

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

**Tuesday, October 12, 2004**

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

Mayor Thalhofer called the meeting to order at 7:00pm

**PRESENT:** Mayor Thalhofer, Councilor Gorsek, Councilor Ripma, Councilor Thomas; Councilor Kight; Councilor Kyle, and Councilor Daoust (by phone).

**ABSENT:** None.

**STAFF:** John Anderson, City Administrator; Jim Galloway, Public Works Director; Marnie Allen, City Attorney; Rich Faith, Community Development Director; Debbie Stickney, City Recorder; Kathy Leader, Finance Director; and Dave Nelson, Chief of Police.

**GUESTS:** See Attached List.

Mayor Thalhofer asked are there any agenda updates?

John Anderson, City Administrator replied we have no updates.

**2. CONSENT AGENDA:**

**2.1 Accept Minutes:** September 28, 2004 Regular Meeting and Work Session.

**2.2 Motion:** A motion to accept the annual evaluation of Judge Young as completed by Jerry Calavan and reviewed by City Council and Judge Young and to reaffirm the existing First Amended Personal Service Contract dated August 26, 2003 with no changes.

**MOTION:** Councilor Thomas 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.

Bob Bents provided a handout of a map to the Council (a copy is included in the packet).

Bob Bents stated I live on SW 10<sup>th</sup> Street, above and east of the Multnomah County Correctional Facility (MCCF). Commissioner Lonnie Roberts has announced that on November 4<sup>th</sup> he will recommend to the other Commissioners, the sale of the MCCF property with the proceeds going to the funding of a new county justice center to be sited in Gresham. I am here to ask you to address Goal 8 of the Comprehensive Land Use Plan and the Parks Recreation and Greenways Plan, particularly with respect to the proposed Cherry Ridge Open Space, which is some 15 acres that would track along the steep hillside that extends to the west from 257<sup>th</sup> to 242<sup>nd</sup> Avenue just south of the jail. The plan calls for the City to reserve a corridor 150' wide along that hillside to develop a greenway that would connect the Helen Althaus open space to the proposed Ridgeline Trail. The plan mandates that the necessary money be set aside. Much of the land the County proposes to sale is in the Town Center Overlay District. The proposed Ridgeline Trail, or open space, is not. It is, still at this time, an area that provides a visual corridor all the way from the Sedona Park development north to Camas and Mt. St. Helens. The Ridgeline Trail recommendation is on land with a greater than 25% slope and is not really suitable for building without major hillside disruption. Additionally, there is a pond in the forested eastern most section of the County land and as of yet there hasn't been any wetland surveys done. To my knowledge this is the last of Troutdale's undeveloped view property. Time is short if Troutdale is to retain some of it. In summation, we know that the land is going up for sale, we need to know if the Parks Master Plan has any teeth in it, or is it just a 10-year old dream. If it is just a dream, how do we if we can, put teeth in it before the County sells the land on which the dream begins? Then how do we notify the County so they can inform potential purchasers? Three weeks isn't a lot of time in which to protect a very special piece of property.

Mayor Thalhoffer thanked Mr. Bents and stated it might be wise to put this topic on our next agenda, two weeks from now, so we can discuss this in more detail.

#### **4. REPORT: A report on the Fire and Life Safety Inspection Program.**

Gus Lian, Gresham Fire Marshal stated I am here this evening to talk to you about the Inspection Program we are conducting in Troutdale. It has been a very successful program. The inspections that are conducted are mandated by the state and are controlled by the Oregon Fire Code. We also do an educational process with these inspections to inform business owners why violations are being called out and why they are being asked to abate them. There have been some complaints and it was brought to my attention that the Council may have been informed of these complaints. There were three complaints from business owners in the core area of East Columbia River Highway against one of my inspectors. The complaints specifically were that the inspector was rude and seemed more intent in finding violations than on educating the business owner as to why they need to abate and was not helping them find solutions. I have investigated the complaints and spoke with those business owners. I also did a quality assurance check by speaking to other businesses in downtown Troutdale who were very receptive to that same inspector commenting that he was very cordial, respectful and took the time to educate them. Knowing this inspector and the dedication that he has, it still is not acceptable to have two or three complaints against an inspector, and I want the Council to know that this has been handled. I would also like to briefly talk to you about the issue in Fairview regarding

