

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

Tuesday, July 27, 2004

1. PLEDGE OF ALLEGIANCE, ROLL CALL, AGENDA UPDATE.

Mayor Thalhofer called the meeting to order at 7:02pm.

PRESENT: Mayor Thalhofer, Councilor Gorsek, Councilor Ripma, Councilor Kyle, and Councilor Daoust.

ABSENT: Councilor Kight (excused) and Councilor Thomas (excused).

STAFF: John Anderson, City Administrator; Jim Galloway, Public Works Director; Rich Faith, Community Development Director; Marnie Allen, City Attorney; and Debbie Stickney, City Recorder.

GUESTS: See Attached List.

Mayor Thalhofer asked are there any agenda updates?

John Anderson, City Administrator replied we have no changes to the agenda.

2. CONSENT AGENDA:

2.1 Accept Minutes: May 11, 2004 Regular Meeting and May 25, 2004 Regular Meeting.

2.2 Resolution: A Resolution recognizing the completion of the public improvements associated with the Morgan Meadows Phase 1 planned development and accepting these improvements into the City's Fixed Asset System.

Mayor Thalhofer read the consent agenda.

MOTION: Councilor Daoust moved to adopt the consent agenda. Seconded by Councilor Kyle. Motion passed unanimously.

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

None.

4. DISCUSSION: A discussion regarding the operation agreement with Jack Glass.

Jack Glass stated I had the opportunity to work with the City and enter into an agreement regarding a piece of property in Glenn Otto Park to restore the building and the land around it so we could open and operate Jacks Snack and Tackle, which has been a successful operation. My wife and I have put our life and souls into this to make it successful. We have been very actively involved with the River Safety Program. Shelly and I have been operating Jacks Snack and Tackle for seven years under this agreement, one year for construction and six years of operation. It requires a lot of hours to operate and we are not getting any younger. I want to expand my business and operating Jacks kind of holds me back from expanding. My wife has run into some health problems, nothing major, but requires surgery. We thought about the potential of selling Jacks Snack and Tackle. We didn't advertise we just started talking to a couple of people. Mr. Rob Brown and his wife Brady approached us with an option to buy the business. I was very concerned that we maintain the existing appearance and operation of the building as it states in our agreement and I really can't move forward with this without the Council's consent. If the Council agrees, for the first year I would maintain the lease agreement under my name. After one year Mr. and Mrs. Brown would take over the lease obligation and in three years, when the five-year term is up, have the lease transferred to Rob Brown under the same type of agreement that I have operated under.

Councilor Ripma stated it sounds like you would like this structured to have Mr. Brown take the business for a while and you would continue to be the operator of the lease. Is there anything in the way this lease is written that would prohibit Mr. Glass from making some independent business arrangement under the terms of our lease? I can't think of any reason why he couldn't make some kind of business arrangement, share of profits or whatever, to have Mr. Brown run it for a year without having to change a thing, is that right?

Marnie Allen, City Attorney stated Section 8C says that the premises shall be operated by the operator and one of the obligations is that they continuously use the premises. Jack is the operator and this agreement seems to contemplate that it would be Jack running and operating the business.

Councilor Ripma asked Marnie, is there anyway that you can see that it could be structured where Jack Glass would continue to be the leaseholder and not operate it or be in a supervisory capacity over Mr. Brown.

Marnie Allen stated maybe the City and Mr. Glass can agree to an amendment that clarifies that provision in the agreement that Mr. Brown is going to operate the business.

Councilor Ripma asked Jack, would you be willing to renegotiate any of the terms that would allow what your intent is to happen?

Jack Glass replied yes.

Mayor Thalhoffer asked is it your intent to still be on the lease?

Jack Glass replied yes. The first year we want to see if Rob is going to be successful and at that point then he would start making the lease obligation. Three years after that, when the five-year term is up, we would like to have it written up for him to continue this present lease.

Mayor Thalhoffer stated I don't see any problem with that.

