



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. -- March 27, 2001

Mayor

Paul Thalhoffer

City Council

Pat Smith
David Ripma
Bruce Thompson
Jim Kight
Paul Rabe
Doug Daoust

- (A) 1. **PLEDGE OF ALLEGIANCE, ROLL CALL, AGENDA UPDATE**
- (A) 2. **CONSENT AGENDA:**
 - 2.1 **Accept Minutes:** February 13, 2001 Regular Meeting, February 13, 2001 Work Session and February 27, 2001 Regular Meeting.
 - 2.2 **Resolution:** A Resolution approving Amendment No. 2 to Intergovernmental Agreement No. 4600001732 (formerly Agreement No. 0010834) with Multnomah County for the Troutdale Road Sidewalk Project.
 - 2.3 **Resolution:** A Resolution recognizing the completion of the new Water System Control and Data Acquisition (Telemetry) System and accepting all of its components into the City of Troutdale's Fixed Asset System.
- (I) 3. **PUBLIC COMMENT:** Please restrict comments to non-agenda items at this time.
- (A) 4. **PUBLIC HEARING / RESOLUTION:** A Resolution authorizing submission of the 257th Avenue Pedestrian Improvements Project for the FY 2004 and 2005 MTIP Project List. Galloway
- (A) 5. **PUBLIC HEARING / ORDINANCE (Introduction):** An Ordinance amending Troutdale Development Code Chapters 1, 5, 6 and 16 relating to definitions, nonconforming uses, variances and public deliberations and hearings. Faith
- (I) 6. **COUNCIL CONCERNS AND INITIATIVES**
- (A) 7. **ADJOURNMENT**


Paul Thalhoffer, Mayor

Dated: 3-21-01

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

March 27, 2001 7:00pm

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

1. PLEDGE OF ALLEGIANCE, ROLL CALL, AGENDA UPDATE

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

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

ABSENT: Rabe (excused)

STAFF: Galloway, Faith, Greif.

GUESTS: See Attached List.

Mayor Thalhofer asked are there any agenda updates?

Galloway replied we have no updates.

2. CONSENT AGENDA:

- 2.1 Accept Minutes:** February 13, 2001 Regular Meeting, February 13, 2001 Work Session and February 27, 2001 Regular Meeting.
- 2.2 Resolution:** A Resolution approving Amendment No. 2 to Intergovernmental Agreement No. 4600001732 (formerly Agreement No. 0010834) with Multnomah County for the Troutdale Road Sidewalk Project.
- 2.3 Resolution:** A Resolution recognizing the completion of the new Water System Control and Data Acquisition (Telemetry) system and accepting all of its components into the City of Troutdale's Fixed Asset System.

Mayor Thalhofer called this item and read the consent agenda.

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

YEAS: 6
NAYS: 0
ABSTAINED: 0

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

Mayor Thalhofer asked is there anyone here to speak to us on a non-agenda item?

No public comment received.

4. PUBLIC HEARING/ RESOLUTION: A Resolution authorizing submission of the 257th Avenue Pedestrian Improvements Project for the FY 2004 and 2005 MTIP Project List.

Mayor Thalhofer read the Resolution title and opened the Public Hearing at 7:08pm.

Galloway reviewed the staff report contained in the packet.

Councilor Daoust asked the city pays that local match of 10%, which is \$144,000 and the funding for that would come from where?

Galloway replied I think we would get that from a mix of things. I think to the extent that it can be tied to enhancing capacity, I believe our transportation improvement fund, which is based upon system development charges, would be an adequate source. Probably the remainder would come from our street fund. There is one piece that was in the original study recommended by the study group that is eligible for federal funding and I suspect that we would want to do at that time and that is the undergrounding of the existing overhead utilities and we have a separate fund for that purpose that derives its money from the 1½% tax on the electric utilities in the city.

Councilor Daoust asked when we talk about pedestrian lighting, I assume in addition to street lighting, what kind of lights are we talking about?

Galloway replied the study group recommended a type of light that would not be nearly as high as the existing street lights and would be closer spaced to provide, in addition to the lighting, it helps the traffic, the lighting would be more friendly to pedestrians.

Councilor Smith asked is 257th the highest priority, why was it selected?

Galloway replied I don't think it is our first priority. I think a number of years ago when Council established several priorities the Stark Street section between 257th and Troutdale Road was identified as our highest priority project. As to why that was not selected and this project was, there are a couple of reasons. One, the Stark Street project has a price tag somewhere around \$2,500,000 range, so in it of itself it is more than the amount that all of East County was allowed to submit during this particular process. Secondly, one of the main criteria that projects are being evaluated against when they go to Metro and compete for regional funding is its conformance with the 2040 Functional Plan. There seems to be a fairly strong opinion among others in the region that that particular project, or any similar projects that are on the fringe of the urban growth boundary and outside of a regional center or town center, don't support the 2040 Functional Plan very well. We have submitted that in the years past and it hasn't fared to well. The thought this time was to try something maybe with a pedestrian emphasis that might compete better for regional funds.