occupancy and use of buildings that were designed for residential nature and they ended up being used for commercial. I have heard some concerns that when we finish with the issues in Fairview we are going to turn our attention to downtown Troutdale. I want the Council to know that there is no truth to that whatsoever. There was one isolated case in Troutdale in a multi-use building that had both commercial and residential available where a business owner(s) or occupants actually went into the residential space to do commercial business. The inspector, doing a fire inspection, found it and it was turned over to your employees and it has been handled very professionally. What happened in Fairview was an anomaly and it is because of rapid growth. We now have a process in place to review their business license applications so that won't be repeated. I want to assure you that this is not something that will not happen in Troutdale. When this happens it is a very rare occurrence, we are not keying on this issue and it is not something that we are looking for. It is something that a fire inspector doing his job will normally find.

Councilor Kyle asked what is the most common violation that you find when you are doing your inspections?

Gus Lian replied in a normal business inspection it is the use of extension cords, using temporary wire in place of permanent wire.

Councilor Daoust stated I appreciate the report.

Councilor Gorsek stated that we appreciate the work being done.

Councilor Ripma asked you indicated you were reviewing business license applications and that could catch certain violations, how does that work?

Gus Lian replied when a new business comes into Troutdale and applies for a business license we actually make their first fire safety inspection in relation to the opening of their business. So we are able to take a look before they open the business to make sure that the structure meets their use and that they don't have any violations to begin with.

Councilor Thomas stated I appreciate the proactive work you are putting into this to work with the businesses.

Mayor Thalhoffer asked do you have a course or training where inspectors are taught how to deal with the public and how to approach these situations with a friendly demeanor and a helpful attitude?

Gus Lian replied yes. The Oregon Fire Marshals Association and other organizations do provide courses for inspectors.

Councilor Kight asked with the seriousness of how this affected the businesses in Fairview, I assume those businesses were down for a period of time?

Gus Lian replied actually they were operating because I never put a stop notice on them.

Councilor Kight asked those people that have businesses that are located in their homes, could you give them some assurance that an inspector won't be knocking on their door shutting their business down? What would you tell these folks?

Gus Lian replied I would tell them that there are businesses that can operate in homes, for example an approved home occupancy. Gresham, Fairview, Troutdale and Wood Village all have ordinances that allow home occupancies. These are what we call minor home occupancies where the use of the residence for business purpose is minor to the home use as a residence. We have approved your ordinance because the uses allowed are minor; they do not have high hazards that are associated with them. We recognize that as a residence we cannot do inspections nor do we of residential occupancies. So we are not going to come knocking on their door to do an inspection.

Councilor Kight asked what if there appears to be an illegal operation in a residence?

Gus Lian replied if that is reported and we get a complaint about that then yes we will respond to that and go speak to them.

Councilor Kight asked how often do you inspect businesses in the Troutdale area?

Gus Lian replied right now every twelve to thirteen months.

Councilor Kight asked is there a cost to the business owner?

Gus Lian replied no, not in Troutdale.

Councilor Kight asked could a business owner be proactive and call and request an inspection?

Gus Lian replied yes.

Councilor Thomas asked regarding the fire safety training education for your fire inspectors, do you offer any training to the building officials that would be helpful to them?

Gus Lian replied the new codes work together very nicely and the same training that is available to my inspectors is available to building inspectors and officials and in fact many of them are certified in the fire code.

**5. PUBLIC HEARING / ORDINANCE (Introduced 9/28/04): An Ordinance amending Title 9, Public Peace, Morals and Welfare, of the Troutdale Municipal Code.**

Mayor Thalhofer read the ordinance title and opened the public hearing at 7:39pm.

Chief Nelson stated this is the second hearing on the proposed updates to Title 9. At the last meeting there were a couple of comments/questions that I would like to review. In Chapter 9.06 there was a typographical error in the definitions in Section 9.06.030(C)(1) which has

been corrected. In Chapter 9.24 Council asked that we change the language in this chapter from jumping to jumping/diving, that change has been included in the proposed ordinance before you this evening. Councilor Kyle had asked what the age limit was for purchasing an airgun. From what we can tell the manufactures suggest that the operator of those guns be 18 years of age or older, however, there is no law indicating that you can not sell them to someone under 18 years of age.

Councilor Kyle asked in Exhibit M, Section 9.48.010, concealed weapons prohibited, the knives you see strapped on belts for hunting, how do you treat those if someone is stopped for a traffic violation and they have a knife on their belt?

