

CITY OF TROUTDALE

"Gateway to the Columbia River Gorge"

AGENDA

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

EXECUTIVE DEPARTMENT

Fax (503) 665-7265

Administration

City Administrator
City Recorder

Human Resources

Community Services

October 24, 2000 - -7:00 P.M.

- (A) 1. PLEDGE OF ALLEGIANCE, ROLL CALL, AGENDA UPDATE
- (A) 2. CONSENT AGENDA:
 - 2.1 **Accept Minutes:** September 26, 2000 City Council meeting
- (I) 3. PUBLIC COMMENT: Please restrict comments to non-agenda items at this time.
- (A) 4. PUBLIC HEARING / ORDINANCES (Introduced 9/26/00):
 - 4.1 An Ordinance Granting a Franchise for Broadband, Cable, Institutional and Telecommunication services to RCN Telecom Services of Oregon, Inc. ("RCN")
Norm Thomas, Chair Mt. Hood Cable Regulatory Commission
 - 4.2 An Ordinance granting a franchise for Broadband, Cable, Institutional and Telecommunication services to Western Integrated Networks of Oregon Operating, L.L.C. ("WIN").
Norm Thomas, Chair Mt. Hood Cable Regulatory Commission
- (A) 5. PUBLIC HEARING / ORDINANCE (Introduced 10/10/00): An Ordinance annexing certain property in Section 24, Township 1N, Range 3E Willamette Meridian, to the City of Troutdale and amending the City's Comprehensive Plan Map to assign the Industrial designation and amending the City's Zoning Map to assign the General Industrial zoning designation to the property upon annexation and repealing Ordinance No. 694.
Faith
- (A) 6. PUBLIC HEARING CONTINUANCE / ORDINANCE (Introduced 9/26/00): An Ordinance amending Troutdale Development Code for Compliance with Title 3 of the Metro Urban Growth Management Functional Plan pertaining to water quality and flood management and repealing Troutdale Municipal Code Chapter 15.24 Flood Damage Prevention.
McCallum

- (I) 7. COUNCIL CONCERNS AND INITIATIVES
- (A) 8. ADJOURNMENT

An Executive Session will be held immediately following the Regular City Council Meeting. The Executive Session is being held pursuant to ORS 192.660(1)(e) - "Real Property Transactions".


Paul Thalhofer, Mayor

Dated: 11-18-00

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

October 24, 2000 7:00pm

Meeting was called to order at 7:01 p.m. by Mayor Thalhofer.

1. PLEDGE OF ALLEGIANCE, ROLL CALL, AGENDA UPDATE

Mayor Thalhofer lead us in the Pledge of Allegiance.

PRESENT: Smith, Ripma, Thompson, Kight, Daoust, Thalhofer.

STAFF: Faith, Galloway, McCallum, Kvarsten, Sercombe, Stickney.

GUESTS: Nicolasa Bloom, Robert Houghtaling, Shannon Turk, Gloria Chevraux, Melissa Robertson, Dan Piluso, Glenn White, Lora Feddersen, Stephen Feddersen, Ray Valone.

Mayor Thalhofer asked are there any agenda updates?

Kvarsten replied we have no changes this evening.

2. CONSENT AGENDA:

2.1 Accept Minutes: September 26, 2000 City Council meeting

Mayor Thalhofer 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.

Mayor Thalhofer called this item and asked is there anyone here who would like to speak to us on a non-agenda item?

Shannon Turk stated I urge everyone to support Measure 26-24 which is the local option levy for the City of Troutdale's general operating expenses at \$980,000 each year for the next four years. This does not go to increase or improve services, this is just to maintain our current level of services and I think that is very important for our City.

Robert Houghtaling stated I live near the Home Depot in Troutdale. I have some concerns about the lights and the sound being omitted from Home Depot and I think it negatively impacts the

livability of the properties around there and could affect the property values in the future. Because of this concern I had contacted the Community Development Department in the past and recently I created a letter and went around and showed it to other residents in the area and I got a lot of support for my concerns. This letter was submitted to the Community Development Department today and I think other letters will be coming in. I could go into the details of my specific concerns about the lighting but it boils down to condition number 5 from the design review, it appears to me that the condition has not been met at all and the developer has made no effort to meet that condition which deals with lighting. There is also concern about noise and this brings me to the topic of Home Depot opening very soon, I believe the ribbon cutting ceremony is tomorrow and the grand opening is Thursday. Why does it make sense to open up an establishment like that when they have not met the conditions of approval. From talking to the people at City Hall, it sounds like there are other conditions of approval that have not yet been met. If we let them open up and start doing business that is an implied okay to occupy the building, what incentive would they have after that to comply with these conditions?

Mayor Thalhoffer asked Mr. Faith if he would respond to Mr. Houghtaling's concerns.

Faith stated Mr. Houghtaling has raised some valid points. These are issues that we have been attempting to resolve with Home Depot for some time. The issue of lighting is one that has been raised by the surrounding residents for a number of months now and Elizabeth McCallum has been dealing with the Home Depot representatives and informing them of the need to correct the problem. We have had quite a bit of correspondence that documents their lip service to taking care of the problem, but as we speak tonight it still hasn't been taken care of. We are concerned about that and other issues that still have not been corrected. He raises an excellent question in terms of how do we put some pressure on Home Depot to comply with these conditions before the scheduled opening on Thursday. Internally, among staff, we are looking at some things that we might be able to do in order to get these things taken care of. We do have a scheduled final walk through to primarily look at the public infrastructure that they were required to build in conjunction with the project and the Public Works Department will be taking the lead in going through and looking at the public infrastructure, the streets, water and sewer connections to detect any deficiencies that need to be corrected before they are allowed to open. We also hope to use that opportunity to address these other issues related to the land use permit, the conditions of approval that were imposed by the Planning Commission. I was in contact with our primary contact, who is a representative of Home Depot out of their home office in California, and discussed these concerns with him. He is in flight this evening and he will be present at the final walk through tomorrow.

Mayor Thalhoffer asked Mr. Sercombe, could you help us. What can the City do in this situation?

Sercombe replied there is a range of enforcement actions that the City could take. I am not totally familiar with the actions that you can take in terms of the occupancy permit because of the planning violations, but certainly we could prosecute them for violating the City Code in Municipal Court and impose a fine on them. You can also enforce our Development Code in Circuit Court, seek an injunction against them opening or continuing operation until they comply. There is a range of potential actions the City can take, some of them are more expensive than others.

Mayor Thalhoffer asked if we were to seek an injunction for example, to keep them from opening until they comply with these conditions, how soon could that be done?

