

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

Tuesday, November 9, 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 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; Marnie Allen, City Attorney; Debbie Stickney, City Recorder; Kathy Leader, Finance Director (7:15).

GUESTS: See Attached List.

Mayor Thalhofer asked are there any agenda updates?

John Anderson, City Administrator replied staff is asking that Council add an Executive Session regarding litigation under ORS 192.660(2)(h) after Agenda Item #5. The media has been notified.

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

Johnnie Mansfield stated two years ago I came to you with a petition from approximately 70 to 75 neighbors requesting that a sidewalk be installed between SW 12th Street and a new development, which at that time was Arbor Homes and has since changed to DR Hortin. I would like to thank each of you for your assistance with this. At this time the sidewalk is about 99.9% complete.

3. REPORT: A report on the Troutdale Airport overview and Master Plan.

Darren Griffin, General Aviation Manager and Andy Prieb, Aviation Planner showed the Council a power point presentation and updated the Council on the recently completed Troutdale Airport Master Plan. (A copy of the power point presentation is included in the packet and two copies of the Master Plan were left with the City Administrator.)

Councilor Gorsek asked in terms of the Ports operation of PDX and the surrounding airports, are there any plans in the future for passenger service or commuter service for Hillsboro or Troutdale?

Darren Griffin replied we have been asked that question a lot, especially regarding Hillsboro. We have determined that the role of the Hillsboro airport is not to accommodate passenger service. In the future there may be some light shuttle service also called air taxi service which is a developing area in the aviation industry right now. We don't envision that for Hillsboro or Troutdale.

Councilor Gorsek asked is there any plan to move the forest service facility?

Darren Griffin replied no. We value them as a tenant. We went through a lot of lengths in the Master Plan process to accommodate them and make sure that the Troutdale Airport can continue to serve their needs. We think their operation is very valuable at this location.

Councilor Ripma asked I take it from this presentation that there are no plans to discontinue the Troutdale Airport.

Darren Griffin replied there are no plans to discontinue the Troutdale Airport.

Mayor Thalhoffer asked what hours does the tower operate each day? When it is not operating how does the aircraft light up the runway?

Darren Griffin replied the Troutdale Tower opens at 6am and closes at 10pm. When it is not open the pilots are responsible for contacting Portland approach control to let them know they are going to be departing if they are going to reach a certain altitude. The airfield is available 24 hours per day; the lighting is automated and can be controlled by the pilots.

Councilor Kight stated at one point there was discussions about incorporating residential housing with hangers residing below the residential units, much like you see in Sun River. Has there been any consideration for doing that?

Andy Prieb replied I recall that issue coming up about five years ago and at that point the Port was not very enthusiastic about it. I think there has been more interest since then. We did not look at that specifically in this Master Plan. The Troutdale Airport is a busy quasi-industrial setting but residential airparks are a growing phenomenon throughout the country. I think it would probably behoove us if someone were to come up with a concept for us to sit down and take a look at. I certainly think we would be a little more open to looking at the idea then we might have been the last time around.

Councilor Kight asked so it is not off the table?

Andy Prieb replied it is not off the table but to me the Troutdale airport seems to perhaps not be exactly the right fit for it but it would be interesting to explore that concept.

Councilor Kight asked what role do you see the airport playing in incorporating your services with the expansion of the Alcoa property?

Darren Griffin replied any airport sponsor is always in favor of industrial development around the airport. Airport owners almost always have to deal with residential encroachment. We are lucky in Troutdale because that is really not an issue. Redevelopment of the Alcoa site to industrial is something that works well with the airport from a compatibility standpoint. We would like to think that the Troutdale Airport could support any business aviation demand that an industrial park might generate or any other kind of use from a corporate aviation or a business aviation standpoint. We think 5,400' of runway, an air traffic control tower and those kinds of things help attract businesses. From a cargo standpoint this airport is much more limited. If they are looking into flying in cargo for industrial related purposes it is probably going to be at PDX because of the length of the runway and the weight bearing limitations on the asphalt. But I see this as a positive relationship. Having an airport in a location like that can only be a benefit because it offers an added element in trying to attract businesses in that many businesses have the corporate aviation element, which has been the fastest growing element at the Hillsboro airport.

Councilor Kight asked regarding cargo, you mention the length of the runway and the weight, can any of those items be corrected in order to accommodate light industrial and manufacturing that would locate on the Reynolds/Alcoa site?