Chief Nelson replied it wouldn't be considered concealed. It would be visible on the belt and under your scenario of a traffic stop if it's on the right side where an officer couldn't see it, it would still not be considered concealed. Concealed would be in your pocket, tucked inside their pants where you could not see it.

Councilor Gorsek asked in Section 9.48.010, and 020 you can't conceal a weapon and you can't discharge it, but is there anything in the statute that prohibits people from walking around wearing a weapon?

Chief Nelson replied no.

Councilor Gorsek asked are most of these changes designed to bring us in line with ORS?

Chief Nelson replied yes.

Councilor Gorsek stated in Section 9.20.010 regarding indecent exposure, I wanted to point out to the Council that the City's code is actually more restrictive than the ORS in this respect.

Chief Nelson replied yes.

Councilor Gorsek stated if you look at public indecency, which is ORS 163.465 basically states that a person commits the crime of public indecency if the act of exposing their genitals is with the intent to sexually arouse someone else.

Chief Nelson replied that is correct.

Councilor Gorsek stated the question for Council is do you want our code to be more restrictive than State law?

Councilor Ripma asked is there a reason why we are making this more restrictive?

Chief Nelson replied yes. This is to primarily allow us the opportunity and the ability to go up to and engage in conversation with people that are parked in cars if they are engaged in this activity. It also gives us the ability to engage in conversation with someone that is inside of

his or her home and is engaged in sexual activity which can be seen by someone from the outside. The City Attorney and I had a great deal of debate about this language and we choose the language "visible from a public place" which is more restrictive to give us more teeth in our ordinance versus the state statute.

Councilor Ripma stated it seems as though the state statute would cover the situations that you were talking about. Seems to me the big difference is the intent of arousing sexual desire that is what makes ours more restrictive. Basically someone who is urinating in public would violate this and that might be a good enough reason for this, we might not want that to occur in public places in Troutdale. Was that also one of the reasons?

Chief Nelson replied yes, that very issue has been raised of people urinating in the bushes either in our parks or on private property. We also choose this language because it can be interpreted as a person could be by himself or herself or with a partner.

Councilor Thomas stated I have no questions, but I surely wouldn't change what you have written here.

Mayor Thalsofer asked can you give examples of the activities that have occurred in Troutdale that has caused you to recommend this proposed language?

Chief Nelson replied there have been a number of times when an officer has come across people engaged in activity within their vehicles or engaged in sexual behavior at a bus stop where people can view it from their homes. There have been cases where some behavior is going on within their own home in front of a window where people walking by on the sidewalk can be viewing that behavior. There have been some recent complaints in the Sweetbriar Troutdale Road area of people urinating on private property.

Councilor Gorsek asked in terms of the things that you just described, wouldn't most of those involve sexual activities and be covered by the ORS, except for urination?

Chief Nelson replied they could be.

Councilor Gorsek asked so it is possible that we could simply go with the ORS and pass an ordinance against public urination and that would solve the problem wouldn't it? I hate to see a situation where someone is walking around without any clothes on in their house and someone happens to see it and calls the police, that is different than urinating or standing in front of your window engaged in sexual activity.

Chief Nelson replied I think if you were just walking from your shower to the laundry room and you forgot the drapes were open, I think that would be a stretch. I don't think we would issue a citation for that, we might give them some drape etiquette.

Marnie Allen, City Attorney stated we have a case pending in Municipal Court right now where the defendant is charged with indecent exposure was observed masturbating in the

front yard of his neighborhood. His defense is that he wasn't masturbating he was urinating in the bushes. Certainly this language will help us respond to those types of claims.

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

No testimony received.

Mayor Thalhoffer closed the public hearing at 7:53pm.

**MOTION: Councilor Ripma moved to adopt the Ordinance amending Title 9 as proposed. Seconded by Councilor Thomas and Councilor Kight.**

**Councilor Ripma stated having reviewed all of the changes I think they are good. Some of them are housekeeping and some of them are improvements.**

**Councilor Thomas stated I have nothing further to add.**

**Councilor Kight stated it appears that the Chief and the City Attorney have deliberated over this and they have come up with a recommendation to help them adjudicate cases that could be otherwise difficult.**

**Councilor Kyle stated regarding the chapter dealing with indecent exposure, I think that we need to follow the ORS, so I am not going to support that portion of the ordinance, but everything else I agree with.**

