



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

7:00 P.M. -- November 14, 2000

EXECUTIVE DEPARTMENT

Fax (503) 665-7265

Administration

City Administrator
City Recorder

Human Resources

Community Services

- (A) 1. **PLEDGE OF ALLEGIANCE, ROLL CALL, AGENDA UPDATE**
- (A) 2. **CONSENT AGENDA:**
- 2.1 **Accept Minutes:** October 10, 2000 Regular City Council meeting, October 24, 2000 Regular City Council meeting.
- 2.2 **Approve Liquor Licenses:** Celebrate Me Home, Fortuna Chinese Restaurant, Godfather's Pizza, McMenamins - Edgefield Brewery, McMenamins - The Black Rabbit Restaurant & Bar, Plaid Pantry #137, Safeway, Inc., Skyland Pub, Tad's Chicken & Dumplings, Tippy Canoe Bar & Grill, The Brass Rail, Troutdale Chevron and Troutdale Thriftway.
- 2.3 **Resolution:** A Resolution approving an Intergovernmental Agreement with Metro for the City of Troutdale's Annual Waste Reduction Plan for Year Eleven (2000-2001).
- 2.4 **Resolution:** A Resolution recognizing the completion of a new storm sewer main associated with the Improvements at the intersection of Troutdale Road and Stark Street and accepting it into the City's Fixed Asset System.
- 2.5 **Resolution:** A Resolution recognizing the completion of the capital improvements associated with the Public Works Shop Parking and Pedestrian improvements project and accepting them into the City's Fixed Asset System.
- 2.6 **Resolution:** A Resolution recognizing the completion of the capital improvements associated with the North Evans Outfall project and accepting them into the City's Fixed Asset System.
- 2.7 **Resolution:** A Resolution approving a Memorandum of Understanding with Tri-Met and the Mid-County Lighting District for streetlight installation at the bus layover on SE 2nd Street at Dora Avenue.
- (I) 3. **PUBLIC COMMENT:** Please restrict comments to non-agenda items at this time.
- (A) 4. **PROCLAMATION:** Mediation Month - November 2000
- (A) 5. **PUBLIC HEARING / APPEAL:** An Appeal of the Planning Commission's decision in the matter of Case File No. 00-025, setback variance for Sandy Frontier Trailer Court. Faith

(I) 6. COUNCIL CONCERNS AND INITIATIVES

(A) 7. ADJOURNMENT


Paul Thalhofer, Mayor

Dated: 11-7-00

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

November 14, 2000 7:00pm

Meeting was called to order at 7:03 p.m. by Mayor Thalhofer.

1. PLEDGE OF ALLEGIANCE, ROLL CALL, AGENDA UPDATE

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

PRESENT: Smith, Kight, Rabe, Daoust, Thalhofer.

STAFF: Faith, Galloway, Seivers, Kvarsten, Sercombe, Stickney

GUESTS: See Attached.

Mayor Thalhofer asked are there any agenda updates?

Kvarsten replied we have an addition to agenda item 2.2 and that is an liquor license application for the Troutdale Office.

2. CONSENT AGENDA:

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Mayor Thalhofer called this item and read the consent agenda.

MOTION: Councilor Daoust moved adoption of the consent agenda with the addition of the liquor license application for the Troutdale Office. Councilor Rabe seconded the motion.

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

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

Mayor Thalhofer called this item and asked if there was anyone here to speak to us on a non-agenda item?

Marty McMahan stated I have been a Troutdale resident for 11 years. For those of you that didn't get to know me during this past election, I worked with Norm Thomas on his campaign. Prior to getting involved in this I hadn't really gotten involved at all in Troutdale politics, what I had heard about it was not good and it didn't give me any incentive to want to get involved. During the course of this campaign, and I should probably say that I talked to a couple of reporters before this campaign was over, this was not related to who won and who did not win, I said that I was going to attend the first Council meeting after the election, speak to the Council about some of my concerns about how Troutdale is being represented by the current City Council. I don't want to pick on anybody individually, because I don't think that is fair, but what I have learned over the course that I have been involved in this and what I have seen over the course of time that I have been involved in this is not very good. Quite frankly, as a resident of Troutdale I am pretty disappointed in the City Council. The tone in this last campaign was far nastier than it had to be. The issues that we were talking about were not nearly as significant as that kind of tone would have indicated they were. There are a lot of things that we share in common about what we want for Troutdale. I don't think that this was necessary. I don't think this was necessarily a battle of good versus evil, as it sometimes got to be portrayed. I expect more from the City Council than what we got. What my thing became as the campaign went on, rather than what property got developed into what or where a park should go or any of those particular issues, as a resident of Troutdale, as an elder in my church, my thing became, this has got to stop. At some place somebody has to step up and say this is not becoming of our City. I have heard from other leaders from other commissions and other cities in this community, I have seen what has been in the press, it is not real favorable towards the city right now. As a Troutdale resident that is disappointing to me. Somewhere somebody needs to take the leadership, somebody needs to step up and say okay, we are going to let whatever happened in the past be over with, we are going to drop it and we are going to move on in a different way. For some people that is going to mean that you are going to have to adopt a new style of interacting with people and a new style of leadership. But to continue on in this vain is quite frankly an embarrassment to Troutdale. It has got to stop. This is not just a two year old issue. I've gone back, I have been here for 11 years and I have never heard, now when you get into different politicians and people start mentioning names and there are some people that like this person or dislike that person for whatever reasons, but when you just get into generically talking about Troutdale politics, I have never heard a good word about it. That is a sad statement. This is my concern. I had the question asked of me by a reporter, if you would have got involved in the mud slinging and got your name out there more, that maybe you would have done better in the election? We said from the beginning that we will not go there and if that means we lose, that means we lose. There are some things more important than holding a position on

the City Council. I firmly believe that. I am very concerned at this point of the direction that the politics in Troutdale has taken. If there are people in the community that you don't like, well those things happen. But if I am a businessman that some of the City Councilmen don't like, no I don't deserve any preferential treatment when I come to the City Council, but I don't deserve to be blasted either. I should be addressed on the merits of what I proposed to the Council and whether or not that is in the best interest of the City. Our City Council should not be going out and attacking this businessman or have a favoritism over that businessman or this person in the community or that person in the community or this former council person or that former council person, it has got to stop. From this point forward I will continue to watch and take issue with this and continue to write letters to the editor and come out publicly and say this is not okay.

Mayor Thalhoffer stated we intend to have a Council relations meeting sometime between Thanksgiving and Christmas and discuss everything.

4. PROCLAMATION: Mediation Month - November, 2000

Mayor Thalhoffer called this item and read the proclamation.

5. PUBLIC HEARING / APPEAL: An Appeal of the Planning Commission's decision in the matter of Case File No. 00-025, setback variance for Sandy Frontier Trailer Court.

Mayor Thalhoffer called this item and asked Mr. Sercombe to go over the process for this appeal hearing.

Sercombe stated I am going to talk about the rules that apply to this hearing and how the hearing will be conducted. Item #5 on tonight's agenda is a quasi judicial land use hearing. A staff report has been prepared on this item and has been made available seven days before tonight's hearing. That staff report analyzes and discusses the approval criteria for this variance application and talks about how those criteria would apply in this case. The criteria is set out in Troutdale Development Code (TDC) 6.240 relating to the criteria for a variance and TDC 5.320 relating to the continuance of a non-conforming development or use. The procedure that we will follow for this hearing is set out in state law and in our development code and will be as follows: First the staff will present the staff report and comments. Then the Mayor will open the Public Hearing. The applicant will present the application and explain why she believes the criteria are met. Then anyone who wants to testify in support of this application for this variance may present his or her position. After that anyone who wants to testify in opposition to the application, leading off with the appellant, may present his or her position. If there is testimony in opposition, then the applicant will have a chance to rebut that and that will conclude the evidentiary presentation of the hearing. After all that testimony has been submitted, the Mayor will close the Public Hearing and the Council will deliberate towards a decision. It will likely then inform the staff tentatively of what that decision is and direct the staff to come back to the Council in two weeks with a formalization of that decision, with findings and a decisional document which they will then adopt on November 28th. If you are going to testify or submit evidence, you should start by stating your name for the record so that we can have it for the purpose of the minutes and record of the hearing. Your testimony and evidence should be directed toward the approval criteria set out in the TDC relating to how to get a variance and to the continuation of a non-conforming development or use. If you believe other criteria apply in addition to those that are addressed in the staff report, you must identify and discuss those criteria, explain why it is you believe they apply to this application, so if you contend that you have

a legal point that you think governs this application, it is important that you bring that out at this hearing or you won't be able to argue about it before LUBA or any other proceeding relating to this. We may reasonably limit oral testimony, presentations in length or content depending on time constraints. However, any party may submit written material of any length while the public record is still open. Council will be operating under a limitation called the 120 day rule which requires that the city conclude its action on this application by a time later this month, which I believe is November 28th. So it is unlikely that the Council, without the consent of the applicant, would grant any significant continuance. If we make a decision that you disagree with, any issue that you want to raise on appeal to the Land Use Board of Appeals (LUBA) or any constitutional or other issues you want to raise in circuit court regarding any proposed condition of approval, must be raised here tonight with enough detail so that the Council can understand and respond to this issue. So if you are opposed to this and you are trying to raise legal contention it is important that you be very specific as to what that contention is so that the Council, the City and the applicant can respond to that contention. Failure to raise an issue on the record, including objections to proposed conditions of approval with sufficient specificity to afford the city and all parties the opportunity to respond to the issue will preclude appeal on that issue to the Land Use Board of Appeals and will preclude any action for damages in circuit court. What that means again, is if you don't raise an issue tonight with sufficient specificity, you can't then use that as a basis for appealing further beyond the city action. At this time, Mr. Mayor, it would be the Council's obligation to disclose any site visits, any ex-parte contacts, conflicts of interest or bias.

Mayor Thalhoffer asked is there any ex-parte contacts, site visits, conflicts of interest or bias that any Councilor needs to disclose?

None disclosed.

Mayor Thalhoffer opened the Public Hearing and asked the staff to make their presentation.

Faith stated before I turn it over to our Associate Planner, Jason Seivers, who will give our staff report, I wanted to make a few comments to clear the air of some confusion that exists about the nature of this appeal and the issue before you. I think it is very important for you to understand that this appeal pertains to the decision that the Planning Commission rendered to grant a setback variance. That decision did not address the encroachment of the manufactured home into the public right-of-way. The decision of the Planning Commission dealt only with the side yard and front yard setback and their decision was to grant a zero side yard setback. The Planning Commission was very careful in that decision that they separated themselves from the question of encroachment beyond the property line into the public right-of-way. That is a separate issue that will have to be taken up by you at another time and will be looked at under a license agreement to allow for encroachment within the public right-of-way. But the first matter that needs to be resolved is the setback variance. If you do uphold the Planning Commission approval for the zero setback variance then you have a basis then to consider the encroachment beyond the property line into the right-of-way and a license agreement to allow for that. If however you were to overturn the decision of the Planning Commission and did not approve the zero setback it obviously makes the encroachment beyond the property line a moot point. It is very important for us to all understand what the focus of tonight's hearing is on this appeal. I want to make that very clear because I know that much of the information that has come forward in the appellants brief talks about the encroachment into the right-of-way and the proving of that and that is not what is at stake here with this appeal.

Councilor Kight asked when you keep referencing the encroachment, are you talking about Midvale

Road?

Faith replied that is correct.

Councilor Rabe asked the side yard setback that is currently at zero, when you say side yard are you talking north?

Faith replied yes, on the north side.

Councilor Rabe asked which approaches the circular driveway?

Faith replied no, it approaches Midvale Road.

Councilor Daoust asked as far as the timing of the Council granting the temporary license, if that is the case, if we go along with the variance. You mentioned later, would it not be just fairly subsequent to us, if we did go along with the variance, to grant this license? You say later, what is later?

Faith replied what I mean is we will be coming back to you with a separate agenda item that will include a license agreement to allow for the encroachment but first we want to decide the variance issue.

Councilor Kight asked but that would be a housekeeping issue that would just clean it up, setting a time for the license agreement to terminate.

Faith replied without getting into this argument, you could approve or uphold the variance that the Planning Commission granted to allow for a zero setback and deny a license agreement to encroach into the right-of-way, they don't both have to be approved. That is what I was trying to say, the Planning Commission was very careful in no way to construe their approval of this variance as sanctioning or supporting the encroachment into the right-of-way.

Mayor Thalhoffer asked on the maps we have two manufactured homes pictured, but we are only dealing with space #1 not the other manufactured home?

Faith stated that is correct and I am not to sure how to address that because there is no ignoring the fact that there is a second unit on the site that encroaches but it was not the subject of any land use action and did not come to our attention until the one before you now. It is one that will have to be dealt with in some manner at some time, but not tonight.

Jason Seivers stated the matter before you is an appeal of the Planning Commission's approval of a special variance waiving 10 feet of the side yard setback requirement on the north property line and 10 feet of the front yard setback on the west property line of the Sandy Frontier Trailer Court, located at 1542 E. Historic Columbia River Highway. The Sandy Frontier Trailer Court has been in operation since the 1930's or 1940's, and has been owned and operated by the Cox family since 1956. Today, the site is zoned R-20 (Single Family Residential on 20,000 sf lots), and the Sandy Frontier Trailer Court is considered a pre-existing non-conforming use. In November, 1998, the tenant who occupied Space #1 in the Trailer Court was evicted, and Multnomah County recommended the 10' x 48' trailer in that space be demolished due to unfit living conditions.