Sercombe replied I don't think it is practical to think that we could put together an injunction and have it filed tomorrow and have a court act on it before Thursday. I would take several days to put together a complaint and get it filed, then we would probably go for some kind of temporary restraining order and set up a hearing on a preliminary injunction, the hearing on the preliminary injunction would probably be scheduled, assuming we could get a TRO, within a matter of days.

Mayor Thalhofer asked are there any other remedies that you can think of?

Sercombe replied I would want to look beyond the judicial enforcement aspect whether or not there are any sort of occupancy permit mechanisms to the Building Code that you could do, but I do not know the status of this project so I don't want to give you advice on that.

Mayor Thalhofer stated unfortunately since this is our last meeting this month, what we are going to do we will probably have to be done tonight. What is it we can do to help this situation?

Sercombe replied you may want to involve lawyers at this point and have me contact their lawyers and start that line of potential enforcement actions that we are going to take and give them a timetable to comply with our laws. I guess if you are looking for an option to take tonight, it would be to ask the staff to investigate all enforcement actions that seem practical and to come back to you with a recommendation for enforcement prior to the time that we file our actual litigation if that is the direction that you recommend.

Mayor Thalhofer stated that would be next month and in the meantime they are opening in violation of the final order of the Planning Commission.

Sercombe stated there may be some non-judicial remedies that we can take where we wouldn't be coming back here for authority to go ahead and file a lawsuit against them. We could also schedule a special meeting of the Council. I want to have a chance to look at it and assess the likelihood of success and talk to you about that before we go forward.

Councilor Kight asked how long do you think it will take Home Depot to correct the problems?

Faith replied first I would need to have a list of what all the problems are. I am not familiar with those which come from Public Works. The problems I am familiar with, some of them could take up to a week perhaps.

Councilor Kight asked how long have they known about these conditions that need to be met?

Faith replied the lighting is a problem that we have been dealing with for a number of months.

Councilor Kight asked are they refusing to fix it?

Faith replied I wouldn't say they are refusing, there seems to be a communication breakdown or some internal problem occurring. The individual that we have been dealing with contends that the order has been placed and he doesn't understand why the work hasn't been done. Somehow the work is not being carried out by the contractor.

Councilor Kight asked would it be in the best interest of the City to withhold the certificate of completion and occupancy?

Sercombe replied I don't know. It would depend on whether or not there is a violation. I am not sure that we can, I would have to look at the issue of whether or not the zoning permit violation is a basis for not allowing a certificate of occupancy and look at what the consequences of withholding a certificate of occupancy might be and what those consequences might be for the City.

Councilor Kight asked when you brought this to the attention at the corporate level, did they seem like they were concerned enough about it to make the corrections necessary?

Faith replied I can only speak specifically to the lighting issue and maybe Ms. McCallum could answer that better since she has had the direct contact with them on this issue.

McCallum gave details of all the dates and people that she has spoken with in regards to the lighting issue.

Councilor Kight asked what happens if the City does take action and does not give them their occupancy permit? They just simply haven't complied, if they just ignore us and expect to have their grand opening on Thursday, what leverage do we really have?

Sercombe replied we have legal enforcement options available to us. We have political leverage in terms of making a big stink about it and there are other ways to put pressure on corporations to comply with law besides suing them. I don't know the level of discourse here but it sounds like it is with the architect and certain local people. There may be a way of having a discussion with Home Depot that would be productive as well. I have had some experience with them in other planning fights, they generally try to be receptive to local concerns that are raised. I would think we might have some chance of success with them if we put some pressure on them.

Councilor Daoust stated the specific complaints are the exterior light fixtures and the noise issue from the loud speakers that they have mounted outside the garden center. If those two specific things, not the rest of the list, we would have to deal with those eventually but if those two things could be dealt with tomorrow, bring them up during the walk through and see what they say and call their bluff. I guess what I mean by that is what Tim Sercombe referred to as the political approach rather than the court approach.

Councilor Ripma asked the Building Official can either grant or deny the certificate of occupancy, is that correct?

Faith replied if he has basis to deny, that is correct. He will defer to the Community Development Director on any planning issues, he will only speak to building codes.

Councilor Ripma asked and the planning issues include the lighting and the noise?

Faith replied yes.

Councilor Ripma asked rather than talking about TRO's and injunctions and enforcement actions, we have leverage today and maybe tomorrow that we wouldn't have on Thursday once they get the occupancy permit, is that right? We do have the ability, if for instance the Building Official doesn't grant occupancy permit, they can't open, is that right?

Tim Sercombe replied that is right. What I am not clear about Councilor, is the degree to which

zoning conditions that go to the matter in which the business is conducted while it is open can be used to deny the certificate of occupancy.

Councilor Ripma stated that is a matter of argument, the operating conditions of the business as it is being operated as it applies to external light fixtures and we know that they are going to be operated because we can see that they are too bright, they might still be relevant.

Tim Sercombe stated I don't have any judgement about this. I just don't want you to think about this as a black and white issue and I am not prepared at this time to give you a legal opinion.

Councilor Ripma stated I guess I join with my fellow Councilors in saying that we sure want to see those conditions complied with and we need to do what it takes.

Councilor Thompson stated I also agree that we should do something but I am not so sure we should do it through the threat of withholding the occupancy permit. I think Home Depot is going to want to be a good neighbor. I think part of the problem has been dealing with Home Depot as the operator of the store and the other people who are the constructors of the store, there could be a lack of communication between those two entities. I am not sure we should withhold an occupancy permit on the matter of the lighting or noise, I think they can be attacked afterwards as well. It is not the only time that we have any influence over Home Depot.

Mayor Thalhofer stated I think where we should go tonight is to direct staff to take all possible efforts to get this matter handled as expeditiously as we possibly can and leave it to the discretion of the staff to do that. It sounds like the staff has been doing everything that they can, Home Depot or the contractors just haven't been willing to do what has to be done and we need to impress on them somehow that they have to comply with those conditions. Mr. Sercombe are you prepared to work with the staff to get that handled as expeditiously as possible.

Sercombe replied absolutely.

Mayor Thalhofer asked does anyone on Council have a different way of handling this?

Councilor Daoust asked if the route of a penalty provision were chosen, in other words we would let them know that in order to get the certificate of occupancy there would be a penalty for each day that they were out of compliance, what limits would we be able put on some kind of penalty provision and would that be acceptable.

Faith replied the Development Code lists the penalty as a minimum of \$500.00 and a maximum of \$1,000 per violation per day. However, that may not be a deterrent to them to get there doors open and start making some money.

Councilor Daoust stated well I don't understand that. They can't open their doors without a certificate of occupancy.

Faith replied it has happened before.

Councilor Ripma stated the fine doesn't do the residents any good.

Councilor Thompson stated the fine would work, it may not make them comply with the conditions before they are open, but after they are open they are not going to want to continue to pay the fine on a per day basis.