**Councilor Daoust stated I support the motion.**

**Councilor Gorsek stated I agree with Councilor Kyle. I think that we should use the ORS language for indecent exposure even though the Chief said it may be a question of drape etiquette it does say that it is unlawful for any person to expose his or her genitals and the next phrase says or engage. So what we are saying is that even with drape etiquette, it is technically illegal and I can't support that, I think the ORS does a better job. I have no problem with the other proposed changes.**

**Mayor Thalhoffer stated I am going to support the motion if it is going to make it easier for the police department to enforce conduct in the City of Troutdale that is deemed inappropriate. If we have complaints about it down the road we can always change it.**

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

**Motion Passes 5 – 2.**

**6. PUBLIC HEARING / ORDINANCE (Introduced 9/28/04):** An Ordinance clarifying the reimbursement district cost assessment process and amending Chapter 12.08 of the Troutdale Municipal Code.

Mayor Thalhofer read the ordinance title and opened the public hearing at 7:56pm.

Jim Galloway, Public Works Director stated this is the second hearing on proposed changes to the code pertaining to reimbursement district cost assessments. These are matters that are attempting to clarify some of the issues that you struggled with a few months ago when you dealt with our first and only reimbursement district cost assessment process. Specifically the proposed changes would address a few items, which I will briefly summarize. They would not allow bids, quotes or estimates to be accepted for cost reimbursement. There would be a requirement for a receipt or an invoice with proof of payment. We identify the particular information that needs to accompany that receipt or invoice. We indicate that the late charges or similar fees that the developer may incur would not be included in the reimbursement; the one exception to that is for financing costs. That summarizes the changes being proposed.

Councilor Kight stated the only cautionary note I have, which I brought up at the first reading of this ordinance, is that the contractor involved in the current reimbursement district had less than an arms length transaction with companies that he owns and you felt that in fact he might have inflated some of his costs related to the reimbursement district. What cautionary language do we have in here so that doesn't happen in the future?

Jim Galloway stated for clarification, I don't think that I implied that he inflated those costs. I think you asked the question, could that occur and I certainly agree that is something that could occur. We did not make an effort to address that in the proposed changes. If that is something that the Council would like us to try and address, we could do that but that is not one of the issues that we tried to address.

Councilor Kight asked than what safeguard do we have that the next people that are paying into a reimbursement district will be protected in that regard?

Jim Galloway replied I don't think there is any absolute protection. An entity that wears more than one hat and in affect is billing themselves could overcharge. I guess in that same situation a developer who has a friend in the construction business could ask his buddy to inflate the invoice, so I don't know that we can totally get around that. I guess the best defense we have against that is to simply look at it and give it a reasonableness test. We don't guarantee those who are in a reimbursement district that they are going to pay the absolute lowest cost. I think the charge in the ordinance is that you come up with what is fair and reasonable or fair and just cost.

Councilor Thomas asked when we are talking reimbursement district, we are usually talking about somebody who has actually negotiated some of this before they bring this forward so they know approximately the price range?



Jim Galloway replied generally speaking that is correct. The normal procedure would be that prior to starting construction the developer would come in and indicate the desire to form a reimbursement district. There would be some initial estimates involved and the Council then, if you choose to do so, would form the district then the developer would get a contractor to construct the improvement and then present the final billing.

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

No public testimony received.

Mayor Thalhofer closed the public hearing at 8:01pm.

**MOTION: Councilor Kight moved to adopt an ordinance clarifying the reimbursement district cost assessment process and amending Chapter 12.08 of the Troutdale Municipal Code. Seconded by Councilor Ripma.**

**Councilor Kight stated I think it is only fair to those folks that receive the benefit of having public utilities and hooking up to them, particularly if a developer prior to their piece of property brought it in 500 to 1,000' and all they have to do is go 10' to connect up to the same utilities. So I think it is an issue of fairness if nothing else.**

**Councilor Ripma stated the reimbursement district experience that we had revealed a couple of things that needed refining and I think this change responds well to that. Like anything, it is not going to cover every contingency but we will adjust it as we go. I think this is an improvement.**

**Councilor Daoust stated I will support the motion. This is good follow through by the staff.**

**VOTE: Councilor Kyle – Yes; Councilor Daoust – Yes; Councilor Gorsek – Yes; Councilor Ripma – Yes; Councilor Thomas – Yes; Mayor Thalhofer – Yes; Councilor Kight – Yes.**

