

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

Tuesday, August 24, 2004

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

Mayor Thalhofer called the meeting to order at 7:01pm.

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

ABSENT: None.

STAFF: John Anderson, City Administrator; Jim Galloway, Public Works Director; Rich Faith, Community Development Director; Kathy Leader, Finance 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 agenda updates.

2. CONSENT AGENDA:

- 2.1 Accept Minutes:** June 1, 2004 Work Session, June 8, 2004 Regular Meeting and June 8, 2004 Work Session.
- 2.2 Resolution:** A Resolution approving an Intergovernmental Agreement between Metro Regional Government and the City of Troutdale for funding of the Year Fifteen Annual Waste Reduction Program.
- 2.3 Resolution:** A Resolution authorizing the City Administrator to enter into a License Agreement with Richard and Leslie Clark to allow encroachment in the City Right-of-way.
- 2.4 Resolution:** A Resolution approving an Intergovernmental Agreement for Fire and Emergency Services.
- 2.5 Resolution:** A Resolution supporting submittal of an ODOT Transportation Enhancement grant application for certain improvements within Glenn Otto Community Park.
- 2.6 Motion:** A Motion to adopt the City of Troutdale 2003/04 – 2004/05 Council Goals.

Mayor Thalhofer read the consent agenda.

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

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

Mayor Thalhofer asked Derrick Luster, a Cub Scout with Pack 174, to come forward and show the Council the car he built for the Pinewood Derby. His car took 2nd place in the People's Choice Award.

4. MOTION: A Motion to recommend that Multnomah County approve a request from the West Columbia Gorge Chamber of Commerce for two 10-minute parking spaces.

Jim Galloway, Public Works Director stated we have before us a request from the West Columbia Gorge Chamber of Commerce to designate two parking spaces on or close to their business on Columbia River Highway for ten minute parking. This is not something that we would traditionally bring to Council but if you remember a few years back the Council got very actively involved in the parking situation downtown to the point of hiring a consultant, getting a report, holding open houses, involving the Parks Advisory Committee and eventually weighing each of the recommendations from the consultant, accepting some and rejecting others. In this particular part of downtown you opted for the parking pattern that has been in effect for several years. The request from the Chamber would deviate from that with the two spaces located in front of or very close to their office. As I indicated in my report there are a few pros and cons to each. Certainly from the Chambers perspective, granting their request or at least recommending to the County that the request be granted, would probably enhance the parking situation for those folks that want to do business with the Chamber. Generally speaking those are short-term stops by folks that want to get information, literature or need directions. Possible downsides to granting the request could involve possibly setting a precedent where other businesses downtown may feel that parking in front of their establishment should be tailored to the particular needs of their business. It also may tend to lead folks to believe that they own or they are in charge of the right-of-way adjacent to their property. However, in despite of those potential drawbacks, our recommendation is that the Council authorize us to go forward to the County recommending approval of the Chamber's request with one small deviation and that would be that the spaces to be dedicated to the 10-minute parking start as far to the east as possible at the intersection of Kibling and Columbia. This would allow us to take advantage of one of the existing street light poles for the required signage that would be needed. I have spoken with Diane McKeel, Executive Director of the Chamber, about that slight deviation to their request and that was acceptable to the Chamber.

Councilor Kight asked at the corner of Kibling and Columbia River Highway there is a fire hydrant and by law there has to be a 10' setback, am I right?

Jim Galloway replied I don't know the exact distance, but yes.

Councilor Kight asked do you know how many feet there is from corner to corner from Kibling to Harlow?

Jim Galloway replied I think most of the downtown blocks are 200'.

Councilor Kight stated so out of 200' if you take approximately 10' off of that for the fire hydrant you have 190'. How much room is allowed per parking space?

Jim Galloway replied I think the traditional space is 18' to 20'.

Councilor Kight stated the businesses that share that same block include the beauty shop, the river rafting business, Chamber, Taste of Village restaurant and the bar. Essentially you have five businesses utilizing that same 200' of parking space. Why are they asking for two parking spaces as opposed to one or three?

Jim Galloway replied I don't know the answer to that.

Diane McKeel, Executive Director West Columbia Gorge Chamber of Commerce stated I believe that we are requesting two spaces because of the number of visitors that we have. We probably have two to three carloads of visitors at any given time coming into the center.

Councilor Kight stated I am confused. Are some of the folks handicapped and that is why you need parking right in front of your office?

Diane McKeel replied some of them are but I don't think that is the issue as much as just being able to have access. Our block is very full very quickly and there is often no place for the visitors to park to pull off the road and come into our office to get information. As a courtesy to them we felt that having the ten-minute parking spaces would be helpful.

Councilor Kight stated if you already have a problem with capacity and then you extrapolate out two of the parking places, doesn't that in fact exacerbate the problem?

Diane McKeel replied not necessarily because sometimes it has to do with the length of time that people are parking in the block. There is also adequate parking around the corner on Harlow for people to access the businesses.