Councilor Kight stated I have been working a long time to get this on the radar screen and it has finally come forward. This is a project that is long overdue.

Norm Thomas stated I was a member of the committee that helped put this recommendation together and I would like to ask you to support it and recommend that it go forward.

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

No further testimony received.

Mayor Thalhoffer closed the public hearing at 7:16pm.

MOTION: Councilor Ripma moved adoption of the Resolution. Seconded by Councilor Kight.

Councilor Ripma stated I think it is a wonderful project and I support the resolution.

Councilor Kight stated one of the reasons that I suggested to Jim Galloway this particular project with this funding mechanism is it takes into consideration the pedestrians, particularly the students trying to get to the middle school and the high school. It is also the aesthetics of the improvements of the medium strips, the lighting and so on. 257th unfortunately has become a pass-through to Highway 26. The traffic goes really fast through that area and hopefully, to some degree this will slow the traffic down, particularly with the addition of another traffic light at Hensley. That is one of the many reasons why I am supporting it.

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

5. PUBLIC HEARING / ORDINANCE (Introduction): An Ordinance amending Troutdale Development Code Chapters 1, 5, 6 and 16 relating to definitions, nonconforming uses, variances and public deliberations and hearings.

Mayor Thalhoffer read the Ordinance Title and opened the Public Hearing at 7:19pm.

Faith reviewed the staff report contained in the packet.

Councilor Daoust asked have you dealt with appeals to a City Council decision to LUBA?

Faith replied the only appeal that we have had to LUBA was with the adoption of the Town Center Plan in 1998. David Bennett appealed that decision because he disagreed with the zoning that was applied to his property, but we settled that through a revision to the Mixed Office Housing Zoning District to accommodate what he was trying to achieve and on the basis of that he withdrew his appeal.

Councilor Daoust asked so if we have a decision of the Council that is appealed to LUBA, it basically has to be on the record that has been either before the Planning Commission or the Council?

Faith replied that is correct, that is state law as well.

Councilor Daoust asked if we have an appeal of a decision under Type III that is appealed to us, we will automatically have a de novo hearing that we can consider anything and everything. Would that be a problem with LUBA if it went one step further, does that present a problem to us in any way since the appeal to LUBA has to be on the record, but yet we are holding a de novo hearing, evidently it is not a problem if the City Attorney is okay with it.

Faith replied that was a specific question that I asked the City Attorney, do we have authority to conduct all appeals to the Council as de novo. The City Attorney replied yes, there is no restriction to that. Therefore I take that to mean that it would not present a problem with LUBA.

Councilor Ripma asked what was the reason for eliminating the Council's ability to conduct hearings on the record?

Faith replied primarily because I think we have had difficulty in the past determining what is on the record and what isn't and who is going to referee that or challenge an attorney if they say something that is not part of the record. In the appeals that we have recently had, certainly the last one, the independent living facility. There was clearly some information presented that constituted new evidence although that hearing was to be on the record only. I think that we run the risk of violating that and open the door to a legal challenge because we haven't conducted a hearing under the rules that were set. I think it is easier to conduct the hearing de novo and allow everything to be presented fresh and clean.

Councilor Thompson asked could you explain what the difference between the Type I and Type II hearing process is.

Faith replied Type I is strictly handled in-house by staff at an administrative level and there is no notice required to surrounding property owners. Type II is again handled in-house administratively but it does require notification to all property owners within 250' giving them an opportunity to at least comment on the proposal, although there is no public hearing. Type III is a procedure that involves the Planning Commission and there is notification but there is also a full public hearing to allow neighbors and the applicant to all come forward, make a case and present evidence. Type IV is one in which it would come all the way to the City Council and then the Planning Commission serves only in the advisory capacity and conducts a hearing and forwards a recommendation to the Council which renders the final decision.

Mayor Thalhofer asked if every hearing is conducted de novo then the Planning Commission just does it for drill and makes a recommendation and then we could get a whole set of different facts, or at least some of the facts may be different then what the Planning Commission had to deal with. I wonder, what is the purpose of the Planning Commission at that point?

