for a ten year period.

Councilor Kight asked would this qualify then?

Sercombe replied I don't know the nature of the possession between 1950 and 1981 but if it was that the house was there under claim that they thought that was where the property line was, the house was openly there and it was for a period of longer than ten years, I think it would be a legitimate adverse possession claim for the area occupied by the house. There are two types of encroachments that are of issue here. There is the house and the smoke house which have been there for some period of time and there are some recent encroachments so how you choose to deal with those may differ depending upon the nature of the encroachments.

Councilor Kight asked what is the difference between the easement and the license?

Sercombe replied generally licenses are revokable and are an occupation by permission that typically is more personal to the licensee and not something that is conveyed with the property. For something that runs with the property we typically do that by means of an easement.

Councilor Daoust stated in your staff recommendation you deal with option 2 or 3 for the guest house and the smoke house only. What about the utility shelter and the wood frame cover?

Faith replied that we wait and see whether the Planning Commission grants a variance for them to even be there. Right now they are illegal structures, there are no permits taken out for those structures and Mr. Wilhelm understands that and wants to rectify that. The variance is because of the setback from the bank of the Sandy River. In the absence of the Council granting either a license or easement or other type of permission for that encroachment to occur, Mr. Wilhelm will have to redesign the structure so that it does not encroach.

Councilor Rabe asked the guest house is within the setback to the Sandy River, is that correct?

Faith replied no it is not.

Councilor Rabe asked could you please clarify to me what is encroaching into the Sandy River setback?

Faith replied the guest house, the wood frame cover that has been added and the storage cover. I really don't know for sure about that, I would have to go out and do measurements.

Councilor Rabe stated my question was whether or not the guest house preceded the setback?

Faith replied yes it did, it is grand-fathered in.

Councilor Ripma stated it sounds like we aren't absolutely certain that they even encroach, they think they do, and the people who sold them the land think they do, but there is no proof. It would be great if we

could learn that, and I wonder if it might be best to suggest that they have a survey done and see. Couldn't we ask them to find out for sure? If they encroach then they are no worse off then they are now and it could be that they don't.

Faith replied it is a possibility, I guess I rely on there word if they are saying we know we encroach and here is a map that represents the encroachment I am going to accept that.

Councilor Ripma stated that in the end we are being asked to issue a license or an easement on land that we don't even know if we own.

Faith replied they may have the evidence already and can document it.

Councilor Ripma asked couldn't we wait and find out if they encroach for sure, would that be an option for us?

Faith replied I am reluctant to bring this matter to the Planning Commission. I have not taken in an application on this because I feel that this issue is critical to how the Planning Commission would look at this application. As it stands right now, we have two structures that have been put up without the benefit of permits that the applicant himself is contending encroach on the City property. I think the position ought to be, they are not permitted and can't be there but he would like to go before the Planning Commission to get the necessary approvals and not have to move them off our property.

Councilor Ripma stated the question of adverse possession, isn't it fact based, in other words if they had built those structures in 1950 with permission of the land owner at the time, they didn't acquire rights through adverse possession if they always had permission isn't that right?

Sercombe replied that is correct.

Councilor Ripma stated the question of just the length of time it has been is not that simple. Isn't it also true that adverse possession is not acquire against the City?

Sercombe replied that is correct.

Councilor Ripma stated so any use since it has become City property doesn't count toward adverse possession. That whole issue is pretty muddy. Is that why staff recommended option 2 or 3?

Faith replied partially.

Mayor Thalhofer asked that Mr. Wilhelm come forward.

Donald Wilhelm stated that the previous owner told him at the time of the purchase that the corner of the property was on City property. I didn't have a survey done, not having any experience in this area I didn't think it was necessary. I decided to build this wood shed and a storage cover and then the dispute with the neighbors came up and that is when I brought it to the City.

Mayor Thalhofer asked how do you feel about having a survey done so everybody knows what is going on?

Wilhelm replied if that will resolve the problem. I am willing to do that.

Faith replied if he is going to invest in the cost of a survey, if you have any inclination in terms of whether an easement or whatever direction you are going and staff is able to establish that he does encroach, in conjunction with doing the easement he can also have the survey include a description of that portion that he encroaches upon and it could be incorporated into the easement and it could all be taken care of.

Councilor Kight stated if he has the survey done and if the house does encroach on City property, wouldn't the simplest thing be to just do a minor lot line adjustment?

Faith replied that is right, but a lot line adjustment requires a transfer of ownership so what we are doing is changing the boundary line but if it is established that the City owns that part and is going to deed it over we need the legal description of the property to do that.

Councilor Ripma stated that is a greenway and we don't just give away property. If you are proposing option one, I have some objection to that. We are reasonable people and we will do something to make it right. We appreciate your honesty and your willingness to make it right.

Mayor Thalhoffer stated after the survey is completed and we find out whether you are even encroaching on City property and the results of the survey are presented to Council, then we will move forward with this.

Faith asked I need guidance on the several structures that have been put up without the proper permits, should we just leave them there until after this matter is settled?

Mayor Thalhoffer replied yes.

7. COUNCIL CONCERNS AND INITIATIVES

Mayor Thalhoffer called this item.

No Council concerns

8. ADJOURNMENT

Mayor Thalhoffer called this item.

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


**YEAS: 6
NAYS: 0
ABSTAINED: 0**

Meeting was adjourned at 9:58pm.


Paul Thalhoffer, Mayor

Dated: 3-25-99

ATTEST:


Debbie Stickney, Acting City Recorder

--PLEASE COMPLETE THE FOLLOWING--

NAME <small>(please print)</small>	ADDRESS	PHONE #
Jim Galloway	City Hall	665-5175
Rich Faith	" "	" "
GORDON DAVIS	1035 NW HOYT - Box 97209	221-5306
Cynthia Finney	2035 SE TROUTDALE RD	665-5773
Christine Snizek	" "	" "

DATE 2-23-99

PAGE # 1 of 1