**Motion Passed 7 – 0.**

**7. MOTION: A motion to initiate vacation of a 10' x 495' strip of right-of-way adjacent to Sandy Dell Road.**

Rich Faith, Community Development Director stated this is yet another chapter in the ongoing saga of Sandy Dell Road. You are being asked to initiate a vacation of a portion of right-of-way associated with Sandy Dell Road. This is a 10' strip that lies immediately north of that private road. It is being brought to you in order to satisfy the requirements of Multnomah County for the recording of the final plat of Sandy Dell Acres. If you recall Sandy Dell Road is a private road that serves both residents within and outside of the City that was created through an easement back in 1921. Conditions that go with that easement prohibit it from

being converted to a public road without the consent of the easement holders. There are presently about 18 of those through subsequent conveyances since it was created in 1921. In 1989 Mr. Hardy and Parks who are successors in interest in part of the property that is connected by that easement partitioned their property and as part of that partition they created a 40' track that encompasses the 30' easement and additional 10' to that easement for Sandy Dell Road. They then deeded that tract to the City and the City accepted it without knowledge of the easement restriction and the consent of the easement holders. In 1999 Mr. George Zifcak who purchased the property from Mr. Parks submitted an application to subdivide the property with the intent of using Sandy Dell Road and that 40' deed of tract as a public road. It was at that time the easement holders along Sandy Dell Road brought it to our attention that there was a restriction and that this could not be converted to a public road. Mr. Zifcak ultimately filed a tort claim against the City on the basis that we had falsely represented that as a public road or as a dedicated right-of-way for future public road. We engaged in numerous discussions with Mr. Zifcak trying to figure out a way to accommodate his subdivision and ultimately we entered into a settlement agreement with him. Under the terms of that agreement the City secured quitclaim deeds from the Hardys and Parks conveying whatever interest they may have had in that 40' tract and then we in turn quitclaimed our interest in those to Mr. Zifcak which then would mean that he would have full ownership of that 40' track. He then submitted a new application for a subdivision in which the 30' easement area to Sandy Dell Road would be retained as private road and the remaining 10' of that 40' tract would be incorporated into the various lots of his subdivision. That proposal was approved by City Council on appeal of the Planning Commission's approval in September of last year with the understanding that the final plat could go forward and be recorded and we would finally see development of that property. However, when Mr. Zifcak went to record the final plat the County Surveyor and the Deeds Records Office refused to sign off on it because according to their records there was still this remaining 10' strip that had not been properly vacated according to the procedures of state law. Even though our City Attorney tried to make the argument to them that the entire dedication of that 40' tract was invalid based upon the restrictions of the original easement, the attorney for the County did not agree with those arguments and said that the 10' right-of-way would have to remain on the plat or it would have to be properly vacated. So we are bringing this matter to you to see if you would be willing to initiate this vacation as a needed housekeeping measure to clear the record about this 40' tract and the remaining 10' strip outside of the Sandy Dell Road easement and hopefully bring some closure to this and would allow Mr. Zifcak to record the final plat and get on with his development that has already been approved by the City.

Councilor Kyle asked if we initiate this how many property owners get notified?

Rich Faith replied I don't have the number but we did do a preliminary map of that and I would say it will be in the neighborhood of 30. The reason being is under the notice requirements of state law you have to extend the terminus of the vacated right-of-way 400' in each direction and then notice the property owners 200' on either side of that as well so it encompasses many of the folks down below on Sandy Dell Road as well as those within Sandy Heights.

Councilor Daoust asked if we don't vacate this strip does that mean that ten of the buildable lots would have to be redesigned?

Rich Faith replied he wouldn't necessarily have to redesign lots but it is going to create some problems primarily that 10' strip that is now shown as being incorporated into the lots adjacent to Sandy Dell Road would come off of those properties and it will render several of them as non-conforming by not meeting the 7,000 square foot minimum lot size. The other problem that it creates is that there were some private utilities that were going to be placed in the area to the north of Sandy Dell Road as well as the private sidewalk and those would now be considered to be part of the public right-of-way if it remains on the plat. It does create some problems and perhaps you might have to question whether or not it would have to be redesigned, although I haven't really thought of what the ultimate outcome may be.

Councilor Gorsek asked is this part of the settlement agreement?

Rich Faith replied this was never contemplated actually as part of the settlement agreement. This only came to light when he went to record the final plat.