Faith replied remember that when we are talking about de novo, these are on appeals. Normally the decision is made by the Planning Commission and it is not intended to go forward unless it is appealed. Your concern is probably valid when we are talking about a land use application that is going to be highly controversial and we know that we have people out there that are opposed to it and if it doesn't go there way they are likely going

to appeal it, then you make a valid point and we are really just going through the motions. I don't know how to get around that, I guess you just hope that you don't have many of those.

Mayor Thalhofer asked what is the problem with holding the appeal hearing "on the record"? Don't we have minutes that serve as a record?

Faith replied even when it is conducted de novo, you will be receiving the entire record of the Planning Commission. Having an "on the record" appeal is the route that we attempted to go when we were dealing with the Sandy Frontier Trailer Park appeal. When we brought that forward staff's recommendation was to conduct it de novo because from prior experiences I felt that the direction I had been given from Council was you want to be able to hear what everyone has to say, you don't want to restrict anyone's right to speak. It was the attorney representing Nancy Cox that asked for it to be on the record only. As you recall we spent an entire meeting going through the debate on how to conduct the hearing. The other problem is that when the second appeal came to you, regarding the independent living facility, it was agreed that it would be "on the record" although the appealing party was continually expressing some concern that if I agree to this will I be limited to what I can say. It took a lot of time trying to explain to him that you can speak to anything that is on the record that has been brought up at the Planning Commission but you cannot introduce anything new. It was finally agreed to hear the appeal on the record. When we got to the hearing he presented you with a map, but it was a map of the layout or design for that property that he contends is what they were told as to how the property was going to be developed. That map was never submitted in front of the Planning Commission, and that constituted new evidence which is a violation of the rules. Did anyone care to challenge that, no. I was sitting in the back wondering, as was the City Attorney, who should be raising this as a legal point and we didn't really know. We had many discussion in-house as to whether that is the job of staff, the City Attorney, the Mayor or the Council and applicants. It was the level of debate and turmoil that we have gone through with these last two appeals that led us to believe that the simplest thing would be to hold them all as de novo.

Councilor Kight stated on page 2 you have under major changes, the current code says that a nonconforming use terminates when it has been damaged beyond 80% of the fair market value and you want to reduce it by 5%. How is that quantifiable?

Faith replied it is based upon the real market value as indicated on the county assessors roll.

Councilor Kight asked so the county assessor would have to send out an appraiser to look at the property?

Faith replied no. We establish the bench mark based upon the official records of the county. What is the real market value of this piece of property.

Councilor Kight asked on accessory dwelling structures and required yards, is there any height limitation. I noticed that there is setbacks from the property line, but is there any height restrictions?

Faith replied those are already built into the code.

Councilor Kight asked if you had an accessory dwelling within three feet from the projections to the property line, how high can the structure be?

Faith replied the accessory structure can not exceed 12 feet if it is within the rear or side yard setback.

Councilor Kight asked is that in the State Building Codes?

Faith replied it is tied to that in that you can have a structure that is less than 120 square feet in area or 12' or less in height, does not require a building permit.

Councilor Kight asked on 16.170 through 16.200, the area of notification, is that set by state law or our own code?

Faith replied that exceeds what is required by state law.

Councilor Daoust asked an accessory structure of 120 square feet, that amount of square footage which is a 10' x 12', does that come from state law?

Faith replied it is tied to the building code in that you do not have to get a building permit for a structure that is less than 120 square feet and less than 12' in height.

Councilor Daoust asked so if someone wanted to build a 12' x 12' structure, they would have to do what?

Faith replied first they would have to get a building permit. As it relates to these amendments, you can build that, put it on your lot but you have to meet the side yard setback of the underlying zoning which in a residential zone could be 7 ½ feet up to 10'. You would not be allowed to put an accessory structure of that size as close as 3' to a property line without going through a variance.

Councilor Kight asked is there some reason why we have to accept the idea of having an accessory structure 3' from a property line that is 12' high? That is pretty close to a fence line and I think that a fence, in lieu of doing a variance, can only be 6 feet high.

Faith replied yes, 6' is the maximum height of a fence.

Councilor Kight stated so you are looking at 12' high along a 6' high fence, is there some reason we have to accept the 3' setback?

Faith replied our code currently allows accessory structures to be as close as 3' to the rear property line and I am trying to be consistent in that respect in terms of how we might deal with one on the side property line. Although I did try to address bulk by restricting it to 120 square feet or less, I did not speak to height. The maximum height that you can have for an accessory structure, if it is going to be within the side or rear setback area is 12'. This could impose a height restriction as well of something less than 12'.

Councilor Kight replied I am not familiar with building heights and so on as far as architecturally and what works, so maybe you could give us some guidance in that area.

Faith replied I will check into this with the Building Official and bring back information at the next hearing.