Mayor Thalhoffer stated I hope that the staff has direction from the Council that a political decision has been made by the Council that we want these conditions complied with as soon as possible and if necessary we will take other action.

Sercombe replied I think your direction is very clear.

Councilor Kight stated could you make a suggestion to the folks that have the PA system. That is old cheap technology in order to contact an employee, could you suggest to them that there is other means of communication without using a PA speaker in a neighborhood. Also, have you addressed the issue of them throwing freight at night?

McCallum replied I know there were questions about the ongoing operations of Home Depot, but because we don't have standards in the Development Code about that, and at the time they were reviewed the closest thing we had was the standard about the noise ordinance, and now we don't have that in the Development Code it has been superseded by the Municipal Code. We don't have a condition about loading and unloading freight and during what hours of operation they can do that.

Councilor Kight stated so they can be doing this at 1:00am in the morning?

Councilor Daoust stated we do have our noise ordinance.

Councilor Kight stated it doesn't necessarily address this type of an issue where they are loading and unloading freight.

Faith stated under the current noise ordinance if there is an unreasonable noise being created or produced from that site, that is grounds for complaints and the police will need to address it.

Houghtaling asked Ms. McCallum you were talking about the complaints that the residents had been lodging and how they started in September. The shields that you are referring to, is it correct that they are for about 9 or 10 wall lights on the north and west wall or were you talking about additional shields?

McCallum replied it is my understanding that the shields are for the exterior wall lights but in my many different e-mails and faxes to the architect I did raise the question about the garden center lights and most recently about the parking lot standards that the lights seem to have non-directional light. The condition is not just to the wall lights, the condition speaks to all exterior lighting. The shields that they have ordered, I understand are just for the wall lights but I have asked them to explain to me how they were going to address the other light issues and I have not received a response from them about that.

Mayor Thalhoffer asked Mr. Faith could you keep in touch with the neighbors and keep them apprized of what is happening as we go along the next few days.

Faith replied I would gladly provide an update to those individuals that have signed this letter.

Gloria Chevraux stated a lot of time when you have so many measures on the ballot people are misinformed on how things really are. Such as myself when I initially voted for Measure 11. None of my family had ever been in trouble with the law so I had never had to go through a judicial system. My Nephew, who is 47, got into a little brawl with his landlord, one of them fell down and hurt themselves really bad. My nephew ran to the phone and called 911, thinking he was doing the right thing, when he came out while talking on the cordless phone the gentlemen that was hurt had gotten up and got a shovel and hit him in the head giving him seven stitches, he grabbed the shovel from the man and hit him back. Now, because of Measure 11, which states first time offenders get maximum sentencing. Maximum sentencing for a second degree assault gets 70 months. This seems extremely outrageous for a fist fight, anyone of us would have done the same thing. There are many people sitting in our jails, overcrowding our jails, that have second degree offenses. The Judges have had the judgements taken out of their hands with this measure, they are not able to judge any longer, they have to comply with what the law says. I think that the law should be put back into the Judges hands, the only way that this will happen is by people voting yes on Measure 94.

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| <p>4. PUBLIC HEARING / ORDINANCES (Introduced 9/26/00):</p> <p>4.1 An Ordinance Granting a Franchise for Broadband, Cable, Institutional and Telecommunication services to RCN Telecom Services of Oregon, Inc. ("RCN")</p> <p>4.2 An Ordinance granting a franchise for Broadband, Cable, Institutional and Telecommunication services to Western Integrated Networks of Oregon Operating, L.L.C. ("WIN").</p> |
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Mayor Thalhofer read the Ordinance Titles and opened the Public Hearing at 8:10pm.

Norm Thomas, Chair of Mt. Hood Cable Regulatory Commission (MHCRC). On behalf of MHCRC we are very proud to bring these franchises to you tonight. We started out about a year ago with the initial requests from about ten to twelve companies to come in, out of that we wound up with four of which we have now managed to get down to two that have completed the entire process. Each company projects an investment of nearly \$500 million in Multnomah County alone to overbuild the existing cable and phone systems. RCN and WIN will provide new competition for AT&T Cable and Verizon Phone Systems. Of the various franchise applicants, RCN and WIN have particularly strong financial and management credentials. With competition consumers can look forward to cheaper packages, better services and more choices. The Consumers will also be able to bundle phone, cable and internet services for one rate with one billing cycle. Construction will be prompt, buildout will be in five years and must be completed by early 2006. (Thomas reviewed some of the key terms of the franchise agreement).

Councilor Kight asked what should the City expect in the form of revenue?

Thomas replied the standard 5% and whatever the telephone revenue fees are.

Councilor Kight asked is there a base amount that the City should be expecting?

Thomas replied it is 5% of the gross revenues.

Councilor Kight asked Mr. Sercombe, I noticed at the bottom of your memorandum you have a

sentence that reads "however the City should reserve this authority over use of the right-of-way for telecommunication services and participate in future discussions with MHCRC and its member jurisdictions about the scope and application of the IGA to telecommunications service providers". Are you telling us that it is not part of this document that we are going to be passing tonight?

Sercombe replied the franchise ordinance in both instances has language in it that reserves the City's ability to require a further franchise agreement from each of these companies with respect to telecommunication services and use of the right-of-way for that service. My understanding is that the IGA that we have with MHCRC is for certain types of franchises not telecom franchises and to the extent that this service by both of these providers is voice transmission that would require further franchise from the City.

Councilor Kight stated so there is a potential for more revenue for the City?

Sercombe replied possibly. It may be that there would be a different fee arrangement for the telecommunication services. That area is regulated under a different set of laws then that which regulates cable. There is a possibility of additional revenues or different kinds of charges that would come from an additional franchise requirement.

Councilor Daoust stated we are authorizing these companies to place facilities in our right-of-ways, and it looks like we are calling for them to provide open access. With open access on the broadband internet cable, if a new company comes in a year from now, are the current two companies suppose to provide them access over the infrastructure that they put in now or within the next five years?

Thomas replied I think we are talking two different things. If we are talking open access we are talking at this point of internet services only, we are not talking about renting space on your cable to run my video transmissions or a separate cable system. What we are talking about is if I am a teleport and I have the facilities to offer internet services on a cable platform I can lease that space from one of these two companies and use there platform to get my service out, the same way the phone company works.

Councilor Ripma asked we are being presented with two franchises and they are both the same, can you explain why we are granting two identical franchises at the same time?

Thomas replied the primary reason is we have non-exclusive franchise agreements within the city. Any company that wants to request a franchise can do so if they show valid reasons. It is up to you whether you want to approve both of the franchises. However, the way it is set up is that no company can come in and say that they have the exclusive rights to Multnomah County. It happened to work out that both franchise agreements were finished at the same time and from our perspective it was easier to present both of them at the same time.