Mr. Rob Brown introduced himself to the Council.

Councilor Daoust asked you would continue to pay the \$100 per month over the next three years?

Jack Glass stated I would make those payments for the first year and at that point I would like Mr. Brown to take over that lease obligation payment.

Council directed staff to meet with Jack Glass and work out the terms of the agreement.

5. DISCUSSION: Discuss the City Council's involvement in ordinance violation proceedings.

John Anderson, City Administrator stated this agenda item is a result of the May 25th Council meeting when Ali Peret expressed concern regarding a complaint that was filed against him for violating Troutdale Municipal Code relating to street trees. At that meeting the Council recommended that he take up the policy end of this with the joint committees that are working on this issue. Council also asked staff to prepare a report regarding your involvement in ordinance violation proceedings that are pending before our Municipal Court. That report is what is before you this evening. The Troutdale Municipal Code does not give a person that is charged with violating an ordinance the opportunity to have their case heard or considered by the City Council. Instead, the Troutdale Municipal Court Judge is responsible for handling those violations. Once a citation is filed in Municipal Court and the adjudication process is underway it is unusual, and probably ill-advised to have the legislative body intervene. We did some surveying of other cities to find out what their practices are including Beaverton, Salem, Eugene, McMinnville, Newberg, Lake Oswego and Pendleton. None of those cities reported having a process in which their council participated in the proceedings. We have looked at some of the problems that might arise if the Council were to intervene (that list is included in the staff report). If Council is interested in being involved or being more involved in the ordinance violation proceedings the Council could avoid some of the problems by changing the text in the current code. Option 1 is to follow the existing procedure in the Code and to implement one of two options. Option 1-A is to instruct the person that they must raise their concerns at the hearing at Municipal Court and that the Council does not intervene in cases that are pending, pending being the key word, in court. Inform the person if they are not satisfied with the outcome that they could appeal the Judge's decision. Option 1-B is to instruct the person to take the case through the court process and then inform them that Council will consider any comments regarding the reason the person believes that the ordinance itself may be unfair and should be amended. The Council would amend the ordinance after the persons hearing had been resolved. Option 2 would be to direct staff to prepare an ordinance under which the City Council, and not the Municipal Court Judge,

would hear the ordinance violation cases. Option 3 is to adopt a motion directing staff to dismiss the pending citation against Mr. Peret and to take similar action in future cases where Council decides it is warranted. Staff is recommending Option 1-B.

Councilor Ripma stated I concur with the staff recommendation. I think allowing the court to determine violations is absolutely the right way to go. It would be a serious mistake for the Council to get involved in adjudications or to direct dismissals. I truly trust our Judge to be fair and I think a political body like this is not the right place to determine violations.

Mayor Thalhoffer stated Option 1-B appears to be the way to go to me as well. I have a serious concern about the ordinance. Has the Parks Advisory Committee (PAC) and the Citizens Advisory Committee (CAC) taken this issue up?

Rich Faith replied yes. They have held four meetings to discuss the current street tree ordinance and the various issues that have arisen. What they have agreed to is a conceptual framework for revamping the tree ordinance, particularly with respect to placement of street trees. They have completed the work on the conceptual framework and now that has gone to our City Attorney for review of the legal aspects. When that review is completed we will convert it into ordinance format. We will then take that final product back to the committee for one last review and it would then be forwarded to the Council for adoption. I anticipate that it will be coming to you later this fall.

Mayor Thalhoffer stated I have a real problem with requiring property owners to repair adjacent sidewalks that are damaged by City street trees. The City plants those trees and then they damage the sidewalk and the property owner is responsible. I assume that is part of what they are considering?

Rich Faith replied yes.

Mayor Thalhoffer stated if the City is the one who caused the problem by planting a tree that uproots the sidewalk, in my opinion, any cost to repair that should be the responsibility of the City. I have a hard time when someone gets caught in that situation, like Mr. Peret did, where he is faced with a huge repair bill and he didn't have the money to repair it within the thirty-days so he needed more time. I don't know where the CAC and PAC is on that issue of when a City street tree causes damage to the sidewalk who is liable, have they addressed that at all?