Councilor Ripma asked we did attempt to deed back this strip didn't we?

Rich Faith replied the transfer of quitclaim deeds from Hardy and Parks to the City and then on from us to Mr. Zifcak included the full 40' strip, that is correct.

Councilor Ripma asked Hardy and Parks really didn't have title to the 30' to deed, but they could of and did deed the 10' to the City and we as part of the settlement attempted to deed the whole 40' back, that is my understanding.

Rich Faith replied that is correct, however, the County is saying that 10' of that was not theirs to deed, it was a public right-of-way that had been accepted by the City, was created and shown by the County as right-of-way and so what they deeded to us was really only the southern 30' and they couldn't deed back the 10' to the north.

Councilor Ripma asked what if any of these thirty property owners object, what is the process for finishing the vacation if we initiate it if someone down the road objects or maybe a lot of them object because they don't understand it?

Rich Faith replied I can point to the statute that we would be following in terms of the procedure for this. We are working under the procedure of a vacation on the Council's own motion and it says that we would have to give notice as provided in an earlier section of the code, which is the one that says you have to extend it 400' and notice the properties within 200' or the next street parallel to that, whichever is closer. Then it goes on to say upon notice, such vacation shall not be made if the owners of a majority of the area affected object in writing. So if a majority of the property owners submit written objection to this vacation then if I understand this correctly it kills the vacation.

Councilor Ripma asked is that a majority of the owners or owners of the majority of the land?

Rich Faith replied owners of the majority of the area affected.

Marnie Allen stated that is referred to in the statute as the area that we have to send the notice to, so it is all of the property owners entitled to notice. If there are, for example, sixteen homeowners that are entitled to receive notice and nine of them file written objections then the City Council cannot approve the vacation. If that were to occur the County has indicated that they will record the plat with a note that explains that the validity of that right-of-way has been challenged and we have taken the position that there is not a valid public right-of-way there. It just creates confusion for City staff, the County and homebuyers.

Councilor Ripma asked can we approve the tract with that confusion if the vacation does not succeed because of the sequence of events outlined?

Rich Faith stated I think what the City Attorney is saying is that the County will allow us to record it but it would have to have these disclaimers and notations that lend confusion. I think it would be safe to say that if the vacation fails then we would fall back on that position and probably go ahead and record it with the various limitations. Marnie, would it show up as a right-of-way or as a questionable right-of-way?

Marnie Allen replied I think a questionable right-of-way. I say that only because the title company has insured this property and has insured ownership of the property in Mr. Zifcak. Lawyers for the Title Insurance Company are comfortable and agree with the City's position that the entire dedication was invalid. They are taking the position that we shouldn't have to vacate, so I don't believe it would show up as being subject to a right-of-way.

Mayor Thalhoffer asked are there any other cloudy issues about who owns what and the agreement with Hardy and Parks that nobody thinks is valid? Is there any way to file a suit to quiet title?

Marnie Allen stated I think the problem with the City filing an action for quiet title is we quit claimed any interest we have so we are not the property owners and Mr. Zifcak has title insurance saying he owns title and none of the other property owners are contesting that.

Councilor Kight asked are there any public utilities or amenities that are going in that will help sweeten the deal for the affected property owners immediately to the south in Sandy Heights?

Rich Faith replied there is really nothing occurring in conjunction with the Sandy Dell Acres Subdivision that has any bearing on the residents or property owners in Sandy Heights. They are already fully serviced with public utilities.

Councilor Kight asked well what about the people using Sandy Dell Road, is there going to be any improvements to the road?

Rich Faith replied yes. Mr. Zifcak is required to improve that to a paved road.

Councilor Kight asked wasn't that one of their major objections when they came before the Council several years ago and they wanted the city to pave it?

Rich Faith replied right, they did want the city to pave it but they did not want to relinquish control of it as their own private road.

Councilor Kight stated my point is, since they are going to receive at least a portion of the road being paved, don't you think they would buy into this particular development?

Rich Faith replied logic would say that they should.

Councilor Kight asked is there any legal exposure to the city on this particular issue, particularly in light of the settlement agreement that we have with Mr. Zifcak?

Rich Faith replied my initial reaction to that is more so if we fail to cure this in some manner and it is still left out there hanging in the years ahead.

Marnie Allen replied I agree.

Councilor Kyle asked do you think that maybe 32<sup>nd</sup> Street is getting the majority of ingress and egress to the properties down below or do you think they are still using Sandy Dell Road?