Councilor Ripma stated what we will end up with is two competing broadband cable telecommunications services in the city.

Thomas replied actually we will have four. You will have Verizon, which was formally GTE, on the phone side, you have AT&T which has cable, internet and telephone and WIN and RCN which both offer cable, internet and telephone.

Councilor Ripma asked will that mean that the service ran on the poles will each be separate systems?

Thomas replied each one has its own infrastructure, yes.

Councilor Ripma asked is there any requirement for coordination for the construction?

Thomas replied we could not require that as far as the franchise but at the last meeting the companies stated they were willing to work together to see if they could coordinate that construction process, it would be cheaper for them.

Mayor Thalhoffer asked is there anyone else who would like to speak to us on this issue?

No public testimony received.

Mayor Thalhoffer closed the Public Hearing at 8:31 pm.

MOTION: Councilor Daoust moved to adopt both Ordinances - 4.1 an Ordinance granting a Franchise for Broadband, Cable, Institutional and Telecommunication services to RCN Telecom Services of Oregon, Inc. ("RCN") and 4.2 an Ordinance granting a franchise for Broadband, Cable, Institutional and Telecommunication services to Western Integrated Networks of Oregon Operating, L.L.C. ("WIN"). Seconded by Councilor Thompson.

Councilor Daoust stated this has been, from my impression, worked out very well by Mt. Hood Cable Regulatory Commission and by the companies involved.

Councilor Thompson thanked the Mt. Hood Cable Regulatory Commission for there work on this.

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

Mayor Thalhoffer called for a 10 minute break at 8:33pm.

5. PUBLIC HEARING / ORDINANCE (Introduced 10/10/00): An Ordinance annexing certain property in Section 24, Township 1N, Range 3E Willamette Meridian, to the City of Troutdale and amending the City's Comprehensive Plan Map to assign the Industrial designation and amending the City's Zoning Map to assign the General Industrial zoning designation to the property upon annexation and repealing Ordinance No. 694.

Mayor Thalhoffer read the Ordinance Title and opened the Public Hearing at 8:45pm.

Faith reviewed the staff report contained in the packed.

Council had no questions.

Mayor Thalhoffer asked is there anyone here who would like to speak to us on this issue?

No public testimony received.

Mayor Thalhoffer closed the Public Hearing at 8:48pm.

MOTION: Councilor Kight moved to adopt the Ordinance annexing certain property in Section 24, Township 1N, Range 3E Willamette Meridian, to the City of Troutdale and amending the City's Comprehensive Plan Map to assign the Industrial designation and amending the City's Zoning Map to assign the General Industrial zoning designation to the property upon annexation and repealing Ordinance No. 694. Seconded by Councilor Daoust.

YEAS: 6
NAYS: 0
ABSTAINED: 0

6. PUBLIC HEARING CONTINUANCE / ORDINANCE (Introduced 9/26/00): An Ordinance amending Troutdale Development Code for Compliance with Title 3 of the Metro Urban Growth Management Functional Plan pertaining to water quality and flood management and repealing Troutdale Municipal Code Chapter 15.24 Flood Damage Prevention.

Mayor Thalhoffer read the Ordinance Title and opened the Public Hearing at 8:50pm.

Councilor Kight stated based upon the advice from our City Attorney I am going to be standing down at this time because of a conflict of interest.

Councilor Ripma stated my conflict of interest is also on record and I will also step down.

McCallum reviewed the staff report contained in the packet. We received, on behalf of an affected property owner, a letter from Oregonians in Action (OIA). Metro has a response to that letter and I would like to turn it over them Metro at this time.

Ray Valone, Metro Growth Management Department. I am hear with Ken Helm of our General Counsels Office and Councilor Rod Park. I am going to let our legal counsel and Rod Park respond to the letter from Oregonians in Action.

Rod Park, Metro Councilor for this district. Upon receiving this letter from your staff I requested our legal department to go through the letter and address the issues. I think it is very important to make sure that the general public and others understand that we have different sections of Federal and State law that are applying in these particular instances and how it is important to keep the distinction separate, the difference between the clean water act and the endangered species act and those that will be future regulations by the National Marine Fisheries Services. With that Mr. Helm will review the issues addressed in the letter from OIA.

Ken Helm, Senior Assistant Attorney to the General Counsel of Metro. The first point that the letter from Oregonians in Action raises is that this Title 3 work that you have been going through for many

months and that your staff has worked extremely hard on, is a response to the National Marine Fisheries Service recent 4(d) Rule that became final in early September of this year. That is wrong, Title 3 was adopted as part of the Urban Growth Management Functional Plan that the Metro Council adopted in 1996, nearly four years before this 4(d) Rule became final. OIA raises the specter that somehow you will have to redo all these ordinances that you have worked so hard on in just a short period of time in order to comply to the rule. The only requirement of the 4(d) Rule is that you don't harm the fish. Any action that you take toward that is likely to promote the recovery of the species, that is exactly what these ordinances that you are considering do. If the City Council wants to go further at some point in the future and apply to NMFS for one of these limits, there is that opportunity but that is an option. The primary point here is that Title 3 is not a response, this portion of Title 3 which covers water quality and flood plain management, is not a response to NMFS's 4(d) Rule. You can feel confident that your work is addressing precisely the types of issues that Metro Council identified in 1996, which are regional water quality issues and regional flood plain issues. OIA also raises the issue that somehow these amendments to the comprehensive plan might be inconsistent with other portions of your comprehensive plan, and we agree in general that all of your amendments ought to be consistent with the other portions of the comprehensive plan. There is no evidence that these proposed amendments are and OIA doesn't offer you any particulars of which amendments might be inconsistent, in fact our staff review didn't raise any such issues, we think they are entirely consistent with your comprehensive plan. OIA also states that other local governments are taking the wait and see approach. Again, this is wrong. Nine jurisdictions are covered by the Unified Sewerage Agency (USA) on the west side of our region, all nine of those local jurisdictions in cooperation with USA are either in compliance with Title 3 or will be by the end of this month. In addition Happy Valley, Oregon City, Johnson City and Wood Village are already in compliance. The remainder of the jurisdictions in this area are either on there way to compliance just as you are, and are within meeting the deadlines that are set forth in the extensions that they have received. OIA spends most of its letter talking about Goal 5 which addresses primarily fish and wildlife habitat issues and how the City is making a mistake and violating Goal 5 by not following the procedures outlined in the Goal 5 rule. This is a fundamental misunderstanding of what Title 3 is and the division between Goals 5,6 and 7. Goal 6 is a general goal that requires local governments to not violate or threaten to violate federal environmental statutes and standards. Goal 7 is the Statewide Planning Goal that requires local governments to address natural hazards. Sections 1-4 of Title 3, which part of the sections that your proposed amendments respond to, are limited only to issues covered by Goal 6 and 7. In 1996 when LCDC amended the Goal 5 administrative rule they included a provision that explained the division between the three goals and to quote that "the requirements of Goal 5 do not apply to the adoption of measures required by Goals 6 and 7". I don't think anything could be clearer than that. You are engaged in a Goal 6 and 7 activity, it has nothing to do with Goal 5 at this time. The insertions that you are violating Goal 5 are simply wrong. At the end of last month LCDC voted to acknowledge Title 3 for compliance with all of the Statewide Planning Goals. The final point I would like to make is that OIA implies that Metro has been threatening you with enforcement action if you don't act. I don't see any threats. There are various implications for local governments failure to follow the functional plan and those are built into state law.