Councilor Kight asked could the same claim be made for the people utilizing the Chamber office?

Diane McKeel replied I suppose it could but it is just very inconvenient, often our visitors are from out of town and they are very confused about finding the visitors center and they are trying to look as they are driving. Once they spot the visitors center they want to pull off the road and get their information.

Councilor Kight asked have you talked to the rest of the businesses that are going to be affected on your side of the street?

Diane McKeel replied I have talked to some of them. I have talked to our building owner and to one of the other businesses in our building and they are very supportive of the idea.

Councilor Kight asked how about the restaurant immediately to the west?

Diane McKeel replied I have not talked to them.

Councilor Kight stated I am not trying to be adversarial I am just trying to find a balance between your request, at the same time affecting or impacting the downtown businesses. The downtown businesses, if you look at the empty storefronts, have major problems. I want to make sure in accommodating you we don't have a financial impact on the other businesses that you share the same block with.

Diane McKeel replied and the Chamber as well has no interest in financially impacting the businesses in downtown.

Councilor Kight stated I guess I am just trying to strike a balance. As Mr. Galloway pointed out once we accommodate one businesses request, other businesses may request accommodations for their business.

Diane McKeel stated I believe you have that on the other side of the street, correct? There are two 10-minute parking spaces across the street that are marked as a loading zone.

Councilor Kyle asked the 10-minute parking across the street, the loading zone, those have been there since 1999 haven't they?

Jim Galloway replied that was one of the recommendations that came out of that study in 1998/99 timeframe and yes it has been there since that time. I believe it is only one parking space.

Councilor Daoust asked this need not be a permanent decision, we could try it for awhile and see if it works and if it doesn't work then we could remove the 10-minute parking couldn't we?

Jim Galloway replied probably. Keep in mind that Columbia River Highway is a County road so the action here would be what recommendation you would pass on to Multnomah County. I suspect that they would prefer whatever action we take to be in place for some period of time, I doubt that they would like us to change too frequently.

Councilor Gorsek asked have you had any of the visitors that come into the center talk to you about the parking situation?

Diane McKeel replied some. People are looking for the Visitors Information Center and so there is some confusion anyway in trying to find the center. Some of them have to park farther away.

Councilor Ripma asked do the other businesses know about this request and have they endorsed it or have we received any comments on this request?

Jim Galloway replied I have not queried the businesses but in talking with Diane I know she has talked with some of the businesses.

Diane McKeel stated I have talked to several of the businesses but I wouldn't say everyone on the street but I have asked three or four of the other businesses if they would be opposed to us making this request and they said no.

Councilor Ripma stated that is important because if we go forward and then they all come in and say wait a minute I didn't know about this. I don't suppose there has been any kind of notice; it is on the agenda for tonight.

Jim Galloway replied we did not do a special notice.

Councilor Ripma stated and I don't think that a special notice is required. We don't really have any way to enforce the 10-minute parking that I know of and we don't really have police resources to enforce it. How has the loading zone worked out across the street, has that worked out okay?

Diane McKeel replied you don't find people parking in the loading zone.

Councilor Ripma and they presumably would obey the 10-minute restriction thinking we had some way of enforcing it.

Councilor Gorsek asked why don't we have police resources to enforce an ordinance? What do you mean by that?

Councilor Ripma replied I didn't remember the 10-minute loading zone but I think our police have trouble enforcing the 2-hour limit because they are busy with other things. Cities sometimes pass ordinances without thinking about that, which I think we need to and that is why I was asking the question.

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

No public comment received.

MOTION: Councilor Kight moved that instead of providing two spaces, since there is only nine spaces available on that particular block and the restaurant has not been queried and there may be an impact to them, that we provide only one 10-minute space for the Chamber of Commerce for a six month trial period to see how it works out.

Motion died due to a lack of a second.

MOTION: Councilor Gorsek moved to recommend that Multnomah County approve the two 10-minute parking spaces for the Chamber of Commerce as outlined in Option C of the staff report. Seconded by Councilor Kyle.

Councilor Gorsek stated Diane McKeel is right, it is somewhat difficult when you drive down the old highway to really see where the Visitors Center is. Most of us when we travel expect to see something larger with a parking lot. So visibility is the first issue. The second thing is that we know that most people, actually a lot of the people that I see that come in there are older, so access and the proximity to that access is really important. This should not be the Chamber versus the other businesses. The Chamber is here to enhance the businesses, so doing things for the Chamber is doing things for the downtown. It makes sense to me to want to do whatever we can to enhance the downtown. I can't imagine that two 10-minute zones is an overtaxing of our law enforcement capabilities so that is not a viable argument.

Councilor Kyle stated I am in support of this. I have watched the confusion that goes on there, in fact today when I was at City Hall picking up my mail I noticed that there was one of the visitors parking right at the fire hydrant because both of the spaces in front of the Chamber office were filled. One of those vehicles parked there I recognized and is parked there regularly. I have checked with the Chief on enforcement and the Code Enforcement Officer is responsible for enforcing parking downtown.