Andy Prieb replied we looked in the Master Plan at how much additional runway could realistically be achieved at the Troutdale Airport and it is probably 300' to 600', which would give you a runway of approximately 6,000'. That is probably not enough to support most kinds of cargo operations. On the other hand it wasn't that long ago that Sports Air was operating their cargo handling at Troutdale, they are now operating at PDX. Given that cargo is somewhat scaleable it is not inconceivable that some level of cargo operation could occur at Troutdale.

Councilor Kyle asked you mentioned that Sports Air moved to PDX, was that based on the length of the runway?

Andy Prieb replied I doubt strongly that it was based on the length of the runway because they haven't really changed their fleet of aircraft that they operate. I think the principle decision point for them was being close to the other kinds of aircraft for which they move their cargo onto.

Councilor Daoust stated the Sandy River Delta is managed by the Columbia River Gorge National Scenic Area. On one of your slides when you were talking about the runway safety corridor you listed the State of Oregon, why did you list the State of Oregon?

Andy Prieb replied the State of Oregon has been listed because they are the owner of the property and they are who we have an easement with.

Councilor Daoust asked so when it comes to cutting down the cottonwood trees would the State of Oregon have more of a role?

Andy Prieb replied they would have a role in that they are the property owner and we would obviously want to coordinate with them and let them know that we intend to exercise our easement rights.

Councilor Daoust stated you also mentioned pruning, usually that is just taking branches off. Did you mean topping the trees as one way to get rid of the height?

Andy Prieb replied I think we are looking at a full range of options from one of merely meeting the immediate requirements for protecting that surface to one where we would actually address the issue for a number of years by a significant removal of tree canopy. We really have a full range of issues on the table before us at this time.

Councilor Daoust stated the Forest Service has aviation safety plans also, and the air tankers would fall under the aviation safety plans so maybe there is a link there to the forest service's aviation safety plan and getting rid of the cottonwood trees along with your own safety plan.

Darren Griffin stated yes, we think that having the forest service tanker base at the airport is going to help our cause in terms of opening up the dialog on the future of those trees.

4. PUBLIC HEARING / RESOLUTION: A Resolution approving the sale of real property to Skidmore, LP.

Mayor Thalhofer read the resolution title and opened the public hearing at 8:02pm.

John Anderson, City Administrator stated the City has had a goal of selling the RMAC property located at 3601 NW Marine Drive, lots 200, 400, 500 and 600, for some time. We received a purchase proposal from Skidmore, LP. The City negotiated with them a sale price of \$800,000 for the property. For the City to sale property we have to follow State Statutes, which requires that we give public notice for a public hearing and we receive public testimony and that the Council take final action in the form of a resolution. The City has been trying to sale this property since January 2002 when we reached an agreement with DEQ. That agreement covered three basic priorities. The first one was to reimburse the City for the cost of the sale. The second priority was to reimburse the City for its investments in the RMAC property. As you may recall we had some improvements and some liens there so we purchased a couple of the parcels to protect ourselves. The third priority was for DEQ to recoup their clean-up costs. Approximately \$389,000 has been invested by the City in these parcels and DEQ has invested about \$725,000 in clean-up. The property has been on the market for several years and we have had a couple proposals but we have not been able to close the sale successfully. A few days after we received the proposal from Skidmore, LP we received a proposal from the Port of Portland for \$925,650. There is a slight difference there; they have some formal requirements that would require a second appraisal to determine how much of the acreage is actually buildable. Staff in reviewing that with DEQ and our broker, Jeff Brooks, felt that it would probably be prudent for the City to go with the bird in the hand, the proposal from Skidmore, LP. The second reason that we thought that it might be

beneficial to go with that proposal is that it would create five to seven jobs and create some property tax revenue for the city, school district and the county. Port owned property is generally not taxable unless they put some private operation on their property. We had a cooperative sales agreement with the DEQ because neither party could fully recover all of their costs. We are proposing that we sale this property to Skidmore and in that process the City would receive approximately \$349,000 and DEQ would receive \$400,800 and we would have the cost of the sale at about \$50,200.

John Anderson reviewed the options for Council that are outlined in the staff report.

Councilor Kight asked is there any update on the information that the Port supplied the City as to how they were going to use the property?

John Anderson replied we don't have any concrete update. The property managers from the Port commented during their discussions with us that they would probably use it for access.