Rich Faith replied they have certainly discussed that and it is built in that there would be money made available to assist property owners in repairing sidewalks. Some of the details still need to be fine-tuned but overall they are trying to address that in the structure of this program.

Mayor Thalhoffer stated I would almost be of the mind to help them along with that part of it and say property owners shouldn't be liable for sidewalks that are damaged by City street trees. This case points out to me how unfair this is currently.

John Anderson stated they have discussed this and as Rich was explaining, they are trying to find the mechanism to fund it.

Councilor Kyle asked I know we have a thirty day built-in timeframe to resolve these types of issues, is there an extension of time allowed for a hardship cases?

Jim Galloway, Public Works Director stated the ordinance does require the repair to be made within thirty days but staff has been granting additional time, whatever is requested, for what would appear to be legitimate and reasonable excuses or requests that folks would have for needing additional time.

Councilor Kyle stated Option 1-B seems totally logical to me but in this instance in this particular ordinance, I am wondering if perhaps a letter could go along with the person to court informing the court that this ordinance is currently being reviewed for possible revisions. I guess for any ordinance, for instance if anyone comes before us and there is an ordinance that we might be reviewing and they have been cited for violating it, couldn't we give the person that has been cited that information to take along with them into court?

Marnie Allen stated certainly we could let the Judge know that the Council is considering reviewing the ordinance. My question would be what are you hoping to convey to the Judge? If I am the Municipal Court Judge and I receive that kind of letter I would be left with the question of what does this mean. That the Council doesn't want to enforce it? That they don't think I should apply it? I am not sure that sending a letter would help.

Councilor Kyle stated it seems to me that when we discussed this several weeks ago that we decided that there would be a moratorium on issuing any citation for violating this ordinance. So basically what you are saying is we shouldn't have said anything about a moratorium?

Marnie Allen replied I think this Council can decide and give staff direction that until you have reviewed the policy and the ordinance that you are not comfortable with the way it is currently written and that you want us to suspend enforcement action in the future. Typically, even if you were to amend an ordinance, it doesn't apply retroactively to violations that occurred before the amendment. The only case that I am aware of for violation under this ordinance is the case involving Mr. Peret, so there are no other cases out there that would be impacted.

Councilor Daoust asked I was not at the last meeting, is Mr. Peret's case still pending?

Marnie Allen replied yes.

Councilor Daoust asked hypothetically if the Court makes Mr. Peret fix the sidewalk and spend \$1,000 does he have any recourse later if the ordinance gets changed?

Marnie Allen replied he could come back to the City Council and ask for some kind of restitution. Let me clarify, he has already paid to fix the sidewalk.

Councilor Daoust stated the solution to not having sidewalks uprooted by trees is to plant the correct tree, it is not necessarily a planting problem it is having the right species. To determine which trees in the City were planted by the City and which were planted by homeowners would be a huge task I would think. I would also think that most of the trees, maybe because we couldn't figure out who planted them, if we were to look at the landowners not being responsible would probably fall upon the City and that is huge. There are a lot of sidewalks in this City that are being uprooted by tree roots and if we took the perspective that the City would then be obligated to take care of every single sidewalk that is being uprooted that would be quite an expense to the City. I recognize the balancing act we have here and I am totally sympathetic to Ali Peret but on the other hand the remedy of having the City take care of it is, I think, totally unacceptable. I hope that the CAC and PAC are trying to hit that delicate balance to address this difficult situation. I would support Option 1-B.

Councilor Gorsek stated I also support Option 1-B, I think it is the best option to go with. I also agree with Council Daoust that we do need to look for that balance because we do face a large expense to deal with the trees. Some trees that were planted in the past were thought to be the right species and it was not found out until later that they get too large.