Multnomah County public health regulations also required that any new unit be placed at least five feet from the previous trailer's location to avoid the cesspool that was located under that trailer. The tenant of space # 1, Mr. Dale Loucks, hired a contractor who applied to the City's building department for a permit to replace the trailer, and on July 6, 1999, the building department approved the permit to replace the trailer. A new 14' x 60' manufactured home was placed on the site, which was 12 feet longer than the original trailer and extended 12 feet further to the south. With regard to the north side, the new unit was sited at the same spot as the previous trailer. Also in July of 1999, the planning department approved a deck to be built off of the manufactured home with the condition that "exterior setbacks along property lines must not be less than historic existing setbacks." When Mr. Loucks' contractor applied for the permit to replace the trailer, a survey was not done to determine the property lines. Instead, the application for a replacement manufactured home was based on commonly recognized features in the immediate vicinity of the mobile home. After the trailer was replaced, a neighboring property owner, Chester Howell, expressed concern about the effect the replacement manufactured home may have on access to his property via Midvale Road. A survey was eventually conducted and it was determined that the new trailer encroached into Midvale Road approximately 10.5 feet, as had apparently been the case with the previous trailer. The survey also showed that the new manufactured home now encroached 10' into the front yard setback. On April 21, 2000, Westlake Consultants submitted an application on behalf of the property owner requesting a variance from the front and side yard setbacks on the property in order to validate the setback encroachment. On July 19, 2000, the Planning Commission held a public hearing on the matter. The hearing was closed but the record was left open for seven days to allow the applicant to submit rebuttal evidence. On July 26, 2000, the Planning Commission reopened the public hearing to accept additional testimony. At the conclusion of the hearing the Planning Commission approved the variance request and directed staff to prepare the Findings of Fact and Final Order consistent with the approval. On August 30, 2000, the Planning Commission held a third and final public meeting to adopt the Findings of Fact and Final Order. The Planning Commission approved a special variance to waive 10 feet of the side yard setback requirement on the north property line and 10 feet of the front yard setback on the west property line, subject to the condition that the 10 foot side yard setback variance shall only be valid until such time as a land use permit is issued by the City for development of property served by Midvale Road which requires improvement of that portion of the right-of-way upon which the existing encroachment occurs. On September 8, 2000, the appellant submitted an appeal of the Planning Commission's decision. In his notice of appeal, the appellant raised various grounds for seeking this appeal. On September 26, 2000 the City Council held a hearing to consider the appeal of the Planning Commission's approval of the special variance. Before arguments could be made about the appeal, the Council considered whether or not to hear the appeal de novo. The Council decided to hear the appeal on the record with additional evidence, but limited to issues 2-10 raised in the appellant's notice of appeal, provided the particular issue had been heard previously as part of the record of the Planning Commission hearing. The Council reached an agreement with the applicant and the appellant that the appeal would be considered under these restrictions at a future hearing. The appellant has since submitted additional comments (Exhibit BB) supporting the original assignments of error. Staff has determined that assignments 2-10 were discussed in some form or another as part of the record of the Planning Commission hearing on this case file. In approving the requested setback variances, the Planning Commission determined that the criteria for approving the variances were satisfied. The Planning Commission also determined that the standards for expanding a non-conforming use had been satisfied. The Council should evaluate the nine assignments of error against the variance criteria and nonconforming use expansion standards.

The Variance Criteria are outlined in section 6.240 of the Development Code, and the Non-Conforming Use criteria are outlined in section 5.320 of the development code. Staff has the following response to each assignment of error. Assignment of Error #1: The variance is not and cannot be reasonable because the trailer could be moved to another space within the Sandy Frontier Trailer Court. Staff Response: This assignment was not discussed in the original letter of appeal and therefore should not be considered by the Council. Assignment of Error #2: Finding of fact #1 is incorrect when it says, "the trailer located in Space #1 had historically encroached fully into the side yard setback." The testimony of the Howells directly contradicts this finding. There was no credible evidence to contradict the Howell's testimony as to the location of the old, small unit formerly located in "Space #1." Staff Response: The applicant submitted an affidavit from Tim Muck (Exhibit 11 of Exhibit AA) describing the location of the replacement manufactured home in relation to the old mobile home, and the Planning Commission found that the affidavit was sufficient evidence describing the location of the old mobile home. The affidavit indicates the replacement manufactured home was placed in the exact location where the old mobile home existed with respect to the side yard setback. The challenged factual finding relates to criteria A(1). Assignment of Error #3: There was no testimony from the tenant of Space #1 to validate the claim that two additional rooms on the old trailer were used as dwelling space. Staff Response: The Planning Commission found that the drawing and testimony submitted by the applicant's representative (Exhibit 6 of Exhibit AA) was sufficient to show that two additional rooms, which were used as dwelling space, had existed on the trailer, thereby increasing the total square footage of the old nonconforming trailer within the 20% floor area limitation for a nonconforming use expansion. The challenged factual finding relates to criteria is A(1) for the variance and the 20% floor area limitation for the nonconforming use expansion. Assignment of Error #4: There is insufficient evidence to support a finding that fire regulations will not allow a narrowing of Park Street because the only evidence was a letter from a fire agency which does not have jurisdiction over the subject property. Staff Response: The Planning Commission found that fire regulations only allow flexibility in narrowing the width of a fire lane if the fire lane is historically smaller than the otherwise acceptable fire lane width. The Planning Commission found Park Street, the private internal road where the replacement manufactured home would encroach if it were moved to avoid the encroachment into Midvale Road, was not historically smaller and thus it was appropriate to grant the variance and avoid the need to narrow Park Street to unacceptable fire lane widths. The Planning Commission relied on evidence summarized in its staff report to reach this conclusion. The staff report explains that Gresham Fire and Emergency Services (GFES) has jurisdiction over the site. Gus Lian, Deputy Fire Marshal for GFES, informed staff that GFES requires 20 feet of clearance for fire trucks to access a property, and there is currently only 20 feet of clearance on the site. The challenged finding relates to both criteria A and B. Assignment of Error #5: Finding of Fact 3 states "given the specific nature of this development, the side yard setback requirement along the north property line is unreasonable and a full 10 foot variance from the side yard setback requirement is warranted." This finding is based on the premise that the replacement manufactured home did not violate the non-conforming use standard by virtue of its increased size, and therefore it is appropriate to occupy the site in the first place. The Planning Commission erred in its conclusion because the replacement manufactured home did, in fact, violate the non-conforming use standard by virtue of its increased size, and therefore it is inappropriate to occupy the site in the first place. Thus, the setback standard is, in fact, reasonable. Staff Response: By approving the variance, the Planning Commission found the replacement manufactured home complied with the standards that apply to expansion of a non-conforming use. In so doing, the Planning Commission found that the larger replacement manufactured home was appropriate for the site and based its decision on that finding. The challenged finding relates to criteria A(1) for the variance and the 20% floor area

limitation for the nonconforming use expansion. Assignment of Error #6: A manufactured home is completely different from, and much larger than, a trailer. The Planning Commission compared apples to oranges when it considered whether or not the new manufactured home was appropriate for the site, and when it found that "the standard widths of modern manufactured homes are larger than 10 feet wide, and so the replacement manufactured home was necessarily wider. Replacing the old 10-foot wide trailer that occupied Space # 1 with one of similar width was impractical given current manufactured home building standards. It would have necessitated a home that was built prior to 1976 when national standards for manufactured home construction were adopted." Trailers continue to be manufactured in many sizes and shapes, including sizes small enough to fit within Space # 1 with room to spare for a 10 foot setback from Midvale Road. Staff response: The applicant raised this concern to the Planning Commission. The Planning Commission approved the variance thereby concluding it is not necessary to replace the prior mobile home with an RV trailer. Because it is not necessary to replace the prior mobile home with an RV trailer, the Planning Commission did not consider the question of whether or not there was a difference between a trailer or a manufactured home. The Commission viewed the existing use as more like a manufactured home, which houses permanent residents, than like an RV trailer which temporarily houses occupants. Therefore, the Commission found that comparing an old dwelling unit with a new unit that is built to modern standards and defined as a manufactured home is appropriate. The challenged finding relates to criteria is A(1) for the variance and the 20% floor area limitation for the nonconforming use expansion. Assignment of Error #7: Finding 6 says "the cesspool cannot be relocated." There was no evidence to support this statement. Staff response: The Planning Commission accepted the applicant's statement that health regulations prohibited the new manufactured home from being located on top of the cesspool, but the Commission did not consider, nor did the applicant or appellant furnish evidence, relating to other alternatives to the location of the cesspool. The key issue for the Planning Commission was whether the front yard variance should be granted to allow an encroachment into the setback area given the competing health regulation that prohibits locating the replacement manufactured home over the existing cesspool. The challenged finding relates to both criteria A and B. Assignment of Error #8: The purposes of setback requirements are aesthetics and safety. The Commission's finding 11 reads, in part, "the Planning Commission finds that because of the road's limited usage at this time, there is no safety hazard to vehicles or to the residents of the Sandy Frontier Trailer Court." The Commission did not adequately address the variance criteria that says the intent and purpose of the regulations and of the provisions to be waived will not be violated. Staff response: The Planning Commission considered the purpose of the setback regulations and was satisfied that waiving the setback requirement would not violate the intent and purpose of the setback requirements in this case. The Planning Commission agreed with the staff report summary of the intent and purpose of the setback standards, which is as follows: "The intent of the setback standard is adequate separation between the use and travel way. There is typically only one user of the road on Midvale Road, and a waiver of the setback does not pose a danger to those using Midvale Road because there is still a 17.6 foot separation between the property line and the gravel road way." The challenged finding relates to criteria is A. Assignment of Error #9: Finding of fact 9 states "the proposal will allow continuation of the customary use of the Sandy Frontier Trailer Court as it has stood since the 1950's, while eliminating an unhealthy condition in one of its mobile home units." Finding of fact 9 is completely unsupported by the record. Replacing a small trailer with a large manufactured house does not constitute a continuation of a non-conforming use. The unhealthy condition mentioned in the finding was eliminated in 1999 when the old trailer was replaced and therefore cannot be eliminated again. The variance has nothing whatsoever to do with an unhealthy condition. Staff response: The Planning Commission found it was appropriate to replace the mobile

home with a manufactured home. As discussed under assignment of error # 6, the Planning Commission viewed the existing unsafe mobile home that was replaced with the manufactured home as more like a manufactured home which permanently houses its residents than like an RV trailer which temporarily houses its occupants. The Commission found that comparing an old dwelling unit with a new unit, built to modern standards and defined as a manufactured home, is appropriate and therefore constituted a continuation of the existing non-conforming use. The Commission viewed the "unhealthy condition" as the existing mobile home that was removed in 1999 and replaced with a manufactured home. The challenged finding relates to criteria A for the variance and the 20% floor area limitation for the nonconforming use expansion. Assignment of Error # 10: The condition of approval, which states "The 10 foot side yard setback variance shall only be valid until such time as a land use permit is issued by the City for development of property served by Midvale Road which requires improvement of that portion of the right-of-way upon which the existing encroachment occurs," should not have been approved. Rather, if there is any permit for land use for any land served by Midvale Road, the condition should become operative and should terminate the applied-for variance. Furthermore, if the City Council denies an application for permission for the applicant to have the manufactured house occupy any portion of Midvale Road, the entire variance should be eliminated. Staff response: The Planning Commission found that this condition was appropriate for the variance. The criteria under which the condition was imposed is A(2). In reviewing the matter under appeal, the Council may by order affirm, reverse or modify in whole or in part the decision of the Planning Commission. In order to satisfy the 120-day statutory limit, a decision must be rendered by November 28, 2000 unless the applicant grants an extension.

Councilor Kight stated I hear different terms used, mobile home, manufactured homes and RV trailers. Could you give me a definition of what those are.

Seivers replied it is my understanding that the clearest difference is what I would call an RV trailer, which is more of a mobile unit.

Councilor Kight asked the new manufactured house, is it no more than 20% larger than the old manufactured house when you add the other two additional rooms? What is the square footage of the old trailer versus the new manufactured house?

Seivers replied the square footage of a 10 X 48 foot trailer without rooms would be 480 square feet. When we first reviewed the application we understood that it was just the old trailer, then we received a map and additional information describing the two rooms and that brought the total to 752 square feet.

Councilor Kight asked the new one is 16 X 48 feet?

Seivers replied which would be 840 square feet.

Councilor Kight asked so it is clearly within the 20% increase in square footage?

Seivers replied yes, if you count the two rooms.

Councilor Rabe asked the encroachment between the new and the old is the same?

Seivers replied yes.

Councilor Rabe asked the original structure has been there for a number of years, correct?

Seivers replied correct.

Councilor Rabe asked with regards to Midvale Road, at such a time that there might be some residential development on Midvale Road, at that time does the encroachment permit terminate?

Seivers replied we have not got to encroachment yet, the setback variance...

Councilor Rabe stated I'm sorry, let me rephrase...