Councilor Thomas stated I think this is a good idea. I recently came back from a trip to Canada and one of the things I appreciated when I was trying to find the visitors center was the fact that they had some 10-minute parking in front of their office and that was very convenient.

Mayor Thalsofer stated I am in favor of the motion. The more visitors we get the better off we are because those visitors will spend money in this city and that money will circulate. We need to make it as easy as possible for people to stop, go into the Chamber office and get directions, information on where to eat and where to stay. It is all very beneficial to the businesses here in Troutdale. As far as enforcement, I don't think the visitors usually abuse it because they are just stopping to get information.

Councilor Kight stated I am not going to support this. A cautionary note here is that the one business that wasn't queried is going to be affected and impacted the most financially is the restaurant and the accompanying bar next door. I am guessing that restaurant, especially during the lunch hour, has a turnover anywhere between 30 and 40 people and those two parking spaces are going to be badly needed. I was willing to make a compromise to have one 10-minute space. If Diane had come forward and said yes we have talked to the restaurant and they support our request, then I would have probably gone ahead and supported having the two 10-minute parking spaces. I think primarily what we have to look at is not creating a situation in

downtown Troutdale where we are having, by a decision of this body, an effect on the economy of our downtown area. I think there is a cautionary note for this group, I am sure there are other businesses that could come forward and make a compelling argument as to why they should have one or two spots for offloading and that type of thing or maybe another handicap spot. I know this group is going to be looking at a particular set-aside for the crosswalk area. Right now cars are parking right up to the edge of those crosswalks and making a very dangerous situation. At some point the County is going to ask us to have a setback so when people step into the crosswalks they will be seen.

Councilor Daoust stated I support the motion. Short-term parking fits the operation of the Chamber. Secondly, the Chamber represents the businesses and I trust that they would not make a decision or propose anything detrimental to the businesses. Thirdly, I think the 10-minute parking spots would enhance the safety of that intersection by removing cars more often and maybe when you are going north on Kibling you could see around the corner every once in a while.

Councilor Ripma stated I also support the motion. I am mostly persuaded by the fact that the Chamber represents the businesses and I trust that Diane did talk to many of them, not all, but didn't have any objections. My worry would be the loss of the spaces for the businesses for longer parking. In my mind it kind of goes both ways about people that are parking for 10-minutes then driving off somewhere else they might not stay in downtown Troutdale; if they had to find a spot that was good for 2-hours they might walk around town. That was my concern but I guess that I am satisfied since that wasn't shared by at least the businesses that were queried by the Chamber. We could always undo this if it turns out to be a problem down the road so I am willing to give it a try. I still think enforcement will be a problem but it will be complaint driven and I also agree that most people will honor it.

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

Motion Passed 6 – 1

5. RESOLUTION: A Resolution for reimbursement in the Sandy Heights Sanitary Sewer Pump Station Reimbursement District.

Mayor Thalhofer read the resolution title.

Jim Galloway, Public Works Director stated the action before you pertains to the Reimbursement District in the Sandy Heights subdivision. Mr. Ron Johnston of Ron Johnston Enterprises constructed the infrastructure for the Sandy Heights subdivision some time ago. Part of that subdivision required him to put in a sanitary sewer pump station or lift station because of elevation issues in that particular portion of the city. Another potential development, on property owned by Mr. George Zifcak, had some interest in also utilizing

that pump station when he puts in his subdivision, which I believe is being referred to as the Sandy Dell Acres subdivision. Therefore, Mr. Johnston requested, and this Council approved the reimbursement district and an allocation process in which Mr. Zifcak would reimburse Mr. Johnston for a portion of the cost of that pump station. According to our ordinance and the process that we have, the next step in the process was for Mr. Johnston to come back and indicate what the cost of construction would be and the Council would adopt an reimbursement resolution, the action on the agenda tonight, which would levy that particular portion of that cost to Mr. Zifcak. A couple of things have happened since then. First of all the reimbursement costs that Mr. Johnston has claimed are significantly higher than those estimates that he provided at the time you approved the formation of the Reimbursement District last fall to the tune of around \$50,000. The estimate was a little over \$130,000 last fall; the reimbursement amount he is requesting is just under \$180,000. As we were putting the council packet together a week ago, Mr. Zifcak came in with a formal letter objecting to the amount of reimbursement that Mr. Johnston is requesting. I have included a copy of that letter in your packet under Exhibit C and because Mr. Zifcak was referring to certain invoices or cost data the Mr. Johnston provided, I have provided you with all 47 or 48 pages of accompanied data the Mr. Johnston provided, which is in your packet as Exhibit D. Late this afternoon we received a letter from Mr. Johnston (a copy of the letter was provided to the Council and is contained in the packet) indicating that he is unable to attend tonight's meeting. He did offer some rebuttal to Mr. Zifcak's letter.

Councilor Thomas asked in light of the letter received today, does that change your recommendation at all?