Rich Faith replied I believe that the residents along Sandy Dell Road, those that are in the County, are continuing to use Sandy Dell Road and the residents of Sandy Heights Subdivision, which is in the City, use 32<sup>nd</sup> Street.

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

No public testimony received.

**MOTION: Councilor Thomas moved that the City Council initiate a vacation of a 10' x 495' strip of right-of-way adjacent to Sandy Dell Road within the approved Sandy Dell Acres subdivision. Seconded by Councilor Gorsek.**

**Councilor Thomas stated I think we need to finish up the process of getting rid of this potential blockage for future property owners and alleviate this as far as the City's vested interest, which we really don't have.**

**Councilor Gorsek stated I concur.**

**Councilor Kyle stated I support the motion.**

**Councilor Daoust stated I will also support the motion.**

Councilor Ripma stated I am famous in not supporting vacations because I see them as a give away, if we can't sell usually we give them to adjacent property owners. In this case we don't even own it. This is truly a housekeeping measure so I definitely support the motion.

Mayor Thalhofer stated I also support the motion. I wish I could say that this will put an end to the issues in this area but I am afraid it won't be.

Councilor Kight stated I also support the motion. It is clear that from the testimony that Mr. Faith gave that the surrounding property owners will benefit with a paved road. One of the major complaints of the people living down on the river was the potholes and they wanted the City to pay for those improvements and here we have a developer doing it. I think this is a great project that needs to go forward.

**VOTE: Councilor Kyle – Yes; Councilor Daoust – Yes; Councilor Gorsek – Yes; Councilor Ripma – Yes; Councilor Thomas – Yes; Mayor Thalhofer – Yes; Councilor Kight – Yes.**

**Motion Passed 7 – 0.**

**8. EXECUTIVE SESSION:** An Executive Session will be held under ORS 192.660(2)(h) – Current litigation or litigation likely to be filed.

Mayor Thalhofer recessed the Regular meeting at 8:34 to go into Executive Session which was held under ORS 192.660(2)(h) – Current litigation or litigation likely to be file. Immediately following the executive session the Council will reconvene the regular meeting.

Mayor Thalhofer reconvened the regular meeting at 9:04pm.

## **9. STAFF COMMUNICATIONS**

Chief Nelson stated in July we started our own Chapter of PAL (Police Activities League). We received assistance from the Director of the Portland Chapter of PAL in helping us form our Chapter and in preparing a grant application. I received notice yesterday that our application has been accepted and we will receive \$24,990 which needs to be used by the end of the calendar year. The purpose of the grant was to buy equipment for a variety of activities. We identified five specific programs that we wanted to enhance or start in our area which are: purchase equipment for the Hawkeye football team; expansion of our Friday night basketball program; start a fishing program; purchase equipment and pay for green fees for a golf program; and an educational and cultural program where we will have some tuition assistance for Christmas break for kids in our area to go to the Youth Center in Gresham and participate in some activities there, buy bulk movie passes, and zoo and OMSI admission fees. We will be submitting another grant application for \$25,000 to put towards some part-time staff to run this program in conjunction with our recreation program.

## **10. COUNCIL CONCERNS AND INITIATIVES:**

Councilor Kyle stated Reynolds Learning Academy is presenting an Ice-Cream Event on Tuesday, October 19, 2004 6pm to 9pm with 25% of the proceeds being donated to the Reynolds Learning Academy graduation ceremony. The Reynolds Learning Academy became a high school in 2003/04 and is located on 202<sup>nd</sup> and Halsey. Last year I had the opportunity to host one of the students for an internship experience.

Councilor Gorsek stated October is domestic violence awareness month. On October 28<sup>th</sup> from 12-1pm and on November 2<sup>nd</sup> from 7-8pm the Criminal Justice Department at Mt. Hood Community College will have a presentation from one of the outreach people from the Bradley-Angle House to talk about domestic violence.

Councilor Ripma stated under public comment this evening Mr. Bents asked us to address the Ridgeline Trail, I favor putting this on the agenda but I would like to suggest that staff update us on what the Ridgeline Trail is and what the plans are for that slope area.

## **11. ADJOURNMENT:**

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

Meeting adjourned at 9:13pm.

**Paul Thalhofer, Mayor**

**Approved October 26, 2004**

**ATTEST:**

**Debbie Stickney, City Recorder**