Mayor Thalhofer asked don't we have a way to determine whether the City or the homeowner has planted the trees? Don't we have regulations in place now that the City plants the trees?

Rich Faith replied I don't recall the exact year when the City first imposed the requirement that street trees be planted as part of a single-family subdivision. Initially the trees were planted by the developer. Because of problems with the species of the trees that they were planting the City decided that it was no longer going to allow the developer to plant the trees, but instead would assess the developer for the trees and then the City would select the tree species and plant them. Perhaps with some research we could determine at what point we applied that new standard, however, in many instances it is possible that a homeowner may have replaced a tree because they did not like that species. Even though by code they would have been required to get a permit to remove the tree, that doesn't always happen. It is probable that there are trees in these landscape areas that are not the original trees that the City put in but were replaced by a homeowner.

Mayor Thalhofer asked does the City know what species of trees were used when they plant them?

Rich Faith replied we are currently trying to keep an inventory of the trees that we plant. I don't know if we go back ten years that we would have that inventory and could say without question that the City planted this type of species in the subdivision. We don't plant the same exact tree in every subdivision.

Councilor Kyle asked do we have information that we can hand out to the public if they have concerns regarding a problematic tree, how to identify it, or how to get it removed?

Rich Faith replied we have an information flyer about proper care of the street tree that I think focuses on pruning techniques. I am not sure that it talks about what you can do to prevent root uplift of your sidewalk.

Councilor Kyle stated as I recall Ali's testimony there was some question about whether he received the same uniform information from everybody that he spoke to. That is why I am wondering if we shouldn't have some kind of handout so that information is passed along in a uniform way so that everybody knows what to expect, how to deal with it or who to talk to to get it removed. Ali is not in a subdivision, so it probably was not a street tree.

Rich Faith replied I think these were trees that were planted as part of the downtown enhancement when they widened the sidewalks, undergrounded the utilities, planted the street trees and installed the decorative street lights.

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

Ali Peret stated I think what I am looking for is fairness. In all fairness I don't think that we should hold other people accountable for our wrong choices, our miscalculations, and our mistakes. I feel that the trees that were planted were a miscalculation or wrong choice and possibly even a mistake. It was not done by myself or the previous owner of that property, I know that for a fact. It was done by the City when the streets were put in, which the previous owner was assessed \$10,000 which I inherited the balance when I purchased the property. I would hate to be thought of myself as someone who passes the buck, who holds someone else accountable for my choices. I would like to hold myself accountable for my choices. I don't always make the correct choices, none of us do. The situation has been corrected and I am not expecting any restitution for the expense that I have incurred in replacing the sidewalks. I wish that the City had worked with me a little bit more so I didn't have to run around and spend so much energy trying to obtain the information that I did regarding the trees. The City has educated staff that could have given me the same information that the streets would uproot again if the tree remained or if the same species of tree was planted again. What I am hoping for now is that in all fairness, on top of the expenses that I have incurred to replace the sidewalk, that I am not held accountable for and fined because I didn't comply in the given amount of time. I was allowed plenty of time but I did not have the money and I had to run around trying to get the information that I could have gotten very simply from one person in the city.

Councilor Daoust asked did I hear you correctly that you are asking the Council to persuade the court not to fine you?

Ali Peret replied I am not asking that necessarily of the Council, but maybe staff. I am just stating that I do not feel that it is fair. It wasn't my choice to plant these trees.

Council thanked Ali for bringing this matter to their attention.

MOTION: Councilor Ripma moved that the Council comply with Option 1B as set forth in the staff report. Seconded by Councilor Gorsek.

Councilor Ripma stated the question of intervening with a case that is before the Municipal Court is what is before us, it isn't related to the merits of any particular case, particularly Ali's case. I trust our Judge to be fair and that you will be treated fair Ali. I want to respond to Councilor Kyle's suggestion about sending a letter. The one problem with that is that everybody who is charged with any kind of ordinance violation is free to come to Council during public comment and raise a question about the fairness of an ordinance and get us to send it to the CAC to look into. If we then send a letter to the Judge every time, I don't know, its just not the proper way to do that.