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

Terrell Orme stated I have one question on the height of a building. Exhibit "B" item 9, I would like an explanation. It mentions the maximum height of a primary dwelling is that the maximum height of detached accessory structure shall be the height of the primary dwelling or 20'.

Faith replied that is correct.

Orme asked what is the difference between the 20' and the 12'?

Faith replied what applies in this instance is the next sentence which says "a detached accessory structure which does not meet the underlying side and rear yard setbacks shall not exceed 12' in height. What we are talking about here in this particular amendment is relaxing the requirement to meet the underlying side yard setback. For example in an R-10 district you have to be 7 ½ feet from the side yard property line, this will allow the accessory structure to be as close as 3'. Because it is within the side yard setback it can't exceed 12'. The 20' of height of the primary dwelling would apply if that accessory structure were set back 7 ½ feet from the property line it could be as high as 20'.

Councilor Kight asked why are you relaxing this requirement and taking it down to 3'?

Faith replied it is because it happens all of the time. The main reason is because either unknowingly or knowingly people install or construct accessory buildings, primarily sheds, almost right up to the fence on the side yard. After the fact it comes to our attention and we inform them that it does not meet the setbacks and then they want to know what do I have to do to make it right. When we say, you really need to get a variance or move it to meet the setback. Then they ask what does it take for a variance because I don't want to move it. We hear this all the time. I guess I am trying to deal with reality, what really happens out there. If we allow this to occur on the rear property line, why don't we allow it to happen on the side property line with a few modifications, mainly putting some size and height restrictions on it.

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

No further testimony received.

Mayor Thalhoffer closed the public hearing and stated that a second hearing will be held at the April 10th Council meeting.

6. COUNCIL CONCERNS AND INITIATIVES

Mayor Thalhoffer called this item.

Councilor Daoust asked Mr. Galloway we are hearing a lot about the water quantity issue with the rain fall being substantially less. Do we have any concern at all?

Galloway replied no, we have not experienced any situation that would give me reason to think we have a problem with our water at this time or in the foreseeable future. We certainly encourage folks to conserve water:

Mayor Thalhoffer stated I would like to find a date for our Council Relations session. In May the 1st and the 15th did not work for some of us. The 8th and the 22nd of May are Council meetings. So we need to pick a Monday or a Wednesday in May that will work.

Councilor Ripma stated well lets not rush into it. These are terrible months for me. May is full, I am taking two long trips in May and June. I am just swamped. With your permission Mayor, I suggest that we hold it later in the summer, perhaps on a weekend day.

Mayor Thalhoffer stated we can wait until after June and see if we can come up with some dates in July or August or we can wait until September. Normally in July and August we only have one Council meeting and we try to wind down for a summer schedule so it may be that this is something that we can take up in September when we resume our regular schedule.

Councilor Kight stated Bob Paine is in our audience tonight. For the first time we have a County Commissioner with an office located out here in East Multnomah County. Lonnie Roberts has opened a new office in the City Hall in Gresham and he will be out here on Wednesdays.

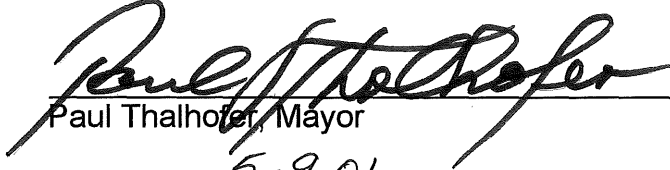
Bob Paine stated the office will be open Tuesday, Wednesday and Thursday from 10am to 4pm I will be out here. Commissioner Roberts plans on being out here on Wednesdays. What we would like to do is when he is out here some days we will be at Gresham, some days we would like to come out to Troutdale, Wood Village or Fairview to make ourselves more available. I would like to thank all of you for the support that you have given us because without your support and the support of the other cities, this would not have happened.

7. ADJOURNMENT

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

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

Meeting was adjourned at 8:25pm.


Paul Thalhofer, Mayor

Dated: 5-9-01

ATTEST:


Debbie Stickney, City Recorder

CITY OF TROUTDALE

PUBLIC ATTENDANCE RECORD

March 27, 2001
CITY COUNCIL REGULAR MEETING

PLEASE COMPLETE THE FOLLOWING

NAME <input type="checkbox"/> (please print) <input type="checkbox"/>	ADDRESS	PHONE #
Terryll Orme	2146 SE SANDY CT	666-7673
Mark Orme	2146 SE SANDY CT	666-7673
Norm Thomas	2751 SW CLARA CT Troutdale	667-4320
BOB Paine DIST # 4	1022 SE 172 ND PORT. OR	254-4129