Seivers stated let me clarify. The condition is written such that the portion of Midvale Road upon which the trailer is sitting, when that portion is required to be developed, then it will terminate.

Councilor Rabe asked is there a standard period of time that the person who has that variance has to move their structure?

Seivers replied no, not that I am aware of.

Councilor Daoust asked why is there a gate and a private property sign on that road?

Seivers replied that question might be better directed to the other two parties. I am not sure.

Mayor Thalsofer asked Midvale Road is owned by the City?

Seivers replied yes.

Councilor Kight asked at the time the Planning Commission gave the variance for the setback, did they realize there was a problem with an encroachment.

Seivers replied yes. In fact they realized it so much that they wanted to make it clear that they were not endorsing approval of the encroachment, they focused on the setback.

Councilor Kight asked I guess I missed it in the notes. I thought this was Mr. Howell's property, I didn't realize it was city property. So from the edge of their trailer, lets go from the edge of the property line, it is 17.6 feet to the gravel road, correct?

Seivers replied correct.

Councilor Kight stated so it's not really encroaching on the gravel road, because the gravel road is 30 feet wide.

Seivers stated it is encroaching in the right-of-way. The existing gravel road is just a portion of the larger right-of-way, it is a public right-of-way.

Councilor Kight asked is it encroaching in the gravel road?

Seivers replied it is not.

Councilor Daoust asked would the city ever have the opportunity or reason to improve Midvale Road outside of Mr. Howell wanting to develop his property?

Seivers replied I don't believe so. Public works might speak better to that.

Councilor Daoust asked so it would remain the way it is until one of the property owners wanted to develop their property?

Seivers replied I believe so, yes.

Councilor Rabe asked are their other property owners on Midvale Road that aren't represented here tonight?

Seivers replied there are other property owners, Midvale Road swings around to Thompson Road and there are other property owners in Thompson Villa tracts, but as you proceed up Midvale Road from Historic Columbia River Highway, I believe that Mr. Howell owns the next several properties.

Councilor Rabe asked but there are other property owners that could potentially be players in this in the future if these lands are developed?

Seivers replied I believe there could be.

Mayor Thalhoffer called for a 10 minute break.

Andrew Stamp, attorney for the applicant Nancy Cox and Sandy Frontier Trailer Courts. I have a power point presentation here that has some maps that I hope will clear up a lot of your questions earlier. The first map is a site orientation map. This picture shows the subject property which is these four tracts, 21, 22, 23 and 24 of the Thompson Villa tracts which was plotted in 1917. Mrs. Cox also owns 11 and 12. The important thing to note from this map is that Midvale Road as it exists right here and Thompson Road as it exists, those roads were dedicated to the public, I said roads but let me clarify it is right-of-way, it is not technically a road. Nonetheless, these were dedicated to the public in 1917. Midvale Road is 30 feet wide and it goes all the way up there (referencing the map on his power point presentation). The question was asked earlier, is this city property? The answer is yes it is. Now that relates to the issue of there being a private fence up there. That fence was put there because the owner realized that no one would care or do anything about it because he pretty much owned all the land except lots 11 and 12 so he decided to put a gate there. This is a photograph showing Thompson Villa tracts, you can see the subject mobile home, you can see this line it shows the encroachment, it is about 10 feet into the right-of-way. What is interesting about this map is it shows Mr. Howell's house and there is the right-of-way. So when I first put this application together I thought there is no way he will fight this because he has the same problem. This map, by the way is a Metro map.

Councilor Rabe asked the property line grids that are superimposed over the photo, that whole package came to you from Metro?

Stamp replied yes. This is an ariel photograph showing Sandy Frontier Trailer Court, it shows

Midvale Road going out of its right-of-way, it should be coming this way, it looks like this right there was the right-of-way but somehow it got moved. A couple of things to look at on this map. You can see this area has been deforested, and there is also a lot of trash on this site. The reason I bring this up is because one of the arguments that the appellant makes is that our manufactured home is not aesthetically pleasing.

Councilor Kight asked what is that in the middle of the photograph, it looks like a long trailer?

Stamp replied that is a mobile home. In various ariel photographs that has been moved around.

Councilor Kight asked is that in the right-of-way?

Stamp replied no, that one is not. This one right here is in the right-of-way. The other thing to point out is there is a large field right here. The appellant has suggested that we put the trailer back here. That is actually a septic drain field for the entire trailer park, so it is not feasible to put a trailer on top of a septic field.

Councilor Kight asked I thought space #1 had its own cesspool?

Stamp replied it does. It is a complex system but they are all connected. It is some sort of initial step.

Councilor Kight stated so it is not a stand alone?

Stamp replied no. There is another photo, you can see Sandy Frontier Trailer Court right there. Also there is a lot of forest here and then right here there is no forest. Here is the Howell property. Even if this were the right right-of-way, you still have a setback violation here, it is fairly obvious. I often wondered why he is complaining about this, if anything he should be helping out. This is a picture of the gate, the gravel road, the private property sign and locked gate. This is where the river meets the road so to speak. This is Midvale, this is the subject mobile home that is encroaching. You can see another home that is encroaching and you can see a tree that is encroaching also. That tree is 28 inches in diameter. You can see that the two homes and the tree are all kind of on a line, they are all encroaching about the same. Here is a map that shows you what we've got. You've got the highway here, Columbia River Highway, you see the spike in the ground showing where the property line is. This blue line is the right-of-way, this line here is the gravel road, so the gravel road is thin but the right-of-way is thick, it is 30 feet. This is the subject mobile home, this is the other home that is encroaching. It is important to know how we got here. There use to be an old mobile home on this site. It was condemned by Multnomah County. Mr. Louck, who bought this mobile home, contracted with a company to install it, he actually paid extra to have that contractor get all the necessary permits. He thought he was paying a contractor and everything would be okay. The contractor went to city hall, got what he thought was the necessary permits. But between the applicant and staff it didn't quite come together. The point is that there was not intent or knowledge that we were going to be putting this mobile home in the right-of-way. Had someone known about this they would not have done it.

Councilor Kight asked when did they do the survey?

Stamp asked this survey was done in support of this application at my recommendation. I said one

of the problems we have here is we really don't have a good map of the area and if we are going to show what is going on we need to figure out what is going on on the ground. This map was created by Westlake Consultants in February or March of this year after the fact. This next photograph shows the old mobile home and you can also see that it was expanded with another room. There was also a tip-out on it. The total size of this was 752 square feet as found by the Planning Commission. The new one is 840 square feet, that is about a 10% increase in size. One thing I want to call out is the old manufactured home or trailer was sitting right on the septic tank. One thing we found out is way back in those days you could put those homes on septic tanks, but today you can't so we had to move the home forward 12 feet to get it 5 feet off the septic tank. This photo shows, the dark line shows the right-of-way to the highway. The highway actually has more right-of-way than just the pavement. Now I am calling out the gravel road at the top, you can see just how wide it is or how not wide it is. It is 10 to 15 feet, but there is a lot of extra right-of-way, the right-of-way is actually bigger than the gravel road. Now what I am calling out down here is Park Street. This cross hatch mark shows a 20 foot wide no-build area that is required by the fire marshal. As you can see we are abutting right up next to it. This is a photo of Park Street, you can see the subject mobile home is actually a very nice looking building, it is also a very well kept property as these photos show. This shows the 30 foot setback that would be required in the front yard in the R-20 zone, had it applied. This is a photo from the opposite side of the highway. You can see plenty of buffering and vegetation. This is another photo of the front yard, one thing you can see here very clearly is how much further away from the road the subject property is than this structure right here which use to be a gas station. When you are looking at the subject property coming from the south, as a pedestrian or from a car, you can barely see the home because it is behind this building. Here I have called out the 30 foot right-of-way and the 10 foot setback. You also have the 5 foot setback and the 20 foot no-build zone for fire access. What you find out is the only buildable area you have is this here, which really isn't much at all. The property has so many setbacks affecting it, you wouldn't be able to build on it, so that is why we asked for these variances. As you can see here there is still plenty of access, it is set back it looks like about 10 feet. As I have said here it doesn't appear to have affect on safety, it is well back from the highway and from Midvale Road. As we discussed the criteria for this case are set forth as the City Attorney mentioned in Troutdale Development Code 6.240 "A" and "B". You either have to meet "A" or "B", but not both. We believe that we meet both because we believe that the intent and purpose of the regulation, the intent and purpose of a setback regulation is to provide a buffer for non-compatible land uses. We think that at least temporarily, until such time as this area develops, there really are no non-compatible land uses to deal with. We think it makes sense to allow a temporary variance. Now, obviously if we were asking for a permanent variance the application of these criteria would be a little stricter, but what we are saying is we will move it when development occurs. I think at some point Sandy Frontier Trailer Court will be worth more as developable land than it is as a trailer court. We don't know when that will be, municipal services are nowhere near this property at this time. It doesn't appear that anywhere in the near future intensive development will be happening. The other criteria here is the variance will not be materially detrimental to the public welfare or injurious to other property when compared with development otherwise permitted. That when compared with development otherwise permitted is very important in this case. The opponents have made the statement that granting a variance will reduce the value of their property. They haven't provided any evidence of that. You really need to weigh that statement carefully, it is an empty conclusion, it is a self-serving statement. There is absolutely no evidence in the record to suggest that we would in fact lower property values in that area. I think that testimony to the contrary could be discounted in the absence of some sort of appraiser coming in here and providing evidence. At this point the record is really closed to new evidence so I don't think that will happen.

The other criteria that the variance is the least waiver of the requirement that will permit practical compliance with the requirement of another law or regulation. As we stated earlier, we have two other constraints, we have to comply with the fire access regulation and we also have to comply with health and safety regulation that we can't put the mobile home on top of a septic tank. Those two regulations really box us in as to what we should build. So we believe that this variance does permit practical compliance with those other laws and regulations. I would like to discuss some of the issues that were not preserved, in other words were waived. These are issues that I spotted in the applicants arguments and in their appeal. The first one is the availability of space near the drain field, that was not raised but even if it was, that is where the drain field is located and therefore we can't build on top of it. The second issue that was not raised below is whether or not the subject mobile home can be swapped with space #4. There was some discussions about swapping it but the argument in assignment of error #1 specifically says space #4, that was definitely never raised below but even if it was we couldn't swap it with space #4 because there just isn't room in that location. Next one is whether subject mobile home can be moved closer to Park Street. As we discussed this is a fire access issue, this was not raised below. I do have transcripts of the appellants testimony and this was never raised below. The thing about this is there has been some discussion about who is the right jurisdiction. Well in general the City of Troutdale contracts out with the City of Gresham for fire services. The thing is the City of Gresham doesn't have tanker trucks. There are no fire hydrants over on this side of the Sandy River, at least not in this area, so the City of Gresham can't fight any fires over here. That is my understanding from talking to the fire fighters out there, so what they have done is created an agreement with the Multnomah Rural Fire District #14 that they would be the folks who would show up here to fight a fire. There is a letter to that affect in the record. I did have Mr. Tom Layton of Rural Fire District #14 clarify that in writing. It is really a non-issue though because the 20 foot standard is governed by the state law. Anyway it wasn't raised below. Next issue is whether or not the cesspool can be relocated. That was raised in assignment of error #7. This issue was certainly never raised below, it was never even mentioned below. We set forth a statement that the reason that we had to move the mobile home closer to the highway was because we couldn't build it on the cesspool. They now say, well you could have moved the cesspool. That was never raised below. Had it been raised below we would of had testimony here from the person who built the system that said that would not be a feasible alternative, but we didn't because it wasn't an issue. That is the reason we have these raise or waiver rules, because it is an unfair surprise to us. Whether the setbacks are needed for pedestrian access and for water drainage, well this is kind of a silly issue. Water drainage, even if it wasn't raised below, the road is actually higher than the property where the home is located, so if anything water would drain off the road into our property.

Councilor Kight asked are you talking about Midvale?