Councilor Kyle replied I understand that. But when he brought this to us we were already unhappy with our tree policy and had already sent it to the CAC for review and that is the only reason I brought that up.

Councilor Gorsek stated I think we do have a fair Judge and I think it is best to leave it in that arena. I also worry about sending instructions to the Judge because there is no point in having a Judge if we start sending him instructions all the time.

Mayor Thalsofer stated I support the motion. We shouldn't interfere with the Municipal Courts proceedings. However, in this case it has been under consideration for a long time. I don't think we ought to interfere with the court and tell the court what to do but I don't think there is anything wrong with the City Attorney informing the Judge that this ordinance is under review by the City Council, the CAC and PAC and has been for some time. This is an exceptional case in my opinion where the City planted the street trees that caused the damage. He has paid for the damage and now he runs the risk of being fined in court. We have a fair Judge but it wouldn't hurt for us to direct the City Attorney to just mention the fact that this ordinance is under review for revisions. I don't see us doing this in every case. Mr. Peret is right, it is a matter of fairness and if some body, whether it be the City or some one else, causes somebody else damage and they have to pay for it, that is not fair. We have to be held accountable just like the people in our community have to be held accountable. It seems to me that we could keep track of who plants what and where. I would favor the Council having the City Attorney inform the Judge that this ordinance is under review. Would you accept that as a friendly amendment Councilor Ripma?

Councilor Ripma replied could we just adopt this motion and address that separately?

Mayor Thalsofer replied sure.

Councilor Kyle stated I support the motion.

Councilor Daoust stated I support the motion also. This case seems pretty clear to me that you could point the finder at the City but I would think that it would be difficult to point the finger at the City maybe in other cases. I recognize the fairness issue here, but I also recognize that you can't apply it citywide because it is not the same

everywhere. I am looking forward to seeing what the CAC and PAC are coming up with.

VOTE: Councilor Ripma – Yes; Mayor Thalhofers – Yes; Councilor Kyle – Yes; Councilor Daoust – Yes; Councilor Gorsek – Yes.

Motion Passed 5 – 0.

Councilor Ripma stated with regards to sending a letter to the Judge...

Mayor Thalhofers stated not necessarily a letter, direction to the City Attorney.

Councilor Ripma stated Mr. Peret will have his chance in court to say his peace and he is going to bring that up and the City Staff will be able to confirm that. Personally I don't favor directing staff to do something like that. I think it is a bad idea.

Mayor Thalhofers stated I think it is a good idea. Any one who would evaluate this case could determine the unfairness of this matter, in my opinion. It wouldn't hurt for the City Attorney to let the Judge know that this is under review. This case is a landmark case in this area if you ask me. What is being done to Mr. Peret is highly unfair in my opinion. He has paid \$1,000 for something that was not his fault and that ought to be punishment enough. If he goes to court the Judge will have to decide what the fine will have to be. I don't know any reason why the City Attorney couldn't mention that this ordinance is under review.

Councilor Kyle stated I would have to agree with Councilor Ripma. I am sure that Ali will have an opportunity to mention this to the Judge, and I am sure he will. I think we have to defer to our legal counsel to know the appropriate way to handle this. I am not comfortable directing her to do a specific thing. I will suggest that Ali speak up for himself.

Councilor Daoust stated I think Ali can take care of himself. I would agree with Councilor Ripma. There have been cases like this in every city; this is nothing new. I was on Gresham's Tree Preservation Committee and we were dealing with the same thing with street trees that were planted that were uplifting the sidewalks. It happens in Portland, Gresham and everywhere and people complain about having to pay the cost. I think Ali can mention it himself and I have faith that our Attorney will mention it if it needs to be mentioned, so I don't think we need to make any special effort to make sure of that.