Jim Galloway replied I have not given too much attention to Mr. Johnston's letter that came in late this afternoon other than making sure that you received a copy and that Mr. Zifcak received a copy. I think there are some things that have been raised by Mr. Zifcak that certainly if Mr. Johnston were here there would be questions that you might want to ask of him. In the 47 pages that Mr. Johnston submitted, there are certainly some that raise questions. In some cases he provides receipts or invoices and in other cases he provides bids or quotes which creates some confusion and question as to why he didn't provide an actual receipt or invoice in all cases. There is certainly some question of the financing mechanism that he used and what was the appropriate time in which he should have paid off that particular loan. Mr. Zifcak thinks that should have probably been done when the lots were purchased, I think the documentation from Merchants Bank that is included in the report indicates that was spread out over a much longer period of time. I probably would not be making the same recommendation that is in my staff report if I had all that information. I was not aware of the objections that Mr. Zifcak would raise, now that he has raised them I think that they are issues that should probably be resolved and probably could be best resolved if the two developers that are in that business could sit down together and ask each other some questions and try to hash them out.

Councilor Thomas asked do you have any idea where the \$50,000 cost overrun came from?

Jim Galloway replied the biggest single item would be the financing cost. In the original estimate provided last summer, Mr. Johnston did not include any financing cost. In the documentation that he has since provided, he has financing costs of almost \$25,000.

Councilor Thomas asked if something like this was submitted to the City using invoices and bids would that meet our standards?

Jim Galloway replied if it were going to be the City's money used to reimburse someone I would recommend against using a bid document. A bid does not indicate that either the bid was accepted or whether that amount was ever paid. I would think if it were our money we would want to see receipts or paid invoices.

Mayor Thalhoffer asked have you had a chance to review the new material that we just received tonight before the meeting?

Jim Galloway replied no. The letter from Mr. Johnston came in around 3:30 this afternoon and other than faxing a copy to Mr. Zifcak and making sure you had copies for this evening, I've taken no further action.

Mayor Thalhoffer asked based on the additional information received would you recommend different action by the City Council?

Jim Galloway replied yes. My recommendation in my staff report was to adopt the resolution which would have called for the reimbursement to Mr. Johnston of virtually the full amount that he requested. The only thing in my initial cursory review of his documents submitted was a few hundred dollars of electricity bills for the use of the pump station after it was in operation and I felt that clearly was not a construction cost that Mr. Zifcak should share. My recommendation tonight would probably ask the two parties to sit down together and try to work things out. If they can not do that then I think the question for the Council is how much of your time or staff time do you want devoted trying to hash this out.

Councilor Kight asked when we have two parties that are fairly far apart on an issue couldn't East County Mediation be a vehicle for them to go to and work out a resolution before we spend hours between staff and council trying to go through this?

Jim Galloway replied I think that is a resource and certainly if either or both of those parties felt that a third party would be helpful to bring them to an agreement, I think that is an option.

Councilor Kyle stated when I looked at this packet I was disturbed at the \$50,000 difference. Back in October when we set-up the Reimbursement District did we get from Mr. Johnston a statement or just a number from him? Did we get any itemization at that time?

Jim Galloway replied if you refer to Exhibit D, page 1, my recollection is that at that time he provided something similar to this. He did provide documentation but it was not receipts, invoices or supporting statements it was just a summary page that he prepared himself.

Councilor Kyle asked as I was reading Mr. Zifcak's letter, the financing charges came up and I saw that we had a statement in here that showed that nothing had paid on that loan until June. I don't understand why that wasn't paid off earlier. I also don't think we should be reimbursing him for late fees or the electricity bill. I was not comfortable with this process. When I looked at the interest that was charged then I become suspect about everything so I started looking more. I further went on to a multiple listing to see if I could tell when the last lot was sold and it looks to me like it was November 2002. I am not sure what the answer is to resolve this but I am disturbed about the difference.

Councilor Ripma asked the way the adopted Reimbursement District reads is that supporting documentation is provided, we adopt a resolution and Mr. Zifcak is required to pay what we approve, is that correct?

Jim Galloway replied yes. Our ordinance has a two-step process. You establish the district and how you are going to allocate the costs in the first step, which is what we did last October. Then the developer comes back with the actual cost and Council reviews them and determines if they are fair and reasonable. When you adopt the resolution there are a couple of triggers that would identify when, in this case, Mr. Zifcak would be required to pay.

Councilor Ripma asked did the original \$129,000 contemplate Mr. Johnston adding on \$14,000 in administrative fees to himself?

Jim Galloway replied at some point Mr. Johnston did come in with a listing that did show one of the expense items to be the administrative charge, I believe it was when he came in with his January listing. I conveyed to him at that time that was something that I could not support. In his further submittals he did not provide any backup documentation for that. I made an assumption, maybe erroneously, that he listened to my reason and elected not to pursue that, perhaps there is another explanation.

Councilor Ripma stated and the same I guess applies to this finance charge of \$25,000, that wasn't necessarily contemplated originally.