Stamp replied yes, Midvale is higher up then the area where the home is. It hasn't happened yet and we don't expect that it will happen. Keep in mind that the Sandy Frontier Trailer Court has been there since the 40's so we have a history on these sorts of issues. Also, whether the setbacks are needed for pedestrian access, well there aren't really any pedestrians going up and down the road, but even if they were I don't see why they can't just walk on the gravel road, its not like there are any cars going up there especially since there is a gate there so you really can't go anywhere anyway. It is a silly issue, it wasn't raised below. Legal issues presented for review, here are the issues. Do R-20 setbacks apply to this mobile home park? I submit that they don't. For one, we are a legal non-conforming use. Our use is a mobile home park. We haven't stopped that use and because we were there before the setbacks were ever placed on the property, they don't apply to

us. Another thing is that even if they did apply to us, the permit that we got said that we had to abide by historic setbacks. The historic setback was set by that gas station, you saw how close it was to the road, that is the historic setback for that property. Keep in mind that is the same lot. The next question, are the non-conforming use provisions triggered by the replacement of a mobile home? I say they aren't and the reason is because a mobile home park is the use and part of that is that you expect an owner to come in and stay there for a year or two, maybe ten years, but at some point he is going to take his mobile home and leave and a new one is going to come in. The City has never enforced that against us, we have been in operation since the 50's and it makes absolutely no sense to apply the non-conforming use provisions in that way. However, if the answer to the question is yes, yes the non-conforming use provisions do apply, this would be a replacement dwelling, it is less than 20% in size than the proceeding building and therefore, assuming it does apply, we still meet it. The appellant raises another interesting argument and that is that we should put an RV on the subject property. The question was raised by the Council, what is the difference between manufactured homes and RV's and we mentioned size and mobility. The other big distinction is building code standards. Manufactured homes are built and governed by building code standards, state law and I even have a copy of the 1997 Oregon Manufactured Dwelling Standards. RV's are not subject to that document, now what does that mean. Well, if an RV burns down in two minutes, that is fine, they can still sale it to you. If a manufactured home burns down in two minutes, it doesn't meet building code. That is a huge difference. Modern manufactured homes are safe dwellings, they are built essentially to the same standards that your average stick built home would be built to. They use the same building materials and they are designed to withstand fire to a certain degree. RV's don't have any of that, they are designed to go on a vacation. You use them for a week or two, they are not designed to be permanently lived in. Your code recognizes that RV's are not to be used in manufactured dwelling parks. The code says that a manufactured home has to be 600 square feet in size. There is not an RV on the planet that is 600 square feet. The drafters of your code specifically envisioned bigger dwellings than RV's. This just makes sense, RV's are great for going camping but it is not good public policy to require people to live in RV's. I think this is a really specious issue even raised by the opposition, I think it has no merit whatsoever. It is not required by the code as a viable alternative to a manufactured home. The other thing I want to bring up is that they keep talking about this thing is a trailer court and not a manufactured home park, keep in mind that this was named Sandy Frontier Trailer Court in the 30's or 40's and was at least that when our clients bought it in 1956. Back then they didn't have manufactured homes, they had trailers. But clearly the intent has developed into what is now known as a manufactured home, it is still mobile but it is not intended to be moved on a regular basis. It is not an RV park. An RV park is very transient, temporary use. Some issues of fact that I would ask the Council to deal with, as discussed above, we have provided evidence in the record that the new mobile home is located the same distance from Midvale Road as the previous unit. The appellants contest that, and have put evidence into the record, essentially testimony to the opposite effect. At this point that is an he said she said issue, it really boils down to who you find is more credible. Is the mobile homes location unsafe? I want to read to you something that the appellant said before the Planning Commission responds to this question; in response to the question by the Planning Commission Terry Howell stated "a lot of automobiles including police officers turn around on that road, sometimes police officers even park on that road. So if someone were parked down there as they have been with the old trailer there and I turn into my driveway rather rapidly and have to overtake hitting a police officer head on to turn around, there wasn't enough room now, if I had missed and gone another three or four feet with this trailer I would have hit the trailer, that is just one example of what could happen. An emergency vehicle in a hurry coming around this corner could fishtail because it is a gravel road, if it fishtails it is going to hit the trailer."

I think that is just pathetic, but now that we know that the trailer is there I am sure that Mr. Howell will be a little more careful and not turn rather rapidly in there. I don't see this as being a safety issue and I am not trying to be mean about this. I think this sort of testimony shows that this is not a valid appeal, this is an utterly frivolous appeal. Talking about emergency vehicles, well what is that emergency vehicle going to do when it comes up to their fence and finds out there is a locked gate there? The last issue is dealing with property value. I don't think that the value of a property is a valid element that can be considered under the criteria. It says injurious to neighboring property. At least in the absence of some specific testimony which says how the property is reduced in value, I just don't see how we can be injurious to the neighboring property. Generally speaking, property values are not a valid consideration in land use matters largely because they are speculative and everyone seems to have an opinion about them but no one can prove it. That is the end of my presentation, I will entertain any questions that you may have.

Councilor Kight asked the footprint that the new manufactured house is on, as it applies to the property to the north, is essentially the same?

Stamp replied yes, they didn't move the new home any closer to Midvale Road than the old home. They did move it closer to the highway by virtue that they couldn't put it on top of the septic. That is why we had to get two variances. By the way, the second variance, the front yard setback really isn't an issue here, it was not appealed.

Councilor Kight stated so really the only point of contention that this Council is dealing with tonight is the encroachment immediately to the north?

Stamp replied I think so. The opponent is going to argue otherwise. I ask that you have him quote you line and verse and where he raised it below.

Councilor Kight asked Mr. Sercombe is that essentially correct? We are dealing with the issue of encroachment, just the setback as it applies to the manufactured house setback north of where it is currently located.

Sercombe replied I think that is correct. A number of the assignments pertain to the finding that the Planning Commission made about that. To say that there is not sufficient evidence in the record to support this fact or the other, and that fact may be relevant to both setback variances, I am not sure. I think that the substantive stuff talking about the variance criteria, appeal contentions appear to be directed at the setback from Midvale Road.

Councilor Kight stated and at a later date we will take up the issue of encroachment of the City right-of-way.

Sercombe replied the appeal contentions go beyond the substantive criteria and attack some of the findings of the Planning Commission, having a de-novo hearing on this you can replace those findings and still uphold the variance or deny it if you wish. In other words, for example, assignment of error #7 pertains to finding #6 that the cesspool cannot be relocated, it says that there is no evidence to support that. The location of the cesspool may be relevant to both variance requests and whether or not there is evidence in the Planning Commission record to support the statement is mute since this is a de-novo hearing and you are going to be making a determination on the basis of this record and the record before the Planning Commission. You will make your own findings

here and they may or may not include something about the cesspool. The core issues are going to be whether or not the variance should be allowed or the setback from Midvale Road and there are some facts in here that are being contested by the appellant.

Stamp stated I am not sure if Mr. Sercombe was aware of this, of your order dealing with the scope of review.

Sercombe replied I understood that the scope of review is de novo or appeal contentions two through ten and the Council will be, in reviewing these appeal contentions, deciding whether the variance should be allowed.

Stamp stated my understanding was that we would be reviewing the issues that were raised below and for example the cesspool issues was never raised below anywhere. Under the scope of review that was approved really was not de novo, it was de novo on issues that were raised below but it is limited to that, so in my way of thinking the cesspool issues is really not appropriate for this discussion.

Sercombe replied I disagree. The talking about an issue being raised below and reserving that for purposes for arguing before the Council, I think you are correct Mr. Stamp that the code requires that the issue be raised below. And the issue below that was raised was whether or not this application made a sufficient case to show that the variances should be allowed. The appellant is complaining that certain facts found by the Planning Commission in their decisional document are not supported by the record. It is not possible to make an argument below that a decision is not supported by the record before that decision is made. So I don't believe that a complaint that a certain fact determined by the Planning Commission was relevant to whether the variance would be allowed that the appellant or testifier has to argue about that fact in order to make the contention that there is no evidence in the record to support that finding. To simplify this the Planning Commission found that the variance was to be approved based on a number of factual findings. The appellant complains that those factual findings do not make a case, that number one, the variances shouldn't be allowed and number two that some of those factual findings are not supported by the evidence before the Planning Commission. Mr. Stamp believes that in the argument about the evidence before the Planning Commission made the findings have to be raised by an assertion made by someone before the Planning Commission. I am saying that you can't do that. You can't argue about the Planning Commission's findings and make arguments about them to the Planning Commission before they are made and that this is a legitimate issue in terms of whether or not the facts are there that would allow or not allow a variance. You are deciding that issue de novo. You are deciding the issue of whether or not the criteria are met based on these appeal contentions and based on the presentation and evidence here. I am advising you that you need to make that determination based on these appeal contentions and then make your own findings on whether or not the variance should be allowed or not and that you are not necessarily bound by the Planning Commission's findings in terms of whether or not you are going to grant or deny this variance. I do think that the appeal contentions go towards one of the two variances as I understand them and that is the issue before you.

Councilor Daoust asked what you are calling the appeal contentions are the assignments of error two through ten from the appeal itself, which is what we agreed to at the last meeting that we were going to cover. Whether it is a de novo hearing or not, I am not sure, but we were not calling it a de novo hearing.

Sercombe replied I may be wrong, I thought you had agreed to allow new evidence on the appeal contentions.

Councilor Daoust stated I recall that we were going to discuss assignment of error two through ten based on what was in the record.

Stamp stated Mr. Sercombe is correct that if you are attacking findings and you don't have time to attack them before hand, you can raise them, LUBA case law says you can raise the issue to LUBA if the first time the issue came up is in the findings. But I think in this case the exceptions follow the rule. The point of the matter was that the issue was brought up about the septic, we said we had to move this building forward because of the septic. We didn't hear anything from the appellant about septic before the Planning Commission, so the appellant waived that issue because he did not contest it, he had the opportunity to, he heard us say we moved the building forward because we couldn't put it on top of the septic. Now he had an opportunity to say wait a minute, he could move the septic and we could have responded to that with evidence but we didn't because it wasn't contested. That is what I am talking about, you don't get another bite at the apple simply because it was raised in the findings. In that regard, I think that shows why we limited the scope of review.

Councilor Daoust stated that is why we dropped assignment of error #1, regarding Commissioner Roehm, because it was not raised below.

Councilor Kight stated I am getting mixed messages.

Sercombe stated the motion was that Councilor Thompson moved that we hear the appeal on the record with additional evidence presented limited to issues raised below on items two through ten. Our appeal process, if I remember correctly, allows for it to be heard on the record, heard de novo or to allow the reception of evidence limited to particular issues. Appeal issues two through ten are essentially the main issues on this appeal. The first appeal issue is the only one that is excluded in terms of additional evidence. All of the other going to the criteria are allowed to have additional evidence about these appeal contentions and that is why I talk about this as sort of a de novo hearing. You are going to listen to all the new evidence on these issues and you are going to decide whether or not the criteria are met and whether the appeal contentions are correct.

Stamp stated I do not recall items two through ten being said. Regardless, even if the issues were raised I think they are still wrong so I am not worried about it. I do think that it is unfair to require us to respond to things that we have not had a chance to respond to below. I am not going to belabor that point because I think we have a great case and I think their appeal is utterly meritless. I think we should move on.

Councilor Kight asked assignment of error #7, the cesspool, could it have been moved in order to keep the building in its current footprint?

Stamp replied not feasibly. There is an engineering solution to everything. We could have spent a ton of money and moved it, had I known it was an issue I could of had the person who designed this system come out here and testify but I felt safe to say that this issue wasn't raised and so he wasn't needed. The long and short of it is there really is no where else where you could move it in this area without expending vast sums of money and completely redesigning the whole septic system in that area.

Councilor Kight asked has the septic system been inspected by Multnomah County as far as health and safety issues and it meets all of these criteria?

Stamp replied I can't testify directly to that. I am presuming it does.

Councilor Kight asked as far as the setback from the actual cesspool, it meets the requirements?

Stamp replied yes, the setback is the problem that we fixed when we put the new unit there. That just goes to show that when we were aware of problems, legal requirements, we made efforts to meet them.

Councilor Rabe asked I am not sure what the argument would be in defense that moving the cesspool would have any kind of bearing on the variance or the encroachment into the right-of-way. Is moving that cesspool location going to change the position of that structure?

Stamp replied no it would not.

Councilor Rabe stated you would still be looking at 7' in and 10' in and you would still be forced to push up against Park Road. I don't see how there would be any other kind of configuration. You could slide it forward or backward, but what is the difference, you are still in the same condition. If you theoretically move it west, what do you gain?

Stamp replied what you could gain theoretically is, you could move this one further from the road. We moved this closer to the highway because of the fact that we didn't want to get near the septic.

Councilor Rabe stated I guess that is my point. I wonder if this is a mute topic.

Sercombe stated I just wanted to clarify the relevance. Again, what the Planning Commission did here, and I am not trying to argue with the applicant, but in their finding #6 they talk about the Multnomah County Health Regulations that require the trailer to be moved 5' to the west to avoid the cesspool. They then say in their findings that the applicant was faced with two incompatible regulations, one relating to health regulations and one relating to the front yard setbacks. We are talking about the setback from Crown Point Highway at this point, and they are saying in their findings that the setback regulation is flexible because the variance allows for modifications whereas the health regulations are inflexible because the cesspool can not be relocated. Therefore giving the development a front yard setback requirement along the west property line is unreasonable and a 10' variance is warranted. This goes to the variance criteria that the variance approved is the least waiver of the requirements that will commit practical compliance with the requirement of another law or regulation. So what the Planning Commission is saying is that Multnomah County law, they have to have 5' setback from the cesspool and it can't be relocated. So this is the minimum setback necessary to comply with the Multnomah County law and you can't move the cesspool. So that is the relevance of that finding. The appellant is saying that there is nothing in the record shows that the cesspool can't be moved, so I don't think that the rationale, that basis for granting the variance is the proper one, that is the appeal. You have agreed that you are going to allow evidence on those issues in the appeal hearing.

Stamp stated the City Attorney just read you this criteria (referenced his power point presentation), my fall back position would be that even if we don't meet "B", you can still approve us under "A"

in that when we are talking about the front yard setback to the highway, the intent purpose of the regulation of the setback is not violated because we still have got plenty of front yard, we are still in the position where we are safe from oncoming cars because you have the buffering and you've also have the gas station in the way and the variance will not be materially detrimental to the public welfare and injurious to other property in the area when compared with development otherwise permitted. We meet those criteria, so even if we don't meet "B", which I think we do, but even if we don't it doesn't matter, you can still approve us under "A".