Councilor Gorsek stated I agree that there is no need to make a special suggestion. While I wasn't here for the last meeting I think we need to be careful of fixing blame to the City in terms of negligence. I don't believe that the City has done anything other than tried to use the appropriate species of trees the whole time and some of those trees just haven't worked out. I don't know that we should quickly say that the City is wrong and we should just pay automatically. The other thing is if you were to say that we were going to have a special case for Mr. Peret, how many other street tree cases do we go back and say we are going to have a special case for. Maybe we go back and refund everybody that has ever been charged under this. We need to be very cautious.

Councilor Kyle asked has anyone else been cited for this?

Marnie Allen replied no one has been cited to court but people have been notified that they need to repair the sidewalk.

6. PUBLIC HEARING / RESOLUTION: A Resolution exempting public contracts for utility undergrounding from competitive bidding.

Mayor Thalhofer read the resolution title and opened the public hearing at 8:10pm.

Jim Galloway, Public Works Director stated this resolution regarding exempting a public contract from competitive bidding is being brought to you in your role as a local public contracting board. The purpose is to implement one of the items in the budget that was approved for the current fiscal year and that is the undergrounding of the overhead utility lines on 257th between Stark and Cherry Park Road. We have an ordinance in the City Code that does require all future utility lines to be underground and that sets a goal to underground all of the existing overhead lines. We have established the next priority to be the 257th line. To do that it requires someone to design, to construct and to manage the construction contract to accomplish that work. Certainly one of the primary entities involved in doing that is the servicing electric utility company, which in our case is Portland General Electric (PGE). They would have to be a major player in that particular work. The work is somewhat technical and complex and it does require familiarity with PGE's services and standards. It just so happens that PGE is capable and willing to design such a project, to bid it using public contracting procedures, and to manage the construction work. In doing so they would charge us a management fee on top of the construction costs, which would be considerably less than going out to an independent consultant to achieve those same services. We would still work with any individual property owners who would be involved for the undergrounding between the main line and the service entrance into their particular home or business. The specific items that the codes requires us to report to you include: The nature of the project is design, construction, and/or services during construction for the undergrounding of utility lines. The estimated cost of this project is budgeted at \$760,000. Our entire undergrounding program, over several decades, is expected to cost several million dollars. We do believe that there are cost savings involved by not having to bring in an additional consultant and to reduce the amount of staff involvement in the project. We also think there is probably less chance of an error if PGE is handling the design of a project on their own service lines. The project would be bid competitively using public contracting rules by PGE for firms that they pre-qualify. This would be a negotiated sole source contract agreement with PGE. We do not have a specific deadline date that we must follow, however, we have been working with PGE for about a year and a half now and we do believe that the design will be completed this fall and we hope to start construction early next year. Your options are to approve the sole source agreement with PGE or to go through a normal competitive bidding process as we would for other projects.

Councilor Ripma asked is the Troutdale Municipal Code the only law that governs competitive bidding, aren't there state laws that govern it?

Jim Galloway replied there are state laws but back a number of years ago our City Attorney, and others in the firm that she use to work for at the time, helped us develop our public contracting portion of the Municipal Code, which was tailored after state law. So our Municipal Code does comply with the aspects of state law. The finding that you are reaching if you agree to a non-competitive bidding source is that you are basically concluding that the exemption of this particular project would not result in favoritism, would not substantially diminish competition and would result in substantial cost savings for the City.

Councilor Ripma asked and state law also allows for that?

Jim Galloway replied yes.

Councilor Ripma asked can you give an example of or explain why it would cost more to go to competitive bid or why it would work better this way?

Jim Galloway replied I think we would find that the construction costs are going to be the same whether we bid it or PGE bids it. PGE's crews will not physically be doing the work; they will bid the construction side. So the piece that is being handled non-competitively is the design on the front end and the management of the construction contract on the back end. We feel that PGE is in a better position to do that at a lower cost than if we hired a consulting firm to do the design because the consultant is going to have to sit down with PGE's folks and in effect work through that particular design with a lot of involvement from PGE. It seems to us that we would be eliminating the middleman.