Mayor Thalhoffer asked we have made substantial progress on this. This is our sixth hearing on this ordinance. One of the things that has been a problem to me is where do you start measuring. It sticks in my mind that the ordinary high water mark is where you should start, and I know there is a difference of opinion on that. Since our last meeting you have probably done some checking on this, what have you come up with Ms. McCallum?

McCallum replied Metro's ordinance is requiring that we start at the bankfull stage which the definition that I brought to you two weeks ago gave four ways to determine that starting point. There is a distinction between the definition of bankfull stage and ordinary high water or mean high water. Metro, in their model ordinance, does define ordinary mean high water line from the Oregon Administrative Rules as the line on the bank or shore to which water ordinarily rises in season. Rich and I did go to the White's property and stood on the bank of the Sandy River, Jack Glass was with us and we were looking at bankfull stage and mean high water or ordinary high water, it is very difficult to tell when you are standing there where it might be. As I understand Metro's goal, they have every intention of that being the most restrictive. In other words it would mean a bankfull stage is during an actual high water event after a storm, where the ordinary mean high water line is not quite the same. When you stand on the bank, Jack Glass said we could with some certainty, establish where a mean high water line could be. Rich and I both looked at mineral deposits on rocks and where vegetation was eroded away, that was pretty evident. It was very difficult to tell where we would establish a bankfull stage even with the four determinants.

Mayor Thalhofer asked could you explain the difference between ordinary high water mark and ordinary mean high water mark.

McCallum replied from what I have been able to find, definitions from professional literature and what was available in the OAR's, there is no real distinction there.

Mayor Thalhofer asked if there is no distinction why are we worrying about it, why not go with the ordinary high water mark? The ordinary high water mark as I see it, correct me if I am wrong, but I can look at the Sandy River today and I can see where the water has been normally, it is pretty clear where that is. That would be the ordinary high water mark, right?

McCallum replied the definition for ordinary mean high water line is from the Metro glossary section of Title 3, I could not come up with a definition for just ordinary high water line.

Mayor Thalhofer is there someone from Metro that could respond to this?

Rod Park stated the main determination here is the Metro Code uses the bankfull stage as the starting point for not just Troutdale but for the entire region. Within the code there is the term substantial compliance and there is a process and procedure that if Troutdale wants to go through it and show that they can come up with the same process as to how you come up with the goal of protection that is the same, you have that process open to you. In order to keep it a fair playing field across the region we are using the same terminology across the region. If you would like to vary off from that there will have to be work done by Troutdale to show how a change to that would comply.

Ray Valone stated in my response letter to Ms. McCallum's inquiry to this I went through what I found out about high water mark. What I found was in asking the person who took this through this two year process with the Water Resources Policy Advisory Committee, they all landed on bankfull stage as being more representative of a way to measure for protection of the terrestrial component, the vegetative corridor itself. When you go to the State Statutes and look at ordinary high water mark, what you find is those are rules for leasing and registration of structures on and uses of state owned submerged and submersible lands. What the ordinary high water mark has been traditionally used for is for governing the management of submerged and submersible land

including marine facilities and floating homes and this kind of thing as well as establishing procedures for authorizing structures on and use of state submerged lands. The bankfull stage is found in State Statutes and is for governing more of the vegetated corridor and protecting water quality with the infiltration and the corridor along it, not dealing with structures in the water. Trying to determine the bankfull stage, it isn't any clear cut line, obviously it isn't for high water line as well from what I can find. The definition talks about if there is no physical evidence for the bankfull stage being an area that contains the water in a channel then you defer to a two year storm event. Having searched, trying to get deeper into this as to why we arrived at bankfull stage, I couldn't find that ordinary high water mark is any more clear, or could be just as changeable as bankfull stage. I included with my letter the way that the Unified Sewerage Agency looks at different ways of determining this, and they offer three or four ways of determining this.

Mayor Thalhoffer asked and we are to take to most restrictive of the four, is that correct.

Valone replied I am not sure we necessarily need the most restrictive way of finding the bankfull stage, this is the Unified Sewerage Agency and I included it to try to give you some points to start from. I don't think we need the most restrictive.

Mayor Thalhoffer asked in other words if we didn't choose the most restrictive we wouldn't be in non-compliance?

Valone replied not if you found a way of determining bankfull stage, whatever that way would be, or the two year storm event and maybe there was three or four ways to derive at that, I wouldn't think we would have a problem with that.

Mayor Thalhoffer asked what if we came up with the ordinary high water mark that you could see, would that work?

Valone replied the only thing I can tell you at this point is if the Council chooses to adopt that, we would ask for a letter asking us if this is in substantial compliance. The way Title 3 reads for substantial compliance is that a change is minor or technical in nature. If you can show us that the differences are minor, then we can probably buy off on substantial compliance. If they are not minor, then we may not and I can not answer you on that tonight.

Councilor Daoust stated this has been a major point of our discussion. I would tend to think that the two year recurrent flood elevation would be a minor difference from the ordinary mean high water mark. In other words if the Council were to drop the four conditions of which you could describe bankfull stage, because I see a problem with soil saturation points within the upper twelve inches of the surface. If we stay with the indicator that is the most distant from the water feature and we are still digging soil pits and we reach water and we are going out 100' from the stream, we are saying right here that we would take that indicator and I think that maybe that is not what we want. I think if we just stick with the two year recurrent flood elevation, in my mind that is a minor difference from the ordinary mean high water mark. We had a letter from McMenamins back on August 22nd and they were requesting time to look at Title 3 because they needed time to consider the affect on the Pig Farm development and the affect it would have on that, have we heard any more from them?

McCallum replied Rich Faith, Tim Sercombe, Marnie Allen and I met with Steve Abble and

McMenamins and we discussed some of the issues there but we have not had a follow-up meeting since then.

Sercombe replied I have not heard any more suggested changes to the ordinance. One of these suggested changes was to take some of the comprehensive plan amendments out which we did, beyond that we have had no more specific suggestions from them.