Councilor Daoust stated I think I understand the location of things, but I do have a process question. We are here tonight to either affirm, reverse, or modify in whole or in part the decision of the Planning Commission. I understand what the Planning Commission's final order was and it had to do with a special variance to waive 10' of the side yard setback which is against Midvale on the north property line and 10' of the front yard setback which is the west property line. They had the following conditions, and basically the condition was that it was good until the development of the property would negate that. That is the decision that the Planning Commission made, so our role procedurally is to affirm, reverse or modify in whole or in part. So when we say in whole or in part are we talking about just the decision or the findings also of the Planning Commission? My second question is do we develop our own findings or can we adopt the Planning Commission findings?

Sercombe stated your discretion is to modify the findings of the Planning Commission that are appealed or that relate to any of the issues that are before you. You can reject the entire Planning Commission findings and write your own, or you can supplement them, or you can just adopt their findings and include that none of the appeal issues were proven.

Mayor Thalhoffer asked is there anyone else here who would like to speak on behalf of the applicant?

Mike First stated I am here as an advocate for the decisions of the Planning Commission, not necessarily for either party. This was a pretty difficult case for us. We tried to reconcile the present situation at the park with city fairness and fairness to the property owner and her tenant. This was difficult for several reasons. First, the property is a legal non-conforming use but due to the small size of the spaces relevant to the common size of the trailers. Second, the owner hasn't taken any steps to update the layout of the park or make it conform to the current mobile home standards. She has been a very passive investor rather than an active manager of real estate which requires management and periodic reinvestment of income. So the park is the way its been for many many years, even though the trailers that are parked there, the new ones, have changed. The third reason that made this difficult is that the tenant tried to cram this large trailer into a space designed for a 1950 or 1960 sized trailer which is equivalent to trying to park a bus in a compact parking space and consequently the building encroaches on the highway and on Midvale Road setbacks as well as actually being in the right-of-way of Midvale Road. We granted the requested variance to the setback on Columbia Highway because the old service station is closer to the highway than the trailer and it hasn't been a problem, so we allowed that. We granted the requested variance to the setback on Midvale Road because if the trailer was moved back from the road it would start to encroach on the fire lane that is on the site. So we allowed a zero setback from the right-of-way, however it is still encroaching into the right-of-way the way it is now. It took us three sessions to get to this resolution. Our job was more difficult then necessary because a number of the Planning Commissioners weren't present at all of the meetings and so we didn't have the benefit of everybody's input and we ended up deciding it on the basis of only four of us. Despite the various opinions held by the Planning Commissioners concerning setbacks, we were as one voice in our

opposition to allowing the trailer to remain in the public right-of-way. We considered it obvious that no stick built house could be built or left in the street. Since the house in question is relatively mobile we considered it relatively easy to cure this problem.

Councilor Kight asked are you talking about the encroachment on Midvale Road or the highway?

First replied yes, Midvale Road. The adjoining property owner who uses Midvale Road is naturally opposed to the trailers encroachment on the right-of-way. We felt that the right-of-way should be clear as a matter of policy and of law. And it is that point particularly that has brought me here before you tonight so that you could understand the feeling. We had mixed feelings about the setbacks, although we ended up voting for it, but we were unanimous in our opinion about the encroachment of the right-of-way, that is we were opposed to it.

Councilor Kight asked even on a temporary basis?

First replied yes.

Mayor Thalhoffer stated the encroachment of the right-of-way is not before us tonight however?

First replied I understand that. I didn't know what was going to be before you tonight.

Councilor Kight asked why did the Planning Commission allow the zero setback on this particular property?

First replied we were trying to balance what the rule is, which would have been a ten foot setback, with the condition as it is found now. You can't move the trailer back without getting into the fire lane. We discussed relocating the fire lane further south but that was getting a little beyond the scope of what we had to do.

Councilor Kight asked Park Street couldn't be moved further to the south, where the old gas station is?

First replied we didn't conclude that it couldn't be, we decided to resolve it by waiving the variance on the property line, but we did discuss that as an alternative.

Councilor Kight asked but not in depth?

First replied we discussed everything over three meetings, but we didn't discuss it so that we concluded that it would have been a better course of action.

Councilor Kight asked do you know if there is enough property there that they could move the road to the south?

First replied part of the issue as I recall it was that the fire lane turns, it has a curve in it and by moving it farther to the south it was getting so that it would be a tight turn for a fire truck to make.

Councilor Rabe stated so it would be fair to describe that it was the lessor of the evils?

First replied yes.

Councilor Daoust asked since it is our job to either affirm or reverse your decision, I want to make sure that I got your decision down right. The way I read this decision, you granted a special variance to waive ten feet of the side yard setback, so that would be the setback from the right-of-way boundary?

First replied yes.

Councilor Kight stated the property line?

First stated that I think that property line and right-of-way are the same line.

Councilor Daoust asked so basically you waived the setback period.

First replied correct.

Councilor Daoust stated but you mentioned that you waived ten feet of the setback. I am not sure what the setback is from the property line.

Faith stated it is ten feet.

Councilor Daoust stated okay, so it is the same, then you answered my question, you waived the setback period.

Councilor Kight asked Mr. Sercombe, can we harmonize the setback at the same time not allow the encroachment? The two are intertwined and I am having difficulty with this. It doesn't make sense to allow the setback but you don't allow the encroachment on a pre-existing building, what do they do cut off the end of the building.

Sercombe replied they move the building so as to avoid the encroachment but still be within the property line. If you allow the setback, it allows the building to be moved partially to the south and don't allow the encroachment, the building will have to move to the property line. If you don't allow the setback the building will have to be moved ten feet south of that property line.

Councilor Kight stated but then you run across the other problem, the safety problem with Park Street. Hypothetically, if we move that building ten feet six inches, you would be right up against Park Street.

Sercombe stated assuming that it maintains that same orientation of the building. If the building rotated in any way, it may not, I don't know.

Councilor Rabe stated you would still have a zero setback. If you brought it up to the property line, you moved it the ten feet six inches that is on the side yard now, you would still need to have a zero setback.

First stated the building is to big for the site.

Mayor Thalhoffer stated we are here to hear the appeal on the Planning Commission's recommendation which does not include the encroachment on Midvale Road, that is a separate issue. We could waste a lot of time here talking about the encroachment of Midvale Road but it will accomplish anything except waste a lot of our time. Therefore, we are going to confine our question towards the temporary variance of the setback.

Mayor Thalhoffer asked is there anyone else who would like to speak for the applicant?

No further testimony received.

Mayor Thalhoffer stated Mr. Howell would you like to speak.

Terry Howell stated my father owns the property. The only time the gate is closed is when I am not home. The reason it was put there was because when I first moved up there I was robbed twice and vandalized three times. If the gate bothers anybody, all it is is a post and if I move it around the corner about fifty feet it will be on private property, so if it is a problem I can move it. The other thing was, the 20 foot fire lane, on Midvale Road now it is only 17.6 feet. That is all I had to say, my fathers attorney will have more to say.

James Leuenberger stated I am an attorney and I represent Chester Howell, the appellant and owner of the adjacent property. This being election season a number of things come to mind. I of course was here before the public record was open in this case and heard the heartfelt presentation of the resident of Troutdale. Although I am not a resident of Troutdale and I didn't pay attention to the issues of the campaign here in Troutdale, his comments about the tenor and tone apply here, not for what the Council is doing but for what Mr. Stamp is doing. The level of acrimony and disrespect throughout this, both at the Planning Commission level and here, is offensive. I would like the record to reflect that my integrity was challenged the last time we were here. It was specifically said that none of the issues, or very few of the issues that I had raised as appellant issues were preserved below. In light of the City Attorney's commentary about the issues, the one issue in particular about the septic tank, and the concessions that are contained in Mr. Stamps October letter to the City Council, that statement should be retracted. I would ask at least the City Council recognize that the appellant issues that I have raised, that Mr. Howell has raised, were preserved with the possible exception of the disqualification of the one Planning Commissioner. Another thing, particularly in light of Mayor Thalhoffer's introduction here, I believe it was in today's Oregonian there was a column that was entitled ignore the man behind the curtain. That quote comes from the Wizard of Oz, one of the last scenes of the movie you have the Wizard of Oz behind the curtain with a voice magnifier and making all sort of sounds and the curtain falls and everybody can see him, recognizing that he can be seen by the audience he says ignore the man behind the curtain. Well the man behind the curtain in this case is the encroachment on Midvale Road. We can turn a blind eye to it. I suppose you have to turn a blind eye to it. But turning the blind eye to it is the same as ignoring the man behind the curtain. That is also pertinent in light of the applicants many many disparaging remarks, about for instance Mr. Howell's property. Complaining that the trees were felled and that it is trashy, complaining that it is just a mobile home. They are complaining that Mr. Howell does not essentially have a sense of aesthetics, or if he has a sense of aesthetics they are completely meritless and they should be completely ignored by this council. If I didn't hear the word specious once I heard it at least a half a dozen times, again it is offensive and it is as ungermane and irrelevant as legally the question about the encroachment of Midvale Road is. The City Council should ignore much of the arguments contained in the written

presentation presented here by the applicant. It was irrelevant and inflammatory and completely unnecessary. One example being the pot calling the kettle black. That was again reiterated here tonight. Mr. Stamp's speculation about Mr. Howell's motives or lack thereof, are completely ungermane and irrelevant to this proceeding. What you are doing is you are reviewing the Planning Commission's decision and as it has been said you have the option of affirming, reversing or modifying in whole or in part that decision. We have raised ten points. One of those points was on a fundamentally necessary finding of the Commission as to the reasonableness of the siting of the mobile home on space #1. In light of the Council's admission that the disqualification of the commissioner was not germane I took it upon myself to flush out, what I believe was an important point that was raised below, and go into the question of the reasonableness of the Council's action. That is that you have to look at the alternatives that are available to the applicant. One thing that has to be focused on, and I want the Council to know that I have this evening filed a reply to Mr. Stamp's observations and that is part of the record and I ask that you all read it before making a decision. I begin that reply by clarifying what I believe is an essential point.

Mayor Thalhoffer asked do we have a copy of that reply that he is referring to that he filed with us?

Leuenberger replied yes.

Mayor Thalhoffer stated it would be nice if we had copies of that.

Sercombe asked so you don't have copies of that?

Mayor Thalhoffer replied no.

Councilor Daoust stated we agreed at the last meeting that we would get this stuff prior to the meeting so that we could read it. That was one of our agreements.

Councilor Kight asked when was this received?

Stickney replied it was handed to me right after the meeting was started.

Mayor Thalhoffer stated go ahead and make copies.

Councilor Kight stated point of order Mr. Mayor. How are we expected to listen to testimony and read a document at the same time.

Mayor Thalhoffer stated we do it all the time. If we have a problem with it, we will just let him explain it to us.

Leuenberger stated an important clarification is who the applicant in this proceeding is. There is only one applicant and that is Nancy Cox. Many of the arguments made or the blame that is apportioned is directed by the applicant at her own tenant, and the tenant's own contractor. You will recall that an important thrust in the applicant's argument is, it is not our fault, we went to the city and we asked for permission and we got permits and we weren't told and we didn't know and we didn't get a survey. But the use of the plural "we" is inappropriate because Mrs. Cox didn't do any of those things as far as the record indicates and as far as what Mr. Stamp's position has been inconsistent throughout. The issue of who the applicant is, is always germane. The applicant is Mrs.

Cox, it is not her tenant and it is not the construction firm which didn't fulfil its contract in a workman like manner. Nor, at issue is whether or not the city issued permitting in a proper manner. The issue is whether or not the setback requirement for R-20 zoning should be waived. It is irrelevant really, the tenants problems, the tenants construction companies problems are not relevant to Mrs. Cox and therefore shouldn't weigh in on any weighing of hardships that the City Council may feel is appropriate in determining reasonableness of conduct accomplished.

Mayor Thalhoffer stated I think we can go through that fairly and decide what is really germane here or not. I think we know what is germane and what we are talking about. You have made your point.

Leuenberger stated I am not talking about the first assignment of error tonight, I have been forbidden from doing so. Instead, I flushed out a different argument, and I denominated it argument number one, or first assignment of error. Contrary to staff recommendation and contrary to the applicants position, this issue was preserved both below and in the notice of appeal. The notice of appeal, the Troutdale Development Code only requires that issues be addressed or identified. One of the issues identified was the reasonableness of the Planning Commission's decision. That reasonableness can only be determined in light of facts. One of the facts is established in my original argument with the photographs, which are an exhibit to my argument, that as things stand right now there are three very small travel trailers in the Sandy Frontier Trailer Court. Moreover, there is a large grassy expanse, which is depicted in the photograph provided to you by me, which shows there is a tremendous amount of room for a long mobile home.

Councilor Kight asked I heard testimony that that was identified as a septic field.

Leuenberger replied it was tonight by an attorney who is not an expert. I don't know if you are going to consider that as the evidence or not.

Councilor Rabe stated might I suggest that he might have gotten that information from the land owners.

Leuenberger stated he might have and they can testify, but they haven't yet.

Councilor Rabe stated so you are contending that is an available space, is that what you are saying to us.

Mayor Thalhoffer stated that is his argument and that is what we are suppose to weigh.