Councilor Ripma stated in view of the fact that PGE is owned by Enron we might have a little less reason to be totally trusting. Is there an opportunity in PGE's management of the design where the City has a chance to review it?

Jim Galloway replied yes, we have been working with the City Attorney who has been in contact with the attorneys for PGE working out the details of the agreement for the last year and a half. There are provisions for us to review the contract documents before PGE advertises for award and there is an option for the City, at any point up until the time that construction starts, to say we are not pleased with the product, we don't like the prices you got and we can opt out of the deal and all we would be responsible for paying would be the cost PGE had incurred.

Mayor Thalhoffer asked how many other firms are in the business of doing what PGE would do?

Jim Galloway replied I think there is probably a very large number of firms who could work with PGE to come up with a design. I think anyone who has some civil and electrical engineering capabilities on staff could do it. Because they are dealing with PGE's system, they are still going to have to sit down with PGE's engineers and work out the details. I think there are any number of firms that could do that front end piece, but I think there would be some duplication of effort as they work with PGE's staff to hammer out the details.

Mayor Thalhoffer asked do you think it will save us a substantial amount of money?

Jim Galloway replied I am certainly hoping so. PGE is asking for 10% of the construction cost as a management fee to cover their involvement in the process. There is no hard and fast rule, but I think generally when you are looking at design cost and services during construction, the rule of thumb would probably put those costs at a 15% to 25% range. So I think the 10% we are being asked to pay by PGE is probably less than what we would be paying if we hired a consultant to do the design, they had to work with PGE to come up with a product, we bid it, and then that firm had to work with PGE and the contractor to oversee the construction work.

Councilor Daoust asked so it is okay for a City Council to pick and choose which items don't go to competitive bidding?

Jim Galloway replied I don't think I would phrase it exactly like that. But yes, the state law and the City's Municipal Code does allow you to exempt a particular contract or a class of contracts from competitive bidding, assuming that you go through a process as we are now, a public hearing, findings of fact and a determination that we are not creating favoritism, diminishing competition and it is going to result in cost savings.

Councilor Daoust asked how can we say that we are not reducing competition, how do we meet that criteria?

Jim Galloway replied we are not diminishing competition for the principle piece of work here, which is the actual construction piece. PGE will competitively bid that. The piece that we are reducing competition on is the front end piece primarily of the design, where PGE would also be involved in that but if we bid it out then there would also be a third party, a consultant, involved.

Marnie Allen stated the argument would be that we are not reducing competition because there is nobody that can compete with PGE. PGE is a sole source provider because they are the only entity that can eliminate that added cost that someone else will have in having to sit down and learn about their system and design.

Councilor Gorsek asked you are sure that this would be the best way to save money?

Jim Galloway replied we believe so. We haven't tried it before. This doesn't lock us in as I explained earlier. There are some opt out opportunities if it doesn't go as we think it should. Even though this gives us the authority to deal with them on this basis for future undergrounding, I think the language says authorizes not requires us to do this in the future.

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

None.

MOTION: Councilor Ripma moved to adopt the resolution exempting public contracts for utility undergrounding from competitive bidding. Seconded by Councilor Gorsek.

Councilor Ripma stated I concur with the staff's recommendation. I think it is worth a try.

Councilor Gorsek stated we always worry about the competition side of it and that is important, but it sounds like this would be the best way to go especially since PGE is intimately involved.

VOTE: Councilor Ripma – Yes; Mayor Thalhofner – Yes; Councilor Kyle – Yes; Councilor Daoust – Yes; Councilor Gorsek – Yes.

Motion Passed 5 – 0.

7. EXECUTIVE SESSION: An Executive Session will be held under ORS 192.660(2)(h) – Current litigation or litigation likely to be filed and ORS 192.660(2)(e) – Real property transactions.

Mayor Thalhofner stated we are going to recess the Regular Meeting and go into an Executive Session, immediately following the Executive Session the City Council will Reconvene the Regular Meeting.