Councilor Daoust stated we have been focusing on the vegetation corridor but there is also flood management areas. Looking at the map it looks like the entire area between the Sandy River and Beaver Creek is a flood management area. I recognize that Mr. White is concerned about the vegetation corridor but in what respect would he be influenced by being within a flood management area?

McCallum replied on Mr. White's property, since Metro created these Title 3 maps and since the flood insurance maps were produced the Whites received a letter of map amendment, based upon fill, that has established that the majority of their property is above the base flood elevation.

Councilor Daoust stated in Ray Valone's response there was a sentence in there that read "remember after the time it takes to develop standards it is another 18 to 24 months before compliance is required", could you explain that?

Valone replied in adopting the Functional Plan as a whole, we said that local governments have two years to comply with the provisions of the Functional Plan. When we adopted Title 3 in June of 1998, we said that local governments have 18 months to comply with it. What I was trying to point out when I made that statement is, it is not as if local governments will adopt Title 3 and in three months you will be facing Goal 5 regulations. The point I was making is even after any kind of Goal 5 regulations may be adopted at the regional level, it is going to be 18 to 24 months that local governments will have to comply with Goal 5.

Mayor Thalsofer asked I guess the question is how do they determine where they start measuring from to be in compliance with Title 3?

McCallum replied based upon what Ray Valone has mentioned this evening, that we don't need to necessarily take the most restrictive marker. The change in the definition that I have proposed that now includes "in the absence of any data to establish the bankfull stage or two year storm event, the starting point for measuring the vegetation corridor is determined by four indicators one of them being that soil saturation within the upper twelve inches of the surface." Councilor Daoust's point is well taken, in that we could have saturation in many parts of the city within the upper twelve inches hundreds of feet away from the river, and so maybe we could take that indicator and maybe the last sentence in the revised definition that reads "the outer edge of the indicator that is most distant from the protective water feature is to be used as the starting point for measuring the vegetation corridor width". Maybe the inner two provisions alone will be sufficient.

Mayor Thalsofer asked does Metro have a response to that?

Park replied I think we have been pretty clear that Metro Code requires bankfull stage. You are asking for an answer to a question that we have no data on for a certain piece of property. I think the starting point for everyone across the region is the same place. If you are trying to choose a different starting point or can show that the bankfull stage or a two-year event is the same as the

mean high water mark, then that would be up to the city or the developer to bring that forward. I think the key to be fair across the region is that everyone starts at the same point and if there is any variances across the region then there is a way to accomplish that. But to start trying to vary the starting point, if we adjust it in Troutdale then what do we measure it against in other jurisdictions. We are trying to start at the same point and if you can come up with, through studies, that you can come into substantial compliance then Metro is satisfied. You are asking for something that until someone brings the information forward we have no way of responding intelligently.

Mayor Thalhoffer stated well Ms. McCallum just read off what we are talking about.

McCallum stated if we identify bankfull stage with the indicators 2,3 and 4 of what the Unified Sewerage Agency adopted?

Park replied I think that would be fine, but like I said someone has to bring that forward and show that it is substantial compliance.

Councilor Daoust stated I think all we are talking about is a terminology difference here. I think if we were to go with bankfull stage as defined by the two year recurrent flood elevation, to me that is the same as mean high water mark, it is the same point. If we drop the soil saturation criteria and drop the outer edge as the indicator as the most distant, then we would still be dealing with bankfull stage and it would be the same definition that Metro has for the region.

Valone stated if you do what Ms. McCallum has suggested and Councilor Daoust just reiterated, as far as I can tell at this point I think that would be substantial compliance. I am not the final say, but our Council earlier was saying that it seems like number one is probably more specific to the Tualatin basin. So, if 2,3 and 4 which are marks and drift lines would seem to be more appropriate to the Sandy River area, so if that is the case and it is fairly equivalent to the two year storm event, I would say it is a good case for substantial compliance.

Councilor Daoust asked regarding the Town Center area which is a critical development area, Metro's response to that would be first we put Title 3 in place and then we could come back later and do what is called a buffer averaging plan for specific areas. This would mean you would have thinner buffers in some areas corresponding with wider buffers in other areas. How big of a process would that be, and would that be something that we would incorporate into the Goal 5 work or would it be separate?

Valone replied I can't answer the level of work that would take. It would be a separate action but it wouldn't necessarily carry over into any Goal 5 work, you would just apply to amend your Title 3 Code and we would review that.

Glenn White stated I represent a group of land owners primarily on the Sandy River. I have a signed petition (copy is in the packet) by property owners stating that they object to the passing of Metro Title 3 in Troutdale. In listening tonight, you can't count the number of times they have mentioned Goal 5 tonight. We have talked to Metro planners on how Title 3 came about and how it can be taken away from Goal 5 because it is pretty much the same thing. If we look at the latest revised version of Title 3 you can clearly see the definition for Goal 5. On page 6, section 1.040 Vegetation Corridor and Slope District and Water Quality and Flood Management definitions. At the bottom of the page it says "Statewide Planning Goal 5, Oregon Statewide Planning Goal that

addresses open spaces and scenic and historic areas and natural resources, the purpose of the goal is to consider open spaces and protect natural scenic resources." That is the definition for Goal 5. Now on page 8 it gives the definition of Title 3 which reads "Title 3 is part of Metro's Urban Growth Management Functional Plan pertaining to water quality, flood management, fish and wildlife conservation, directly pertains to Statewide Planning for Goal 5,6 and 7." Under its own definition it directly pertains to Goal 5. That is why the letter that was written by OIA clearly has a lot to do with Goal 5 based on its own definition. Metro's attorney here tonight stated that their letter had nothing to do with Goal 5, how is this possible? The attorney also neglected to respond to the last paragraph of the letter which is what we were talking about on the setbacks. I think it is clear that there is no way to separate Title 3 from Goal 5. My problem with Goal 5 is there is no comprehensive plan for Goal 5 to review, so why are we putting the cart before the horse.

Mayor Thalhofer stated don't you think that the City of Troutdale has separated out Goal 5 from the Title 3. We have made a lot of amendments to this.

White replied I think those amendments just point out the fact that there is some serious flaws with this even the aggressive nature of Metro. It is grossly unfair to use bankfull stage because the starting point has always been ordinary high water mark. I have a definition of ordinary high water mark since no one else seemed to be able to locate that (Glenn handed the Council a document which contained the definition). It talks about using the mean high water mark if there isn't a mark determined. Anybody can walk down to the Sandy River and see where the ordinary high water mark is. We are right back to a 75' setback if we want to start at bankfull stage. I would like to ask the Metro people where they got the term bankfull stage.