Leuenberger stated not only that but a lot of what we have been doing here is arguing about who has preserved what and who has made this argument in a fashion to preserve himself. I made that argument, I am not making that argument now orally for the first time to which one can rebut something brought up the first time orally before you now. I argue and I submit that because I made that argument in writing before Mr. Stamp put on his presentation first tonight, it was then that he had an obligation to call whatever witness he was going to call to go against that position. Having not done that, he can not use my argument now, I am not putting on any evidence, I put on the evidence. He can not now say oops, I can rebut. You can ignore legal technical arguments if you wish, but the fact is I'm having shoved down my throat and it is not all unfair for me to make similiar arguments, as I said I have no idea what is below that ground. I didn't have surveys done. The fact

of the matter is, you are dealing with the record as it exists and with evidence that has been produced before tonight in a form of photographs by us. You can decide whether or not the Planning Commission's decision was reasonable in light of the alternatives available to the land owner, and I ask you to make that decision independently. I also argue that the issue was preserved below and in the notice of appeal, so it is before you now. As to the second assignment of error, I believe that the evidence speaks for itself, again you have a credibility decision to make. You have not listened to Chester or Terry Howell speak on the question of where the old mobile home was in relationship to Midvale Road, their testimony was heard by the Planning Commission. In response, I believe it was the manager of the mobile home park and the current tenant filed an affidavit saying that they have not moved in terms of location in Midvale Road, the new mobile home is the same encroachment as the old one. You don't have to accept their testimony, you can accept the Howell's testimony on that. The third assignment of error, again this is a question of weighing the evidence. You have the evidence before you on the question of whether or not there were two rooms added to the old mobile home, which two rooms constitute a dwelling space. You do not have to accept the evidence submitted by the applicant. That evidence was not supported with testimony or affidavit of the old tenant. We submit that absent such testimony or affidavit by the old tenant, who knew what the building was used for and what the constituent parts of that building were used for, you have no evidence before you as to the size of the dwelling. What you have, what the staff had was the original dimensions of the old mobile home, 10 x 48, which is significantly less than 20% smaller than the new unit. You can and should make an independent determination as to the validity and persuasiveness of the evidence towards the size of that unit in light of its dimensions as a mobile home.

Councilor Kight asked is it your contention that the two add on rooms were not considered living space, thereby would not be considered as part of the total square footage of the unit?

Leuenberger replied that is correct.

Councilor Kight asked do you have evidence to support that?

Leuenberger replied I do not. But by the same token, as far as I can tell, neither does the applicant. And the burden of proof lies upon the applicant not upon the appellant or person objecting to the application. In objection to the third assignment of error, which is not really being pursued here tonight by Mr. Stamp, the applicant cites non-Oregon case law for a number of propositions. I ask you to ignore that case law. Note first of all that there is no citation to Oregon case law, the case law that he cites from Louisiana, Ohio and Florida come from a completely different kind of legal system in terms of zoning law and its acceptability. The eastern states that he relies upon, as he quite forthrightly quotes, take a very dim view of zoning laws. Oregon does not take a dim view of zoning laws. Oregon is quite zealous in its enforcement of its zoning laws, so the case law about zoning laws should be strictly construed and whenever a loop hole can be found, find it and exploit it, does not apply to Oregon law. Another thing that is brought out in the objection to our third assignment of error is, two things. One is that when Mr. Loucks, the tenant, and PQA Construction applied for a permit to locate the mobile home where it is located, they were told by City staff that there was a 5 foot setback requirement. Granted if that is true, it is 5 feet less than the actual setback requirement. But nonetheless if a 5 foot setback requirement had been adhered to, the mobile home would of had to have been fifteen feet south of where it is now. I believe that the admission contained in this objection that they were put on full notice that there was at least a five foot setback is devastating to the applicants argument. They knew that there was a setback

requirement, they may have been misinformed about its length but they knew there was a setback requirement which they ignored. Another point is, the argument I will concede, that mobile homes are bigger than travel trailers. But the problem that exists as Commissioner First said, space #1 is way too small for what the applicant's tenant is trying to do. There is really no way to fix it other than, one of the reasonable considerations that could have been made and should have been made by the Planning Commission was the siting of a true travel trailer on space #1. We have appended to our arguments brochures of modern brand new travel trailers. I am not an expert on travel trailer construction or fire code safety for travel trailers, but I have seen them. Even the brochures that I have made apart of the record show that travel trailers can be beautiful, they can be comfortable, they can have the conveniences that one would expect in one's home. Not just while out camping, but you can actually live quite comfortably in a travel trailer. The fact of the matter is that there are at least three families living in the trailer court now in travel trailers. So to argue that a travel trailer can not be a permanent home for somebody belies the evidence on the ground. As regarding the fourth assignment of error the

Councilor Rabe stated I am losing track of where you are going. I was with you on the assignment of errors, and then I thought we were just discussing #6, now we are on #4?

Leuenberger replied I was still working on #3, they are connected.

Councilor Rabe asked could you let me know which one you are addressing so I can read the text and listen to your dialog.

Leuenberger stated I was referencing the final paragraph of the third assignment of error argument. Now I am going to the fourth assignment of error argument and that is a question of evidence presented about the fire lane, Park Street. The evidence that was presented by the applicant was an opinion from the Multnomah County Rural Fire Protection District #14. If memory serves me, the opinion was that Park Street was wide enough for fire truck, emergency vehicle access. Staff made everybody aware before the Planning Commission hearing that, in staff's opinion at least, the Multnomah County Rural Fire Protection District #14 does not have jurisdiction over the City of Troutdale fires. The City has contracted with the City of Gresham's Fire Department to provide protection and so based on that the applicant did not put on any evidence from the fire agency with jurisdiction over the subject property in his opinion letter. This assignment of error goes further than just that observation because the opinion letter does not establish in of itself that there aren't other options available on the property for emergency vehicle access. I don't have the answers to whether or not there are other alternatives. My point is that the evidence does not support the finding. What I don't know and what you don't know and the Planning Commission didn't is, are there other alternatives for emergency vehicle access to the trailer court itself. I submit that the evidence does not support a finding that the only access is a twenty foot wide Park Street. Regarding the sixth assignment of error, one of the points made by the applicant was that Sandy Frontier Trailer Court has changed its policy and no longer allows trailers to be located on the Sandy Frontier Trailer Court. That is fine, as far as we are concerned she can have whatever restrictions she wants to put on as to what kind of units her tenants can put on her property. But, she is bound by the zoning and other laws of the City of Troutdale and if she doesn't want trailer courts on her property that is fine, but that doesn't mean she can put mobile homes on her property if they don't fit. Assignment of error #7, I believe the City Attorney has summarized my position absolutely correctly in that my point, in the notice of appeal and currently, is that there is no evidence that there is no alternative to the current location of the cesspool. Tonight for the first time, we learned,

that the cesspool is connected to a drainage field some many feet away. Just as the question of the encroachment of Midvale Road is not before you, the question about how the heck can they connect that cesspool to that septic field is not before you either. Similarly what is not before you is the location of the mobile home unit in space #2, which is also in the setback. Also what is not before you is the location of the tree that is next to the road, nor before you is the question of the gate. Those things are not before you. I don't have an answer for you, I don't know whether the cesspool can be moved or not, but I do know a little bit about travel trailers. I have had to learn a little about travel trailers to prepare for this. One of things about travel trailers, because they are mobile, is they have holding tanks and therefore with a travel trailer there wouldn't be the need for a cesspool of any kind. All waste could be collected in a holding tank and be removed and taken care of off site. I believe that would be supported in the brochures that I have presented to you. Therefore, there are alternatives available to cesspools. My assignment of error was that there was no evidence to support the finding that there was no alternative to the location of the cesspool. I believe that still remains the case. As far as I can tell, no evidence is going to be put on tonight on that issue. My ninth assignment of error, I don't know, I wasn't trying to be clever or funny. The variance was required in order to cure an unhealthy condition. The observation that I make is that the finding is not sustainable by any evidence. The unhealthy condition was eliminated once the condemned mobile home was removed. The unhealthy condition ceased from that moment on. No matter what the Planning Commission or the City Council does regarding variances or setbacks has nothing to do with the question of whether or not the unhealthy condition has been removed or remedied. Whether this variance goes ahead or does not go ahead, the unhealthy condition has been alleviated and is not an issue before either the Planning Commission or the City Council. Finely, in our assignment of error I recommended that the condition be modified. In the October 13th letter from the applicant, a new recommendation was brought forward for the first time by the applicant as to the wording of the condition. I want you to recognize that there is only one appellant here, only one person paid the \$500.00 fee necessary to appeal this and that is Mr. Howell. Had the applicant wanted to change the wording of the condition, which as far as I know the applicant helped write in the first place, then the applicant had the duty to file an appeal. Having failed to file that appeal they can't be heard now about wanting to change the wording on that condition. I have an additional photograph that I would like to put into the record. I took the photograph, so I know what it shows and I do testify that it is a true and accurate depiction of what I saw there. What I saw there was the subject mobile home on Midvale Road with a truck, that was not my truck parked on the road next to the mobile home. I offer this because one of the things that was shown on the applicants power point presentation would lead the Council to believe that there was a lot of room for traffic to go up and down Midvale Road even with the mobile home being where it is and with the gravel surface being where it is. I offer this photograph into evidence to show that it isn't so wide and it isn't so safe.

Mayor Thalhoffer stated that would be more relevant in the proceeding where we get into the encroachment.

Leuenberger stated it is as much of an issue for the setback as it is for encroachment because of safety. We argue that safety is one of the primary reasons, if not the primary reason, for any and all setbacks. In order to grant the variance, the Planning Commission or the City Council has to address why the criteria or the reasons behind the setback requirements can be, in this case ignored, because we are talking about a zero setback.

Councilor Kight asked how would you counter their argument that they wanted to replace like with

like. In other words they had a, lets call it a manufactured home there to begin with and they wanted to replace it with something similiar, essentially the same footprint except for moving the property immediately to the west?

Leuenberger replied we disagree with that contention. We disagree that the old mobile home was in the same location as far as its northern location, that is into the setback of Midvale Road. We have contested that.

Councilor Kight asked are you saying that it is different then the testimony given by the other side?

Leuenberger replied yes.

Councilor Kight asked how is it different?

Leuenberger replied both Terry and Chester Howell testified that the old mobile home was further south then the current mobile home.

Councilor Kight asked what evidence did they bring to support that argument?

Leuenberger replied eyewitness testimony. They have lived there for years. Chester Howell has owned the property for years.

Councilor Kight asked basically just visual?

Leuenberger replied yes.

Councilor Kight asked the other argument is that you are saying that essentially a travel trailer is built to the same standards as a manufactured houses?

Leuenberger replied I didn't say that. I don't know the standards. What I do know and what I can testify to for what it is worth is that travel trailers can be homes, nice homes. The evidence on the ground is that people are living in travel trailers right there in the Sandy Frontier Trailer Court.

Councilor Kight asked in the fourth assignment of error you talk about fire trucks and we have heard testimony tonight that essentially the twenty foot rule is two fire trucks side by side, one could pass so there is enough room for the trucks to either turn or maneuver onto property. How is it you feel that the fire road could be serviced or that road would be vacated so that the manufactured home would be moved immediately to the south and still maintain those same standards, there is an old gas station there.

Leuenberger replied there is other access. Park Street is a quarter circle. By definition access is available via Woodard Road into Park Street.

Councilor Kight asked that would only allow one access, am I right?

Leuenberger replied yes. I don't know and the evidence does not establish whether or not there is enough room for a turnaround.

Councilor Rabe asked so the contention is that the previous site of the condemned trailer house was in fact not as our maps indicated?

Leuenberger replied maps?

Councilor Rabe stated the map before me, the plat map which I am sure you have seen. What I just thought I heard you say was that the previous mobile home, that which has been condemned did not in fact exist in the site that is depicted in this map. That you are saying that it was farther south. Because what I also heard you say is that the variance, the infringement, is essentially identical, the new one and the old one are imposing in that area the same amount. I just heard you say that the previous condemned dwelling which is now no longer there, via eye witness accounts puts the footprint of the previous location south of what it is indicated to us on this evidence that we have before us now.

Leuenberger replied you said map and then you said evidence, there is a big difference.

Councilor Rabe stated lets not tear words apart, lets just talk about this piece of document that you have had and I have for a month.

Leuenberger replied there is question that the testimony differs. The Howells testified that the previous mobile home was south of the current location of the current mobile home.

Councilor Rabe asked how am I to base a decision on hearsay as opposed to an official surveyed document.

Leuenberger stated the survey is based on hearsay every bit as much. The Howell's testimony is not hearsay for one thing. For one thing it was offered in the Planning Commission where the Howells were subject to cross examination or further examination.

Councilor Rabe asked did they submit a survey or something that shows anything?

Leuenberger replied no. But how is the survey conducted. The survey, in terms of how a survey is conducted for things that are on the ground now, one can believe that the surveyor does his own measurements and makes his own drawings but in so far as a survey purports to show what use to be on the ground, it is no different then what the Howells testified was on the ground in days going back. The surveyor has to rely upon statements of somebody because as far as I know the surveyor didn't come out. In fact what we heard tonight was the first time the survey was done was after the new mobile home was sited, there was no survey done before the new mobile home was sited. Therefore the surveyor could not have seen himself where the old mobile home was located.