Mayor Thalhofner recessed the Regular Meeting at 8:26pm to go into an Executive Session, which is being held under ORS 192.660(2)(h) current litigation or litigation likely to be filed and ORS 192.660(2)(e) – real property transactions.

Mayor Thalhofner reconvened the Regular Meeting at 9:51pm.

MOTION: Councilor Daoust moved to authorize staff to pursue settlement options for pending litigation as discussed in the executive session. Seconded by Councilor Ripma.

VOTE: Councilor Ripma – Yes; Mayor Thalhofner – Yes; Councilor Kyle – Yes; Councilor Daoust – Yes; Councilor Gorsek – Yes.

Motion Passed 5 – 0.

MOTION: Councilor Daoust moved to direct staff to: explore options to increase road capacity by adding a bus turnaround and park-and-ride near Glenn Otto Park; contact Tri-Met; and to approve Mr. Kolberg's request to share the cost of an appraisal for the White property. Seconded by Councilor Ripma.

VOTE: Councilor Ripma – Yes; Mayor Thalhofner – Yes; Councilor Kyle – No; Councilor Daoust – Yes; Councilor Gorsek – No.

Motion Passed 3 – 2.

MOTION: Councilor Daoust moved to authorize staff to negotiate the sale of property in accordance with the parameters that were discussed in the executive session. Seconded by Councilor Gorsek.

VOTE: Councilor Ripma – Yes; Mayor Thalhoffer – Yes; Councilor Kyle – Yes; Councilor Daoust – Yes; Councilor Gorsek – Yes.

Motion Passed 5 – 0.

8. STAFF COMMUNICATIONS

John Anderson, City Administrator, stated that at the conclusion of the July 20th Work Session Council asked staff to draft a letter to Multnomah County Board of Commissioners regarding their sale of the County Pig Farm property for your review this evening.

Councilor Ripma stated I read the letter and I favor sending it.

Mayor Thalhoffer stated I also favor sending the letter.

Councilor Kyle stated I am opposed to the letter.

Councilor Daoust stated I think the wording is appropriate to encourage the County. I am okay with sending it.

Councilor Gorsek stated I still worry about our need to push in a particular direction. I understand the intention of sending the letter but I am opposed to sending it.

MOTION: Councilor Ripma moved to authorize that the letter be sent to the County. Seconded by Councilor Daoust.

Councilor Ripma stated Councilor Gorsek didn't have the benefit of all the discussion we had. This favors the County selling directly to McMenamin if a deal could be worked out, and I strongly favor that after much research into the issue over the years.

Councilor Daoust stated this letter matches what the majority of the Council has talked about pursuing on this property over the years.

Councilor Kyle stated I am not in support of this letter because I think the property should be sold to the highest bidder, maybe that would be McMenamins. I think that we should trust our system to put something there that will work for us and will go onto our tax rolls.

Councilor Gorsek stated I have similar concerns and again I do worry about us trying to force issues. I think that the system is capable of working and getting us a good quality selection there.

VOTE: Councilor Ripma – Yes; Mayor Thalhofer – Yes; Councilor Kyle – No; Councilor Daoust – Yes; Councilor Gorsek – No.

Motion Passed 3 – 2.

9. COUNCIL CONCERNS AND INITIATIVES:

Councilor Daoust stated in the Burlingame Subdivision, the new street that connects to McGinnis just north of Home Depot, has become a garbage dump. I don't know if it was the contractors that created this box to put construction debris in but it is full of garbage and people are starting to drive by and dump their own garbage in it.

Councilor Gorsek stated the weeds are also getting very tall in that area.

10. ADJOURNMENT:

MOTION: Councilor Ripma moved to adjourn. Seconded by Councilor Gorsek. Motion passed unanimously.

Meeting adjourned at 10:02pm.

Paul Thalhofer, Mayor

Approved September 14, 2004

ATTEST:

Debbie Stickney, City Recorder