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 8:08pm.

MOTION: Councilor Thomas moved to adopt the resolution approving the sale of real property to Skidmore, LP, Option A in the staff report. Seconded by Councilor Kight.

Councilor Kight stated we can obviously use the money in our General Fund. The \$349,000 could be used to reduce our indebtedness on the future city hall property. There are a lot of other options as well, such as expanding our police department. I think we need to move forward on this.

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

Motion passed 7-0.

5. PUBLIC HEARING / ORDINANCE (Introduction): An Ordinance amending Section 12.05.080 of the Troutdale Municipal Code. (Assigning responsibility and liability to property owners for ice and snow control on sidewalks and driveway approaches, extending the cure period for repairs, and clarifying the requirement to construct).

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

Jim Galloway, Public Works Director stated this matter is being brought to the Council as a follow-up to the discussion we had at the October 26th work session. During the ice and snow storm last January the City received a few calls from residents inquiring or complaining

about the fact that some folks in their neighborhood had not removed ice or snow from the sidewalk. Obviously, during that particular period we had our hands full and were not able to look into those situations. After the storm we did take a look at the code and determined that it was unclear whether maintenance of the sidewalks included snow and ice removal or not. We thought it would be appropriate to try and clarify that. Our recommendation on the clarification would be to spell out in the ordinance that there is a responsibility and liability on the adjacent property owner to keep their sidewalks free of ice and snow, similar to the requirement to keep the sidewalk in good repair. However, we also felt that when this situation would occur, which would be during periods of rather significant adverse weather, that staff would probably not have the ability to follow-up on complaints at that time so we recommend that we not have a complaint follow-up and enforcement policy. This is primarily an effort to try and put the city in the best position possible should there be either a claim or a lawsuit filed and try to minimize the exposure that the city has in that regard. That is the principle purpose for the proposed ordinance. While we were doing the review and the background work to prepare this particular item we took a look at the entire section and found that there were two other items that we would like to bring forward for possible consideration by Council. One has to do with the current standard on repair of sidewalks. It currently says that if there is a complaint and we investigate and find that it is valid we give notice to the adjacent property owner giving them 30-days to make repairs. We have found in many situations, probably the majority, that the property owner typically asks for additional time. They find that the 30-days is not enough time. Either they are having a difficult time finding a contractor, arranging financing or there is bad weather. So we would recommend extending that period to a 60-day cure period but make it clear that there would not be an extension beyond that period. A second proposed change has to do with the use of the term construction in the existing portion of the code. The question was raised last time we amended this portion of the code as to whether or not this meant that there was an obligation on the property owner where there is no sidewalk to go out and build one. At that time we verbally told folks that was not the intent. We thought that this would be an appropriate time to clarify that the intent is simply if there is a sidewalk that is deteriorated to the point where it has to be rebuilt, and if someone wants to call that construction that is the way the term is being used in this section, not as an obligation to build a walk where none exists.

Councilor Thomas stated regarding the 60-day period with no extension, if it was during the winter when you really can't pour cement the 60 days may be a little short. What kind of consideration do we have for that?

Jim Galloway replied under the current code it doesn't address that and folks have typically come back for extension after extension. The proposal would not provide for that even though we sometimes do get some adverse weather, I really don't think we have too many times where a period of 60-days would go by where someone couldn't go out and replace the concrete for a sidewalk panel or two. The proposal that we have before you doesn't make an allowance for that. Obviously if that is something that the majority of the Council feels we need to take into account, we could certainly try to work something into there. It would be my feeling that even in the dead of the winter we usually don't go 60 days without having a decent stretch of weather where that kind of work could be done.

Councilor Thomas asked in Section 12.05.080(C) where we talk about the minimum fines, I know that there has been an effort to remove specific fines from specific sections of the code and have it default to the general penalty section, is there any reason why we left it here?

Jim Galloway replied no. It was not left in deliberately and it would not be difficult to remove.

Mayor Thalhoffer asked is there any reason why there couldn't be an extension to the 60-days in a given situation where it was necessary for the owner?