Councilor Rabe asked so then your contention is, that what I have before me here from Westlake Consultants is no more valid than, well I take this paper and your observations of the Howells and weigh the difference.

Leuenberger replied yes.

Councilor Rabe asked to what extent did the previous dwelling extend into Midvale Road?

Leuenberger replied I believe from the testimony of the Howells that it was a few feet south of where the new unit is. Terry Howell is here if you would like to ask him.

Councilor Rabe stated we have it down to 10.6, we have very specific quantitative information here. I guess I would need something on the other side of coin that would be of equal.

Leuenberger replied the thing is when you are looking at the credibility of a witness, the mere fact that a surveyor has made measurements and put them on a map...

Councilor Rabe stated I am okay with that, you do not need to reiterate that to me, I understand that entirely. My question is, this is quantitative based on a survey, the validity would be my choice and it is your job to try to convince me one way or another. But what I am asking for is some sort of evidence that can counteract the evidence that I have in front of me now.

Terry Howell stated the paper you have in front of you was drawn after the fact. They never saw the trailer in that slot. That trailer was demolished long before those red lines were put on there. The trailer that was on there was approximately the same distance maybe a little bit less than the second trailer, so it was probably three to four feet.

Councilor Rabe asked so you think there was a three or four foot difference from what was and what is?

Howell replied yes, because they were almost identical, the first two.

Councilor Daoust asked just so I can get a feel for what your bottom-line argument is here. I am assuming that your bottom-line argument would be that we would reverse the Planning Commission decision.

Leuenberger replied yes.

Councilor Daoust asked and therefore not grant the variance.

Leuenberger replied yes.

Councilor Daoust asked which would make it very difficult for us to allow a right-of-way encroachment and therefore move the trailer, is that your bottom-line argument?

Leuenberger replied yes.

Councilor Daoust asked now that I understand your bottom-line argument is to get the trailer out of there. To what benefit is that of Mr. Howell then, and this is a sincere question, if the next trailer over is about in the same location as his current trailer is and that one is not going to be moved and there is a tree closer to the road next to that trailer that is even closer to the road. I am trying to get, based on what your bottom-line argument is which is to get that trailer out of there, I see another trailer basically in the same location and a tree even closer, so what is the benefit to the Howell property to get that trailer out of there?

Leuenberger replied well you have gone right back to ignore the man behind the curtain. That is

exactly where we are at because the only mobile home that is before this body is the one in space #1, that is it. Worrying about what is in space #2, the tree and the gate is not before you.

Councilor Daoust stated I realize that.

Leuenberger stated what Mr. Howell would like is he would like to have ingress and egress to his property without being put in risk or danger and the best way to do that is to have setbacks from the road that are designed for safety so that he can go in and out of his property without being put at risk.

Councilor Daoust replied okay. So you just outlined the major bottom-line argument is the safety issue.

Leuenberger replied yes.

Mayor Thalhofer asked is there anyone else who would like to speak in opposition to the applicant, in other words supporting the appellants position.

No further testimony received.

Mayor Thalhofer called for a break at 10:18pm.

Stamp stated I would like to address some of the testimony that I just heard. First of all I would like to address some of the things that Mr. First said. Mr. First, Planning Commission member who heard our appeal and he is correct that the Planning Commission did not specifically rule on the encroachment and that there was certainly some folks on the Planning Commission who were concerned about the encroachment. We never presented a case about the encroachment to them so I think any opinions on that are premature. I would also point out the Mr. First was the only person who voted against us, so I am not sure that anything that he said really reflects the entirety of the Planning Commission and I don't think he was stating an opinion for the Planning Commission I think he was clear that he was stating his own opinion as to what things were. I am not going to quibble with that, I just want to make clear I don't think he was here on behalf of the Planning Commission. He talked about the right-of-way and Midvale Road right-of-way has been there since 1917, nothing has ever happened to it. In an ideal world, maybe we shouldn't have put that trailer there, but we did. What we are asking for is a temporary variance to just say we screwed up, the city screwed up a little also because when we were looking at the permits they we supposed to be checking this stuff out and that process failed. But instead of blaming each other, lets just say can we live with it for awhile, and I think the answer is yes we can. The next person to testify was Terry Howell. Two clarifications, he said he could move the gate up to the private property. I am not sure what he is talking about. This (referencing his power point presentation photos) is right-of-way, I guess he is right in the sense that he could move the gate right there and that would be private property, but the public still has the right of access up there and since that road is not there, in order to get to our property here we have a right to go over his property. Now either he wants us to drive through his grass or over his road, but if he is going to say well we can put a gate on private property then he needs to provide us a road to get to our property. Mr. Leuenberger the first thing he did was talk about the tenor and tone of these proceedings and said that I insulted him and stuff like that. All I said is he didn't raise issues below. I stand by those statements, I have copies of the transcript and I know what he said and what he didn't say. There is a lot of these issues that he is

raising that in his minds eye he raised them because he said reasonableness is an issue and therefore I can talk about anything that relates to reasonableness. First of all reasonableness is not a criteria, I put the criteria up earlier today and reasonableness is not a criteria. Just because you say reasonable doesn't mean you can talk about everything under the sun. The preservation of error rules have a purpose and they aren't that easily subverted. What has really happened here tonight is they in sense have been subverted because we said we were going to limit the issues, well that really didn't happen tonight, he even submitted a new photograph. I would ask that you not consider that photograph or you not accept it into the record because it violated your order from September 24th. But you know, the tone of this proceeding was set when he filed an appeal long after we put this thing up. He didn't tell us when we were building it, he just let us build it so he really set the tone of this. When I talked about the pot calling the kettle black, just look at that photograph right there (referencing photo contained in his power point presentation) and I guarantee you that he is going to be here within the next year asking for the same variances that we are asking for so I don't really see or understand why he is saying that we are disparaging him, I don't think we are. When I talked about his property being trashy, the only reason I mention that is because he is saying that this is aesthetically not pleasing, he raised the issue of aesthetics. I think it looks great, I would be proud to live in that home, I don't think I would be so proud to live up there. Aesthetics are relevant and he raised the issue. He talked about the reply memo that he submitted tonight, I would suggest that should have been submitted way back when in October. The fact that he didn't submit it then I think means it should not be included in the record. He goes off talking about who is the applicant. I am not sure why that is relevant. In a land use proceeding you are not bound by any standing rules other than we are the applicant, we own the property, we filed the application. So it doesn't matter what arguments we raise as to who can raise what on whos behalf, it just doesn't matter. He talked about the drain field space and said that was a new argument tonight. What Mr. Leuenberger fails to realize is that is in our application. We talk about this area (referencing a photo in his power point presentation) right back here as being a drain field in our application. He also talks about the map, he says it moved three feet we are saying that it is the same as it was. To clarify your point Councilor about the map, there is a disclaimer in the corner of that map, so I did not want to represent or make you think that somehow we are saying that the old house somehow is documented by survey, because it is not. We freely admit that this is a he said she said in the sense that we are saying that it is the same and they are saying we moved it out. We have a sworn affidavit from Mr. Mauck saying that he owned that house at the time it was demolished and he knew exactly where it was, I think that is good enough. I don't know what else to tell you, the house isn't there any more, we can't create evidence, at least not ethically. There is some evidence in the record although, it is not very good evidence though. There is an ariel photograph in the initial application that shows the property in its previous state. That is in the record and it showed the old mobile home, unfortunately when you look at it, it is really hard to make heads or tails of it. The other side rags on my case law from Florida, and Louisiana, the thing about that is that Oregon doesn't have any law dealing with that particular issue and whether you can move a trailer in and out so I went to other jurisdictions and Oregon courts do it all the time. When you talk about the courts today in the election law talking about Florida election law, well since they didn't have any Florida cases on point they looked to other places to see what they are doing. It is not binding on us, but at least we can get a sense of what other folks are doing, that is the only reason I submitted those cases. My three cases from other jurisdictions, it is kind of like a poker game, my three cases beats his zero cases, you know what I mean. Talking about a five foot setback and saying we are bound by that because we knew about it. Well the thing is that it is true that the contractor knew about the five foot setback, the only thing is, is that he didn't realize there was a distinction between a right-of-way and a road. He walked out there and saw the road and

measured off five feet and said we've got that. Did he make a mistake, yes. We have never said that we didn't make mistakes so I am not sure what point the appellant was trying to make. There is a legal point to be made about the five foot setbacks though. If in fact you accept the fact that five foot setbacks are binding on this property then Mr. Howell didn't appeal that building decision within twenty-one days of having actual notice of it, so he has waived any right to argue about it. I don't think it is binding on anyone, but if he wants to play the game where there is five foot setbacks, fine, there is five foot setbacks. Then why are we talking about ten and twenty foot setbacks today. That would in fact negate the requirement to have any front yard setback which would deal with the issue of septic. I think that is a bunch of confusing legal argument not worth going there other than to say that his argument doesn't have much merit. Another argument that doesn't have much merit is talking about beautiful travel trailers and how we should all live in them. I don't think Mr. Leuenberger probably lives in a travel trailer, I don't think most of us would want to live in a trailer that is 300 to 400 square foot. I just don't think that is a very humane thing to do, to say well you should live in a travel trailer. Some people do live in travel trailers, maybe some people love them, I don't think many people do and I don't think the law requires that they live in travel trailer. I am sure that most folks that live in them would rather live in Bill Gates house but they can't because of there financial circumstances. Travel trailers don't meet building codes, they don't have all the amenities, they are real small and they are designed to be lived in for a week or two or three. Mr. Leuenberger talks about how they don't need setbacks because they have holding tanks. Well those holding tanks only hold about a weeks worth of stuff and so you would have to move them every week, who wants to move their house every week, that is ridiculous. The fire access issue, this is a issue that wasn't raised below. But even if it was the point that the fire marshal was making was that they want to be able to park the tanker trucks in a place that won't get surrounded by fire. If Park Street is completely closed off, that essentially leaves one access for fire trucks and if that gets cut off then fire fighters could get trapped. That is the reason that they always want two accesses and that is why you don't want to close off Park Street. His issue number nine talked about unhealthy condition being eliminated and how that happened whenever the home was torn down. I am not sure why that is even relevant or even what it has to do with anything. Keep in mind the criteria that we are talking about here are set forth in your code and whether or not it eliminated an unhealthy condition is a nice to know fact but it is not what I would say as legally relevant. A lot of his arguments are really nit picky things about the findings but they really don't go to the criteria and that is what is legally relevant here. He talked about the wording of the condition that says that he only paid the \$500.00 fee and therefore it is his appeal and we can't request that you change the condition. Well that would be real nice if it weren't for the fact that your code says that you can modify in whole or in part. By the way I did not help write that condition. I proposed a new condition after the Planning Commission drafted their condition and I think some of what I said got put in, but the stuff that I wanted in the condition didn't get put in. With that I will close by saying that this is a real simple request to do a very reasonable thing. There was a mistake made that ended up putting a trailer in a location where it had always been, not realizing that it was actually in the road. Nobody realized that it was in the road, the city didn't even know it was there road, no one cared. The thing had been there since 1917 and no one has used it except the Howells and they only use part of it. We thought a reasonable compromise was to say when that street develops, whenever sewer and water gets here and they start building mansions there, we will be in the mansion building business also so will take the trailer down no problem. But that is not going to happen anytime soon and there is never going to be a whole lot of development because it is in the gorge and the city has a hillside ordinance that covers most of that area, so you are never going to get much development there.

Leuenberger stated point of order, this is not below.

Mayor Thalhoffer stated point of order is sustained.

Stamp stated it is a really reasonable solution to what was a bad mistake. I think the city really needs to help the applicant along here because the city staff reviewed these permit applications and didn't catch the mistakes. I am not blaming staff, but it was a comedy of errors and all we are asking for is a reasonable solution. If you look at the criteria I don't think that Mr. Howell has raised any legitimate reason why we don't meet the intent and purpose of the regulation. He has talked about safety, I don't see a safety issue, not one. He even brought a picture, he brought it in late and I haven't even had a chance to see it hardly, but it doesn't prove a thing. With that I would ask respectfully that the Council bring this long process to an end by granting our variances just like the Planning Commission did and that we can come back and ask for a temporary encroachment license or permit that would go away at such time that Midvale Road is built to city standards.

Councilor Kight stated both attorneys have covered a lot of material that really I don't think are specific to the issue tonight and that is the variance. That is what I want you to speak to tonight to this Council. Why do you feel that your client should receive this variance? Don't talk about the encroachment please, just stick with the variance issue. We have the safety issue.

Stamp replied it is right up there (referencing his power point presentation). These are the variance criteria. It says proposed development, we are coming in and basically begging you for forgiveness instead of asking for permission. Had we known about this it would be different but we put it on the site not knowing that we were encroaching on the right-of-way. If you look at the variance criteria, intent of the purpose of the regulation. This is a setback regulation, what is the intent and purpose. He has mentioned safety, I don't think safety is an issue. It is a gravel road, I don't think he has identified any legitimate safety issues.

Councilor Kight stated the safety issue as it relates to your client. In other words if you move that building closer to Park Street, we do have a safety issue as it relates to the fire trucks right?

Stamp replied sure.