Jim Galloway replied it is difficult to say. It was not included in the original listing of the costs that he provided, however, it would seem, unless he has deep pockets, at some point a cost associated with a major improvement like that would be realistic but I don't know if it is reasonable to defray if for upwards of three plus years.

Councilor Ripma asked procedurally we could ask the parties to get together and agree on something or we will impose a solution based on our judgment?

Marnie Allen, City Attorney replied yes you could continue this hearing out for two or four weeks and direct the parties to get together and reach an agreement and if they haven't reached an agreement indicate that when it comes back the Council will determine the amount. You may want to set some parameters on how you will determine the amount so that it encourages them to reach a solution.

George Zifcak stated I certainly don't like being disagreeable about all of this and I certainly I have no problem paying my fair share. When I saw all of this stuff I really got suspicious. \$75,000 what was that for, it doesn't say at all what that was for and there is no invoice at all and \$25,000 for finance charges for 43 months is a lot to pay. Typically you sell the lots and you pay off the loans. Some times people like Mr. Johnston and myself don't pay off the loan and you go buy another piece of property, which is reasonable but I don't think I should share that cost. At the same time as that loan that was out for 43 months there is over \$3,000 in late charges to Familian, which basically means through this process I am helping him finance. What are the real costs of this, it ought to be pretty easy to figure out. To answer Councilor Kyle's question I do have the actual cost of the Sandy Heights subdivision that Mr. Johnston submitted with his initial documents and it says \$129,307.94 for the sewer pump station which was dated February 2002. I have a hard time understanding when the pump station is already built and operating where all these extra charges came from. It makes me wonder if the \$129,000 was accurate. I have talked to a few people including the engineer Lynn Harnish and he didn't think it cost \$129,000. Mr. Johnston did submit a letter, which I received just before I was leaving and I still don't think he really answers the question of what is the Les Brown bid for \$75,000. Where is the documentation that he installed something? I think the burden of proving the cost is the responsibility of Mr. Johnston. He should be providing accurate documentation.

Mayor Thalhofer asked would you have any objections to trying to get the parties together?

George Zifcak replied I do. After Mr. Johnston and I sat down with Mr. Galloway and Ms. Allen and we worked out what I call a handshake agreement and then when Mr. Johnston wrote it out it wasn't the same agreement, the terms changed so I didn't agree to it. That was in June 2003 I believe. I don't have a lot of hope that I can work out an agreement with him. I thought we had an agreement that was simple and it didn't involve the City. I was going to write him a check and we would be done.

Mayor Thalhofer asked was the City of Troutdale aware of the agreement that you are referring to right now?

George Zifcak replied I think Marnie and Jim were at the meeting when we both said yes this is the number and we agreed. My attorney Dorothy Cofield took the notes and when it was time to proceed she sent me the notes and I sent the letter to Ron Johnston saying this is what we agreed to and that agreement came back very different.

Mayor Thalhofer asked Mr. Galloway you were at the meeting where this handshake agreement took place, is what Mr. Zifcak is saying what happened?

Jim Galloway replied I do recall that the parties that he is talking about met at the office of Preston Gates and Ellis and there was a discussion and I think the parties came to a verbal agreement. I do recall that sometime after that Mr. Zifcak indicated to me that when it came time to write up the agreement and sign it that differences occurred. I don't recall ever seeing the written document.

Mayor Thalhoffer asked so you are opposed to us directing you and Mr. Johnston to get together and work out your differences.

George Zifcak replied yes.

Councilor Kight stated how about a modified plan. You have already gone through the mediation process with your attorneys as you indicated in your comments you arrived at a verbal agreement but the two parties couldn't agree to sign the written agreement. If the parameters were that Mr. Johnston would have to provide, not a statement, but an actual invoice describing the work done with a total at the bottom. Would you accept that?

George Zifcak replied I think he has had a chance to do that.

Councilor Kight asked but would you accept that now?

George Zifcak replied I wouldn't because it is not hard for me to produce an invoice on my computer that says that Bill Smith did something for me and I paid him.

Councilor Kight stated but it would have to be on company letterhead and you could verify that invoice by calling that company, would you be willing to do that? Otherwise, if I understand correctly, you are asking us to adjudicate this for you. How do we do that?

George Zifcak replied I don't know how you do that. The Code reads that it is to be based on the cost and I am questioning the cost.

Councilor Kight stated that being the case, if he doesn't provide an invoice for the work that has been accomplished then we would reference back to his original bid for the project.

George Zifcak stated he already hasn't provided the invoice and in fact had an opportunity between a week ago and today to say here is the invoice.

Councilor Kight replied right. As part of the parameters for that meeting, if he knows that if he can't provide a working invoice on that companies letterhead then we will have to reference back to the original bid that he had before he started the project. In other words give him one more chance to provide an invoice. Otherwise he is going to come to us and we are not contractors and we have no way of determining who is telling the truth and obviously there is no trust between the two of you. How else would you work this out? You are asking us to adjudicate this, how do we do that?