Jim Galloway replied I don't believe there is a reason why there couldn't be. I think there might be some reasons why we would recommend against it. One is that from the prospective of the property owner who is going to have to pay for the cost to fix the sidewalk, there is obviously a hardship imposed there; on the other hand the longer we wait to get it fixed there is a hardship imposed on the public using that sidewalk as far as the potential danger of tripping and falling. I think we are trying to weigh the two. The second reason I would recommend against it is the general reason that is provided to us as to why folks need more time is that it is going to cost a lot of money and they need some time to fund it. That is very difficult for us to judge as to how valid that argument is. It gets to be a very difficult choice to say we think you can afford it so you don't get an extension or maybe you can't afford it so maybe you should get some more time. I think it is that reason as much as any that we would recommend against it.

Mayor Thalhoffer stated in some cases this involves the removal of a tree and that can get expensive. Don't you think we should be somewhat lenient with our property owners in a case where a consideration is justified? I am sure we could come up with some kind of objective standard that wouldn't make it too difficult.

Jim Galloway replied I understand your concerns.

Councilor Kight asked I am thinking of the winter of 1996 with the snow and ice. Wouldn't you agree that at least during that particularly winter it would have been very difficult to form up a sidewalk and pour cement?

Jim Galloway replied there were certainly some periods of time when that would be difficult. I don't recall that we had 60 consecutive days that were that bad.

Councilor Kight asked do you see anything wrong with adding one extension, maybe 30-days?

Jim Galloway replied no I don't see anything wrong with that. What we were trying to do is bring to you something that we thought protected the city to the best extent possible. I think the longer that window is that we allow folks to go without making the repair I think the greater vulnerability we have.

Councilor Kight asked how long do some of these sidewalks go that are cracked and raised before the city is contacted and we send a notice for repair? Couldn't the case be made that it sometimes goes for months?

Jim Galloway replied I think that is correct. I would assume that the City's liability probably either starts or becomes greater once we have been notified of the defect. We don't have and we have consciously said that we would not have a program where we had sidewalk inspectors going out looking at sidewalks and trying to find sidewalks in need of repair; it is totally a complaint driven system. I would assume that probably once we have been notified through that complaint system that there is a problem then I would think our window of liability becomes greater.

Councilor Kight asked Marnie Allen as far as the city, what liability do we have if we allow a 30-day extension for instance if there is inclement weather?

Marnie Allen, City Attorney replied those decisions regarding the City's liability have to be made on a case by case basis. Mr. Galloway is correct that once the city is put on notice of a defective sidewalk in our right-of-way our potential is maybe more significant than if we didn't have notice. Having said that, if we have in our code a process that allows someone 60-days and a 30-day extension and we've documented that we have notified them and they are making efforts to repair it, I wouldn't assign that risk to the city as significantly high or something that should dictate the policy decision.

Councilor Kight stated in the city we have older subdivisions where we have incorporated street trees as part of the landscaping and there are a lot of sidewalks that are damaged as a result of planting the wrong type of trees. What responsibility does the city have in replacing those sidewalks?

Jim Galloway replied under both the current language and the proposed language, none unless we are the adjacent property owner.

Councilor Kight stated the city requires as a condition of development to put in street trees and as a result the sidewalk is raised up and then the property owner has to carry the responsibility, not only for removing the tree, but also to repair the sidewalk.

Jim Galloway stated I don't know if the scenario is exactly as you described. Obviously the situation where we have a tree causing the problem with the sidewalk I assume that tree has been around for a number of years. I don't know what the history was as far as the tree program at the time those trees were put in. Your statement, as I understood it, made the assumption that the city dictated what trees went in and I just don't know if that is correct or not.

Councilor Kight stated actually the city crews planted them. They not only choose the variety of trees, but they actually planted them. So obviously the city is actively engaged in planting and selecting the trees and then later on when the sidewalk is damaged the property owner is then responsible for spending several thousands of dollars to replace the sidewalk. Don't you

see any financial responsibility on the part of the city where they have played an active role in creating the problem to begin with?

Jim Galloway replied no.

Councilor Kyle stated I have a hard time with the 60 days. Things are not black and white to me. The one situation that I am thinking of, her sidewalk was turned in anonymously, which I have a problem with that. She had just been laid off, she is a single parent with two kids and the city was kind enough to give her extensions and she did finally get it repaired but it was stressful. I have a hard time with things being black and white. Do we require cones or caution tape or anything to protect people using the sidewalk until the repair is complete to protect the city from liability?

Jim Galloway replied we don't have that requirement in the code. I think we advise folks that they should do that.