Ken Helm replied the definition is taken out of Oregon Administrative Rules and it is a common definition that is used by a number of different state agencies. It is also used by the Unified Sewerage Agency over on the west side.

White stated the lawyers at OIA found out that bankfull stage is the measuring point for the buffer requirements both Metro and LCDC's Goal 5 administrative rules. This standard is taken from the Oregon Division of State Lands and Fill and Removal Rules. This has nothing to do with stream side buffers.

Helm replied lets back up a minute. Councilors, you are considering tonight how is the fairest method, in your jurisdiction, to start measuring these different distances. Ray Valone gave you a good synopsis of the options for doing that which might be fair. The fact of the matter is and the fact that what you are dealing with is, the Metro Council has already adopted this definition and the question for substantial compliance is whether the way that you measure is close enough to that. I suggest that it is not a good use of your time tonight to question the origin or the reasons that the Metro Council adopted this way of measuring. The question of substantial compliance is this, our standard is that the changes that are being proposed are minor or technical in nature. Substituting another definition for bankfull stage is not a minor or technical variation. Using a definition that is similar to the one in the Metro Code and explaining how the results of the way that you measure are similar to the results if you used the Metro definition, is a way to substantially comply. I think that is the path for you to take in trying to figure out a fair way to measure that works for both the City's needs and also complies with the regional regulation.

White stated I think a more fair way is to keep it the way it has always been, otherwise we are going

to have a huge problem trying to figure out where that point is when we already have an excellent means to determine the ordinary high water mark. I asked you the question, where did you get the definition and you haven't really answered why you took it out of a ordinance that is designed for fill and removal.

Valone stated when I did my research on where the definition came from, Mr. White is correct in that one of the places that bankfull stage is used, quoting the definition from my letter dated October 3, 2000, it is for governing the administration and enforcement control of removal of material from the beds and banks or filling of the waters of this state and are to be used in conjunction with the rules governing estuarine resource replacement and the management of the Lower Willamette River. It also was an accepted definition that was arrived upon after two years of study. As I had mentioned earlier, ordinary high water comes from a different place entirely, it comes from governing submersible land issues and marine facilities. What Title 3's intent to do is to protect water quality through the terrestrial, the land bordering these water features. Which one is more appropriate? We could say that none of them say this will be for vegetative corridor, that doesn't appear in the state writings. The bankfull stage is legitimate, if not more so, for what its intended to do then ordinary high water mark. The purpose of these regulations is to protect water quality and still maintain healthy corridors.

Rod Park stated part of this Goal of the Title 3 regulations is flood plain protection and part of that is the balanced cut and fill portion which is as you change the river that you maintain the same volume within that particular area. It is a question of fairness especially when you come to something like the Johnson Creek area where in other years where areas have been filled in which has forced those that are down closer to the end to continue to have flooding problems. So part of this is to make sure that you don't fill areas in and shift the problem to your neighbor down stream as you benefit. Part of the bankfull stage coming from that particular portion does make sense. I want to address another issue that was brought up, we are talking here strictly about a water quality issue, not habitat issue or endangered species issue other then how it relates to the clean water act. Those are very important distinctions to keep in mind.

White stated I haven't seen any science that pertains to how a deck on a persons house is damaging the water quality when we have streets that drain directly into the Sandy River. To me if I was going to attack this problem from a water quality standpoint, that would be my first step and it is not even addressed in this entire packet. If we are talking about water quality lets start at the top, the main offender, lets not take away personal property rights and do it prematurely when all this is going to be addressed statewide with Goal 5 anyway. That is all the citizens are trying to say. We don't see the proper steps being taken, instead we see an aggressive land grab. I was told one of the reasons that my property wasn't considered for acquisition from Metro is because they don't need to buy my property, they are going to obtain it through Title 3, it sounds like they are very close to doing that.

Councilor Daoust asked Mr. White, at the last meeting I think we recommended that if the citizens had any specific ordinance changes that you wanted to recommend that you would bring them forward. In your talking with all these people that signed this petition, are you bringing forward any specific changes that you would like to see?

White replied our tactic here was to point out that there is an unnatural separation, you can not separate Title 3 from Goal 5 and we had a letter sent out to City Council prior to this meeting

showing that. I don't feel Metro did a very good job, they didn't even address the last paragraph regarding the setback. All we are saying is why are we being rushed, there is no penalty for us to wait and see. I think Portland should be an example, they are not accepting Title 3 they are going to do it with Goal 5. I think Troutdale should follow suit, there is no penalty if we don't. If you go through with this I plan on getting a petition going and bring it to the voters of Troutdale. It is clearly unfair. The property owners on the Sandy River almost lost the rights to their houses, all the homes would have been non-conforming uses. We were able to correct that with the help of the Council. The definition of Title 3 which we just found recently reads that Title 3 is part of the Metro Urban Growth Management Function Plan pertaining to water quality, flood management, fish and wildlife conservation and directly pertains to Statewide Planning Goal 5, 6 and 7.

Councilor Daoust asked could Metrostaff respond to two points Mr. White brought up. The first one is where is the City of Portland at with Title 3 and the second is the situation of Title 3 versus Goal 5 and why are we doing that now.

Rod Park stated since I have had contact with Mayor Katz in dealing with this particular issue I will respond to that. They are complying with Title 3, that is their intention. They are not coupling it up, as suggested, with Goal 5. I would like to remind folks that Metro Policy Advisory Committee (MPAC), back when this issue started in 1996, deliberately at that time separated the two issues. They felt that taking them on at the same time would be too big for local staffs to handle as well as Metro. They wanted to address the water quality issue first because they felt it would be easier. Mr. White brings up the issue about storm water runoff which is something that in its current form the City is going to have to address with National Marine Fisheries Services as we do not have a plan to address that.

Helm stated as we were talking about property rights and safety valves that are already part of your zoning ordinance that protect property rights and allow folks with special circumstances to develop their property with the appropriate types of mitigation and requirements. I wanted to make sure that you were aware of two different provisions of Title 3. I did just discuss with Ms. McCallum to check that these were reflected in your proposed amendments to your comprehensive plan which she says they are. The first one is a safety valve specifically for the purpose of ensuring that properties that are encumbered by the Title 3 regulations to such an extent that they wouldn't be buildable otherwise, at your discretion can be relieved of that burden. What the code says is that for lots or parcels which are fully or predominantly within a water quality resource area and are demonstrated to be unbuildable by the vegetative corridor regulations, cities and counties shall reduce or remove the vegetative corridor regulations to assure the lot or parcel will be buildable. I understand the Ms. McCallum has addressed this safety valve by linking it to your existing variance provision. So you have a built in ability to deal with special circumstances as they arise. The other provision is what is referred to as the alternative analysis. Title 3 isn't a prohibition on development near streams and wetlands, it is a regulation on how we do that. Land owners that have land that is close to streams or wetlands that want to build and don't have viable alternatives can go through an alternative analysis that demonstrates that there is no practical place other than where they want to build to do their development and that they can do mitigation to enhance other areas of the property to compensate for the damage they are doing to the vegetation corridor. Those are built into your comprehensive plan amendments as proposed.