George Zifcak replied I don't know how you would do that.

Councilor Kight stated and that is the problem. How do we find the final resolution to this? You are asking us to do something that the two of you can't do, am I right?

George Zifcak replied that the Code reads that this should be based on the cost and you decide that. It doesn't really say anything about the participants in the reimbursement district being involved in that.

Councilor Kight stated so your point is that the original cost of around \$129,000 is in fact the figure that Mr. Johnston should adhere to because that is what you both agreed upon before he began the work, is that correct?

George Zifcak replied the work was done in 2001 and the reimbursement district was applied for in June of 2002. Everything was already done.

Councilor Kight asked how should this be resolved, what should we do?

George Zifcak replied I planned on coming here tonight and having Mr. Johnston here so we could work this out right here. He has known about this meeting for two months. Since he didn't really provide the documentation needed, basically someone is going to have to pick a number that is reasonable.

Councilor Kight asked and you feel that number is what?

George Zifcak replied the original engineers estimate came in around \$115,000 and supported by someone that I brought to the site to try and get an idea of the cost and his estimate was \$102,000. I have talked to a few other people that felt that the \$129,000 was probably more than it actually cost.

Councilor Kight asked again, what do you see as the final resolution to this? What would you be satisfied with?

George Zifcak replied I came here prepare to not be satisfied with the \$129,000 because I don't feel that he has proven that, but I agreed to that and I agreed to more than that actually when I made a private agreement with Ron.

Councilor Kight asked what was that number?

George Zifcak replied \$44,000 for my share.

Councilor Kight asked and the number before that was what?

George Zifcak replied \$39,000.

Councilor Kight stated so there is a differential of \$5,000.

Councilor Gorsek asked what was the number when you received the written agreement?

George Zifcak replied \$44,000 versus the \$39,000.

Councilor Daoust stated that was your share.

George Zifcak replied yes. I would think that if he was willing to agree to the \$44,000 again after everything was completed, why is my share now \$55,000.

Councilor Gorsek stated Marnie Allen, we have heard some from Mr. Zifcak about what the Code says we are to do in this circumstance, something about a fair price.

Marnie Allen stated the ordinance says basically that the Council is to either approve the reimbursement resolution as proposed or adjust the cost if they are not deemed just and reasonable.

Councilor Gorsek asked Jim Galloway, your resolution as proposed here would be to accept things as Mr. Johnston wants, is that right?

Jim Galloway replied that was the way that I drafted the resolution prior to receiving the objections from Mr. Zifcak.

Councilor Ripma asked Jim Galloway you were involved in the meeting at Preston Gates with the parties, Mr. Zifcak's willingness to pay \$44,000 and Mr. Johnston's verbal willingness to accept that, do you recall that or does it sound logical?

Jim Galloway replied yes it sounds logical. I recall they had a conversation during the meeting and my recollection was that the parties came to a verbal agreement. I don't remember exactly what that dollar figure was. I remember that some time later hearing from Mr. Zifcak that when it came time to put it in writing and sign it that the arrangements fell through. I don't believe that I ever saw the written document.

Councilor Ripma asked but as far as you recall did it represent a compromise, each side giving some, and Mr. Zifcak was prepared to go higher than the original amount, do you recall that?

Jim Galloway replied no I don't. I don't disagree with it or doubt it, I just don't recall it.

Councilor Ripma asked the written agreement that was eventually submitted to you Mr. Zifcak to memorialize the agreement you had which was different from the verbal agreement as you remember it, is that the same as this one, was it approximately \$179,000?

George Zifcak replied at the time we made that agreement it was before the reimbursement district was established. It was still in question whether it was going to be based on square footage, is my share going to be 30% or 48% or what percentage was it going to be. I think the \$44,000 was a midpoint between the two methods.

Councilor Ripma asked and that was the two of you trying to work out some way for you to reimburse him for the construction without forming a district?

Jim Galloway replied my recollection is that I believe that it initially came before this body to establish the district at Mr. Johnston's request. I think there were differences and I believe the direction from the Council at that time was for the parties to get together and work it out and I think the subsequent meeting we had was one of the attempts to try and do that. I think what they were working at was perhaps something that would take the City out of the picture, they would have an agreement between the two of them and save some administrative costs and arrive at something without having to involve the city and that fell through.

Councilor Thomas asked I'm trying to sort these two things out here. When I look at the original resolution we talk about \$129,000 or \$44,000 being the reimbursement amount.

George Zifcak stated they really didn't have anything to do with each other. The \$44,000 represented a compromise based on the amount of land or the number of lots or the percentage of the total value paid. I think the total percentage at that point was somewhere between \$35,000 or 39,000 and \$48,000 and that is why I think we came to agreement on \$44,000.

Councilor Thomas asked so what you are questioning is the additional \$10,000 based on roughly \$180,000 submitted at the end.

George Zifcak stated it is an additional \$15,000 for me.