Councilor Kight stated that is what I am referencing to.

Stamp stated that is certainly true. We would have a health problem if we kept it on the septic. Safety issue if anything is a wash but it is probably more in our favor because of the fire issue on Park Street.

Councilor Kight stated I disagree with you when you say it is a wash because there are no buildings over there, opposite your clients property.

Stamp stated at best it is a wash. There is nothing there. The fire trucks could go up and down Midvale no problem, you could park two of them right next to each other. If anything his photograph that he just submitted proves that point. So I guess you are right maybe it isn't a wash maybe it goes more in our favor. Safety is just one issue or reason for setbacks there is also the aesthetics of it. We have looked at photos of the site. I personally was not aesthetically shocked or displeased by the way it looked, in fact it looks much better then it did before. Because there

is no development on the other side right now we don't have to worry about buffers keeping inconsistent uses away from each other. So I think the intent and purpose of the regulation will not be violated and I don't think it is materially detrimental to the public welfare. The public doesn't really use that road except Mr. Howell who uses it as a driveway and he will still be able to use it as a driveway as he always had. We are not asking to change anything that is different than it has been for fifty years. We are asking to keep it the same. It is not injurious to his property, he said nothing, absolutely no evidence as to why his property would be injured, he said it was not my job to say why it is injurious. Well I can't prove a negative either and I guess the Council just has to weigh that and say do they see any injury to other property in the area when compared with development that would be permitted. The development that could be permitted could be legally five feet away because that is what the historic setback was in the front and on the side from the permit. What is five feet, how is that going to be more injurious to the property, I just don't see it. That is the criteria I think we meet.

Mayor Thalhofer asked is there anyone else that you would like to have speak to us?

Stamp replied no.

Mayor Thalhofer closed the Public Hearing at 10:52pm and reconvened the Council Meeting.

Councilor Kight stated there has been compelling argument on both sides by both attorneys. What it really comes down to is one issue and one issue only and that is the variance, the setback. As Mr. Stamp pointed out there is an issue of safety and we have covered that. Without going over the same thing, one thing that I will repeat that I am concerned about is the fire trucks having access to that property. He is right, there needs to be at least two entrances to that property. These properties are surrounded by Douglas Fir Trees and in the summertime it gets very dry. I myself live just opposite on the other side of the river and I know how easy it is, especially next to a main highway, someone throws out a cigarette and that dry grass catches fire and pretty soon it is in the buildings and in the trees and then you have a major problem. Fire is a real critical issue with myself. Safety is really important, not only for the fire trucks but also for the police and medical services as well. As I see it with the current building as it is now if you move it to the south it encroaches on Park Street then you would have difficulty getting those fire trucks in there. The other issue is the health issue. As I understand it based on the evidence tonight, not having expert testimony from people in the cesspool and septic field, we had to rely upon the testimony given here by the attorneys, that there was no alternative if you were going to keep a manufactured home on this property it would have to be moved to the west. That doesn't necessarily address the issue of keeping the property, the manufactured house, on the current footprint to the immediate north, but we have already addressed that by talking about that it would end up encroaching on Park Street. So we are kind of between a hard spot and a rock. I am not going to gloss over the fact that there was a series of errors by the property owner, probably by the contractor and to some degree the city has to share some of the blame, but ultimately what we are faced with tonight is there is a manufactured home on the property. Somebody has to debate the expense to set up that building based on the evidence that we have received tonight, based on the permits that the city gave them to put the building there to begin with. My perspective is I am going to allow this variance.

Councilor Rabe stated I am not going to reiterate the safety issues because obviously they are of noble concern. I have another observation or comment that if in fact the new trailer had been of a similar size it very likely would have been parked in the very near same spot. Only beside the

public safety issue in which it would have needed to be moved the required distance away. Being that it is a regrettable oversight by basically everybody I believe, that it does infringe into an area that it shouldn't. I really haven't heard anything that would suggest that if they bought a similar thing that was exactly 10 x 48 like the previous one that they wouldn't have just plopped it right in the same spot and just moved it away from the cesspool and we would still be sitting here with the same issue only with a smaller trailer and maybe a little more room for flex. So, with the condition that when this area develops that will need to move, provides the option for the change that will inevitably need to happen if the area develops. I will also be supporting this variance.

Councilor Daoust stated it sounds like we have a forty-six year old precedent here. I am seeking a common sense solution and it just so happens that the Planning Commission's findings and the decision that the Planning Commission made fits my common sense solution. It is a temporary variance in the first place. It is not a permanent variance, it is temporary by conditioning the side yard variance to terminate on land use approval for new development that requires road improvements to that portion of Midvale Road, future potential hazards are avoided. The variance, in my mind, has no affect on the neighboring property owners ability to develop his property in the future. There has been no evidence that has been provided that this is the case, that Mr. Howell's property is somehow economically impacted by allowing this variance and that fits the variance criteria A-2 that we are suppose to match the evidence against. As far as the safety hazard on Midvale Road, there has been no evidence to point out that there is a safety hazard there, in fact there has been evidence to point out just contrary to that, that the fire trucks will use Park Street not Midvale Road, the road, I'm not sure how safe the road gets the farther up the hill you get, but the flat portion actually looks safer then it may actually be up the hill. The Howells are basically the only users of that road and so the argument that it is unsafe because the trailer is eight feet from the surface of the road, that argument has not been made. So I am okay for now, allowing this variance until the city actually needs to develop the right-of-way, I see no problem with allowing the Cox family to use the land adjacent to the right-of-way.

Councilor Smith stated I took a drive through there this afternoon and I definitely agree with Councilor Daoust, it is a temporary variance and the roads themselves, I actually didn't see anything that we have had a problem with up until now. Until we do or until we decide what to do, I agree with allowing the variance.

Mayor Thalhoffer stated I agree with the Planning Commission's recommendation. I think they did an outstanding job on this issue. The safety hazard which was brought out, people using Midvale Road, I guess I couldn't see where there was a safety hazard there, at least not now. This is, as it has been pointed out, a temporary variance and any development that is done in the future will terminate the temporary variances so I don't see a problem with it. It is true it is a comedy of errors, but sometimes that happens and we have to do the best we can with where we find ourselves. I think I would support the Planning Commission's recommendation and their findings.

Sercombe stated I need to raise something. Technically, Councilor Smith, if you do a site view of the property beforehand you need to put into the record the things that you saw in that site view that seemed relevant to you with respect to the proceedings before the Council and the parties would have a right to rebut any of those things. It is treated as an ex-parte contact. To keep our record clear, I need to ask you to clarify what you saw when you took the site view and was there anything there that you saw that wasn't part of this record that has been made before the Council tonight?

Councilor Smith replied no. I didn't see anything that would be derogatory. Basically I thought it looked real good for as old as it is and for as long as it has been there I felt like it was in pretty good shape. The tree, the width of the road, I didn't realize it wasn't really a through road and we went all the way up and once you started up through that gate it was rocky going. The roads prior to that on the level was to me, in fairly good shape as far as what I saw.

Sercombe asked does either party want to have the record reopened to rebut those observations in any way?

Stamp stated I would like the record to be open to give the other side the opportunity but I don't have any comments to make.

Leuenberger stated I would like to ask some questions.

Sercombe stated we are technically not in the Public Hearing. The issue is the party is entitled to present any sort of testimony reference to rebut Councilor Smith's observations of the site as she has declared them. It is not, unless you deem it in order, necessary to allow cross examination. She has declared what she saw and she said it is what was depicted in the evidence before the Council with the additional observation about the steepness of the road. Technically the appellant has the right to put on testimony in response to that factual presence of the record. He may need to reopen the record if that is what they want to do and they can present testimony as to the condition of the road and her observations.

Mayor Thalhoffer stated it would seem to me that any evidence on the appellants part would be some what redundant, I think we have covered this about the condition of the road and where it goes and where it doesn't go and where the right-of-way is.

Sercombe stated but the procedures here are governed by that if there has been a property visit it needs to be declared and they have the right to rebut it.

Mayor Thalhoffer stated okay, we will reopen the public hearing (11:07pm) but I would prefer that you put on evidence yourself to respond to what Councilor Smith said.

Leuenberger replied we have a problem and that is before the hearing began everybody was asked to declare any ex-parte contacts and you all replied no. What Councilor Smith just testified to is completely irrelevant. But what I need to know is what else did she see, did she see anything that was relevant and I would like to ask her some questions along those lines.

Mayor Thalhoffer replied okay.

Leuenberger asked Councilor Smith, you said that everything looked good. When you said everything looked good were you referring to Midvale Road itself only?

Councilor Smith replied yes. We drove up to the gate and through the gate, up until then the road seemed like it was in fairly good shape. I noticed where the buildings sat along, the ten foot between the road over to the buildings. I didn't, myself see any problems unless people were speeding or doing something they shouldn't be where they might get themselves into problem. But as far as the road itself, up until we started up the incline, I didn't think the road was in that bad of

shape at all. To me it looked like it was passable.

Leuenberger asked did you see the condition of the mobile homes and travel trailers on the Sandy Frontier Trailer Court?

Councilor Smith replied I didn't pay close attention. I was just looking at the trees, which I knew was sitting out in the right-of-way. I was more concerned with where everything sat in conjunction with the road itself. I didn't really pay that close of attention to the actual road other than the fact that it seemed while we were driving it seemed smooth enough to me until we got close to the gate and then all of a sudden it was on an incline and a lot of gravel. I didn't pay that close of attention other than the fact that it seemed fairly smooth.

Leuenberger replied I have no further questions and no evidence.

Mayor Thalhofer closed the Public Hearing and closed the record at 11:10pm. The Chair will entertain a motion.

MOTION: Councilor Kight moved to accept the findings and conditions of the Planning Commission to allow the variance to the north of Sandy Frontier Trailer Court for space #1 with the condition that the manufacture home be removed within 90 days if the property is to be developed.

Councilor Kight asked what do we need to have as the trigger for development, is that clearly spelled out or do we need more detail?

Sercombe replied we can provide more detail. The current conditions says that until such time as a land use permit is issued by the city for development of the property.

Councilor Kight stated so that is the trigger?

Sercombe replied yes.

AMENDED MOTION: Councilor Kight moved to accept the findings and conditions of the Planning Commission to allow the variance to the north of Sandy Frontier Trailer Court for space #1 with the condition that the manufacture home be removed within 90 days if the property is to be developed. Development meaning that it would be triggered by when a land use permit is issued by the city for development of the property. Seconded by Councilor Daoust.

Sercombe stated is the intent of the motion to have us bring back a decision that would formalize your instruction. You need to have some additional findings to deal with the appeal contentions.

Councilor Kight replied yes.

Stamp asked what about appeal from land use approvals, would that be included? You said a land use permit issued, I would assume that would include the appellant process that goes along with it.

Sercombe stated why don't we deal with that as we draft the findings.

Mayor Thalhoffer stated we will instruct the staff to develop the findings consistent with what we have all said tonight.

Sercombe replied then that is part of your motion, correct?

Mayor Thalhoffer replied yes.

Mayor Thalhoffer asked Councilor Kight would you like to speak to your motion.

Councilor Kight stated I think we have already covered everything.

Councilor Daoust stated just to clarify why I seconded the motion and my assumption of when Councilor Kight made the motion was to affirm the decision of the Planning Commission.

Councilor Kight stated correct.

Councilor Daoust stated also my assumption is that the findings of fact that the Planning Commission has are more or less cover the findings that we also have.

Councilor Kight stated that is part of the motion.

Councilor Daoust stated the findings of the Planning Commission are darn near accurate. There may be some word smithing that needs to be made to make it more applicable to the Council but that is part of what I thought the motion was and why I seconded it is because the findings that the Planning Commission has are pretty accurate.

YEAS: 5
NAYS: 0
ABSTAINED: 0

6. COUNCIL CONCERNS AND INITIATIVES


Mayor Thalhoffer stated due to the lateness of the hour we will skip this item.

7. ADJOURNMENT

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

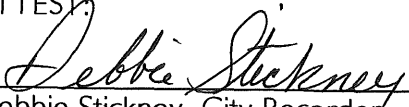
YEAS: 5
NAYS: 0
ABSTAINED: 0

Meeting was adjourned at 11:14pm.



Paul Thalhofer, Mayor

Dated: 1-12-01

ATTEST


Debbie Stickney, City Recorder

CITY OF TROUTDALE PUBLIC ATTENDANCE RECORD

November 14, 2000
CITY COUNCIL REGULAR MEETING

PLEASE COMPLETE THE FOLLOWING

NAME <small>(please print)</small>	ADDRESS	PHONE #
Andrew Stamps	1211 SW 5th Ave Pk 072 9720	796-2892
Ferry Howell	2080 SE. M. Vale Rd.	666-1350
Nettie Cox	1703 SE Woodrow	665-9086
Toei Muck	" "	?
Tim Muck	" "	?
Carrie Classon	1542 E. Columbia	465-2372
Mike First	455 SW 18th St.	'
RENEE SCHMIDLING	1972 SE THOMPSON RD.	665 1996
Norm Thomas	2701 SW 16th St	661-4320
Maggi Pieren	1610 NE 23rd	491-1103
J. McPherson	709 SE 40th	492-0680
J.C. Jr	8100 B SW Parker	670-8182