White stated I am not talking about doing a variance or doing an ESEE analysis to build in the vegetation corridor. You can't separate this from Goal 5. Secondly we need to keep the starting

point where it is very clearly defined and has been used for decades. There is a clear mark on the Sandy River that you can see, I don't mind using mean high water mark on smaller streams where it is less visible, but on the Sandy where you can clearly see it. I think people should be allowed to have traditional riparian rights, it provides no access for a handicap person. If someone were in a wheelchair they would not be able to make it down to the riverbank on their own private property if this ordinance goes through. If you are going to legislate my property to the point of telling me which plants I can plant, I would have no use for it and there needs to be some kind of compensation to the property owner. That is why I am saying lets wait until Goal 5, it addresses these issues.

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

No further testimony received.

Mayor Thalhofer closed the Public Hearing at 10:17pm.

MOTION: Councilor Daoust moved to adopt the Ordinance amending Troutdale Development Code for Compliance with Title 3 of the Metro Urban Growth Management Functional Plan pertaining to water quality and flood management and repealing Troutdale Municipal Code Chapter 15.24 Flood Damage Prevention with one change and that is in the definition of Bankfull Stage in exhibit 1. Delete indicator number 1 which reads "soil saturation within the upper twelve inches of the surface" and delete the last sentence of that definition which reads "the outer edge of the indicator that is most distant from the protected water feature is to be used as the starting point for measuring the vegetation corridor width". Seconded by Councilor Thompson.

Councilor Daoust stated I think we do have a Title 3 that is specific to Troutdale but it is in compliance with Metro. We have had six hearings on this and we have made changes after every hearing to take into account public input that we have had. The purpose of Title 3 is to protect water quality with vegetative corridors and flood plains. Our challenge is to balance that with personal property rights and I think we have done that the best we can with Title 3 with the changes that we have made. The City can put Title 3 in place and then if we feel that we need to we can come back later with a plan to buffer average the Town Center area, if that is something that the Council wants to do for that area. I do feel that we need to put Title 3 in place. I agree that we have made amendments and we do have safety valves for property owners as was mentioned. A developer or property owner can exercise there option to apply for variances to Title 3. We have the alternative analysis if they have no other place to build, those are the safety valves mentioned. We asked for specific changes from the public, but all we got lately was that they just didn't want us to move on this at all, they just wanted us to drop it. There was a lack of specific input that we can deal with other then the definition of where to start measuring. I think with the changes that I have proposed to the definition, I really do think that the definition of ordinary mean high water mark is the same as the two year recurrent flood elevation storm level. I believe that we are talking about the same identical

point. Therefore, I really don't see a need to deal with just terminology changes where we call it the ordinary mean high water mark instead of bankfull stage, because I think the definition that we have now that I have changed is the same point within reason, in other words it is substantial compliance. I realize that the public wants us to deal with Goal 5 all at once, we did have a tough time just dealing with water quality and vegetation corridors. I think we are going to have a tougher time dealing with habitat protection and clean water act when we get to Goal 5. I think dealing with Title 3 was enough for us to handle now and I think we have adequately done that.

Councilor Thompson stated I think we have tweaked this ordinance enough especially with the changes to the definition of bankfull stage. I agree with Councilor Daoust that Goal 5 is going to be a real tough one to deal with, not nearly as easy as this one, and this one took six meetings. I think it gives enough protection to the property owners with the variance provisions and I think it will meet Metro's requirements.

Councilor Smith stated basically I agree with what is going on. We have covered our concerns about McMenamans and the property for the individuals. I do think we do need this type of thing in general because we are running out of open spaces and I am concerned about this and I think this does help.

Mayor Thalhoffer stated we have talked to Metro about combining Goal 5 and Title 3 and they refused to let any jurisdiction do that. I thought it made sense to do that. I can go down to the Sandy River now and tell you where the ordinary high water mark is, I don't need a formula to figure that out. I don't know what is wrong with starting the measurement from the ordinary high water mark but I guess with the changes that we have made to the definition perhaps it will end up being very close to the ordinary high water mark. It is not very satisfactory to me to have to do it this way and deal with it at this many hearings, although we have changed it considerably at least we have been responsible from that stand point to give protection to property owners. Still it leaves a bad taste in my mouth to pass this. I think we have done enough with it that it will be workable for the property owners. I don't like it, but I think I will vote for it and see how it works because I think we have done everything that we can do. From now on it will be up to our staff to help us work through this and deal with our property owners. When we go to find out where the starting point is to measure, we need to be flexible and I think we have some flexibility here. If it turns out that we don't have flexibility like we are trying to work out here tonight, then I think we will have to revisit it.

YEAS: 4
NAYS: 0
ABSTAINED: 0

7. COUNCIL CONCERNS AND INITIATIVES

Mayor Thalhofer called this item.

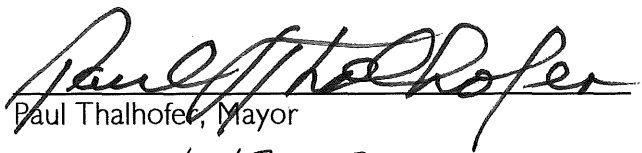
The Council urged the citizens to vote.

8. ADJOURNMENT

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


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

Meeting was adjourned at 10:30pm.


Paul Thalhofer, Mayor

Dated: 11-17-00

ATTEST:


Debbie Stickney, City Recorder

CITY OF TROUTDALE PUBLIC ATTENDANCE RECORD

October 24, 2000
CITY COUNCIL REGULAR MEETING

PLEASE COMPLETE THE FOLLOWING

NAME <small>(please print)</small>	ADDRESS	PHONE #
Nicolasa A. Bloom	Western Integrated Networks	(503) 868-0781
ROBERT A. HOUGHTALING	2630 SW McMINNIS AVE	503 665-1811
Shannon Turk	705 SE 10	503 669-2091
Gloria Chevraux	481 SE 43rd	503 492 0867
Melissa Roberts	1535 SE 60th Ave PDX	503 226-8458
Dan Piluso	1616 SE JACOBSON PARK RD	503 674-0131
Gleann White	1225 E. Historic Col. Rd Hwy	(503) 669-9759
Long Feddersen	1024 SW 425th	
Stephen Feddersen	1024 SW 12th St	503 661-5931
RAY VALONE	600 NE GRANDS, PDX <small>METRO</small>	503-797-1808