Councilor Thomas stated they are asking for a reimbursement of \$54,000. What you would like to see, if I understand correctly, would be for the City Council to enforce what was in the original resolution.

George Zifcak replied I think that would be fair.

Councilor Kight asked so the bottom number was a reimbursement amount of \$39,000 the second number was \$44,000 and the final number was \$54,000, is that correct?

George Zifcak replied yes.

Councilor Kight asked would you be willing to accept a number splitting the difference between the \$54 and the \$39?

George Zifcak replied no. I am not convinced that the \$129,000 was actually an accurate and fair number that is why we asked for documentation.

Jill Dorrrough stated I have had land dealings with Mr. Johnston. I don't know what role I come to you in, as the lady who lives across from the sewer pump or just a concerned citizen of Troutdale for what is going on here. If the Code had been followed we wouldn't be here tonight. It requires that all of this be done before it is constructed. Before the improvement is constructed the Code requires the application to be received by the City, and not just a letter saying I might want to do a reimbursement district later on. It is very specific about needing to be in writing and filed with the Director accompanied by a processing fee sufficient to cover

administrative review and the application should include description, location, type, size, estimated cost, a map showing the property, and the proposed methodology for spreading the cost. As a citizen of Troutdale I see that we have a Code that deals with this but for some reason Mr. Johnston did not apply for this district within the timeframe required by the Code.

Mayor Thalhofer asked Marnie Allen to respond to Ms. Dorrrough's comments.

Marnie Allen, City Attorney stated Ms. Dorrrough is correct, our Code does say that you are supposed to apply for the establishment of a reimbursement district. Mr. Johnston, as you may recall, did submit a letter that was dated prior to the date he built the reimbursement district. There was some question about whether or not that letter satisfied the application requirements of our Code and whether or not the letter was received by the City prior to the date construction started. The Council concluded that the letter was sent to the City and that it satisfied the Code. The Code was complied with and that issue was reviewed back when the district was initially created.

Mayor Thalhofer asked is it your legal opinion that the Code has been complied with?

Marnie Allen replied yes.

Jill Dorrrough stated the validity of that letter, just as Mr. Zifcak indicated, you can make anything on a computer. I am not here to prove one way or the other. The fact is that the Code doesn't say to send a letter saying that you want to create a district. It says to come in pay a fee, give us a map and all of this information along with a detailed estimate and none of that happened before construction of this. Questions were being asked if an estimate is okay to submit and use to request reimbursement. It seems that an estimate of what something might cost before it is built would be appropriate, but this pump station has been done since December of 2001 and for someone to suddenly remember \$50,000 to \$60,000 of extra things seems suspicious to me.

MOTION: Councilor Ripma moved that we set this over and continue this until the next Council meeting and encourage the parties to reach a compromise if possible but if they don't then we will impose a settlement consistent with the verbal agreement that was reached during the meeting at Preston Gates and Ellis, that Mr. Zifcak will reimburse Mr. Johnston \$44,000.

Motion died due to a lack of a second.

Councilor Kight stated Ms. Dorrrough made a very compelling argument and I think it provides a cautionary note to this Council that if we are going to be passing resolutions we had better follow them because if we are in the habit of changing them we are going to have a real problem.

MOTION: Councilor Kight moved that we accept the original estimate given by Mr. Johnston of \$129,876.38, where Mr. Zifcak would be responsible for the \$39,352.54. Seconded by Councilor Kyle.

Councilor Kight stated I think it is very clear and I think we need to follow our resolutions and our ordinances otherwise what is the point of having them. I appreciate Ms. Dorrrough coming forward and I think we need to be reminded of these things. I think this is fair to both parties.

Councilor Kyle stated I think the burden of proof was on Mr. Johnston and he hasn't been here to defend the additional number and I just don't support this going on any longer.

Councilor Thomas stated my preference would have been to let them work this out. But in light of the original resolution passed and the numbers recommended at 30%, I fully support the motion.

Mayor Thalhofer stated I do not support the motion. I support getting the parties together and letting them reach a solution themselves. The motion goes against the recommendation by Staff and I am inclined to go along with Staff's recommendation. I am for letting the parties get together and if they can't then we will deal with it. I think the better number will be one that they can both, not like, but live with.

Councilor Daoust stated I agree with you Mr. Mayor. We have heard from one side tonight and not the other. I trust Mr. Zifcak, I have no reason not to but we have not heard one word from Mr. Johnston. What I was thinking would be best was along the same lines that the Mayor is talking about, which is to give them until the next Council meeting to work this out. I don't think any kind of mediation company is the right venue to do this in. Actually I think the Public Works Director is probably the person who knows the most about this project. We can tell them that if they don't come to an agreement then Plan B would be the original resolution, the one we are talking about moving on tonight. But at least give them a chance to work it out one more time.

Councilor Gorsek stated Councilor Daoust made some good points. It is always important to hear both sides. We did get a letter from Mr. Johnston today and he has had a long time to provide the documentation that we are talking about. While I agree with Councilor Daoust and the Mayor, I think that we have seen that there has been ample opportunity for him to defend his position. I don't think this is the sort of thing where someone is being blindsided. I am going to support the motion.

Councilor Ripma stated I think the idea of sending it back, first of all, it is my opinion, the parties are not going to get together. They just don't seem to be able to, but I would give it one more chance, I made a motion along that line. The trouble with a motion suggesting that we will impose the original amount gives Mr. Zifcak no incentive at all to meet. I was trying to find a middle ground. I would not want to subject our hard working public works director to having a negotiating session with

these parties. Beside the fact that I can count, I actually agree with the motion because it will end this in a way that is not a whole lot different than what I proposed. I am going to support the motion.

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

Motion Passed 4-3.

Marnie Allen stated because the decision made by the Council does establish a reimbursement obligation that is going to be imposed, I would like to recommend that Staff bring back, on the September 14, 2004 consent agenda, for your adoption an amended Resolution that implements the decision that was reached tonight. The resolution that is before you has incorrect dollar amounts and findings.

6. STAFF COMMUNICATIONS

Jim Galloway, Public Works Director asked the Council if they would like to hold a work session with Waste Management to discuss the issue of trash can lids blowing around that was brought up by Council a few meetings ago. Mr. Galloway has spoken with Waste Management and they may have some ideas that may be worth pursuing to alleviate some of those concerns.

Council agreed to schedule a work session.

John Anderson, City Administrator stated we will be working on scheduling a meeting on NASCAR if the other two cities are interested in pursuing that.

John Anderson, City Administrator stated Dave Fuller, Mayor of Wood Village had an opportunity to chat with the Mayor of Forest Grove which has a very good mixed fire department meaning it is part volunteer and part full-time. Mayor Fuller is proposing that we have a tour of the Forest Grove Fire Department to gather information on how a mixed department works in a city with population of around 19,000. We have tentatively set a date of Thursday, September 9th. The date and time of the meeting will be provided to the Council as soon as it is confirmed.

7. COUNCIL CONCERNS AND INITIATIVES:

Councilor Thomas stated that he attended the Party in the Park on Saturday, which was sponsored by local churches. It was a great set-up with a lot of things for kids to do and there was a good turnout. Councilor Thomas thanked the churches for sponsoring the event.

Mayor Thalhoffer stated Saturday, August 21st was the 10th Anniversary of Imagination Station. There was a celebration at 4pm recognizing Leslie Daoust who was the coordinator of this project, assisted by her husband Doug. Imagination Station was the greatest volunteer project that I have ever seen in this City.

Councilor Kight thanked Doug and Leslie for the hundreds of hours that they spent on this project. It was one of the largest volunteer projects in East Multnomah County. This is quite a legacy for the City and we really appreciate that.

Councilor Kight stated it has come to my attention that Tri-Met is not interested in purchasing the White property. Councilor Kight asked the Council, if we don't have a funding mechanism to purchase the property should we go forward with the appraisal of the property or not.

Council decided, after discussion, to postpone the appraisal until an executive session is held on September 14th to further discuss this issue.

Councilor Daoust stated my wife had a wonderful vision and it takes people like her with a vision to start the ball rolling and it takes people to implement it. Imagination Station was probably one of the best grassroots community events that I have ever witnessed. We raised \$125,000 over a seven-month period. The money came from 50 different businesses, individuals and government organizations. We also had donated materials in addition to the \$125,000 that came from approximately 30 additional businesses. We had substantial community backing from all over the Portland Metro area. It only took five days to build Imagination Station. There were 2,000 volunteers that helped build the structure over that five-day period. People came from all over to volunteer. This was the first thing put in Columbia Park, except for numerous large boulders that were there. We eventually had a restroom facility built. People volunteered to be crew leaders who were given the responsibility of being in charge of certain portions of the play structure. Makita Tools donated all of the power tools that we needed to build the play structure. We had people specifically assigned to coordinate the tools, signing them in and out so that we didn't lose any. We fed all of the volunteers breakfast, lunch and dinner all five days. We provided childcare all five days. We had great coverage by the news media, which is what I think brought people from all over to help us in this community effort. It had rained on the last day during dinner and when we were cutting the ribbon, so the kids to go play on the new structure, there was a rainbow in the sky.

Councilor Gorsek stated my kids love that structure. We should also thank some other folks that don't get as much attention paid to them, they are the Sheriff's inmate crews that do a very nice job of cleaning up streets like 257th. Without that kind of support we probably wouldn't have the money to clean up those streets. Councilor Gorsek thanked the Sheriff's Office and the inmates that have been working on cleaning up our streets; it certainly helps the City look a lot nicer.

Councilor Ripma echoed the compliments on Imagination Station and the 10-year anniversary.

8. ADJOURNMENT:

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

Meeting adjourned at 9:19pm.

Paul Thalhofer, Mayor

Approved September 28, 2004

ATTEST:

Debbie Stickney, City Recorder