Councilor Daoust asked when it comes to the city's liability, the code clearly says the land owner is responsible and it clearly says that they are liable for damages so why are we even talking about what the city is responsible for. To me the code is real clear that the landowner is responsible, so why are we getting into discussions about having to put cones out or whether we have to take 60-days to minimize our vulnerability.

Councilor Kight asked don't you remember the lawsuit?

Councilor Daoust replied yes and we took it on as if it were the city's responsibility. I don't know what the outcome of that was.

Marnie Allen stated the mere fact that the city owns the public right-of-way as a trustee for the public puts us in a position of being named in those lawsuits and we can and do use this ordinance to try and both join the private property owner in the lawsuit and shift the responsibility to them but the courts are not consistent in finding that a city can completely shift all the liability. I believe in the one lawsuit against the city where there was an injury on a sidewalk, that case did settle and damages were paid by the city's insurance carrier to resolve it.

Councilor Daoust stated I don't have a problem with going beyond the 60 days. Would it be possible to notify the property owner that a complaint has been filed first and then send them a second letter saying you have 60-days to repair it?

Jim Galloway replied if I understand you correctly the first letter wouldn't tell them that they have to do anything and that probably wouldn't be very effective. I guess if we are going to go out more than 60-days I would prefer to provide potential for an additional extension, I think that would keep it a little cleaner.

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

No public testimony received.

Councilor Ripma asked is the Council all in favor of granting an additional 30 day extension if requested?

Mayor Thalhoffer replied I favor that. Councilor Kight and I both raised that issue.

Councilor Thomas stated I wouldn't mind going with a one-time extension of another 60-days.

Councilor Kyle stated I think it should be on a case-by-case basis. If it appears that there is genuine need for an extension, if there is a genuine hardship then extend it. I don't know if I have to have a specific time extension.

Mayor Thalhoffer asked is there anyway to put some language in the code requiring that they put out cones or mark the area in some way until they can repair it?

Jim Galloway replied I will double check but I believe that the notice letter that goes out to folks notifying them of the needed repair suggests that they take some protective measures. My concern about adding language in the code is then we are in the same situation we are with the sidewalk, what if they don't comply with that? Do we cite them into court for failing to put out the cone or tape? I guess I would prefer to make it more of a suggestion rather than adding it to the code.

Mayor Thalhoffer stated if you want to make that sidewalk safe then you ought to make it a requirement.

Councilor Thomas asked do you know what the cost of cement is to repair a sidewalk?

Jim Galloway replied I think it varies quite a bit. In the case that the City Attorney mentioned during the depositions that were taken the property owner had made the repairs and produced a receipt for the repairs in the amount of \$160.00. That is the only one that I have actually seen something introduced as evidence that appeared to substantiate a cost.

Councilor Thomas asked is the average sidewalk repair 15' to 20'?

Jim Galloway replied it depends, it is usually one or two panels and those panels are typically 4' to 5' so 10' would probably be a typical length.

Councilor Kyle asked do we have a standard letter that we send out for this sidewalk repair issue?

Jim Galloway replied yes.

Councilor Kyle asked staff to provide the Council with a copy of that notice at the next meeting so we can see what language is included in the letter with regard to marking the hazardous area with cones or tape.

Councilor Ripma asked staff to bring the ordinance back with the language allowing a one-time 30-day extension.

Councilor Thomas stated I would like some Clarification on the need to specify the fine amounts in Section 12.05.080(C) as opposed to having it default to the violations-penalty section in Chapter 1.04, General Provisions.

Mayor Thalhofer closed the public hearing at 8:37pm.

5.A EXECUTIVE SESSION

Mayor Thalhofer recessed the Regular meeting AT 8:37PM to go into an Executive Session held under ORS 192.660(2)(h) – Current Litigation.

Mayor Thalhofer reconvened the Regular meeting at 9:05pm.

MOTION: Councilor Gorsek moved to approve a settlement agreement to resolve the Dorrough litigation in accordance with the terms that were discussed in the Executive Session. Seconded by Councilor Kyle.

Councilor Gorsek stated I am satisfied that staff has done everything that they can on this and that we should go forward and settle this matter.

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

Motion passed 7-0.

6. STAFF COMMUNICATIONS

John Anderson, City Administrator stated the Governor has a program called the “Shovel Ready” program. There will be a presentation tomorrow at 11am in Fairview at Townsend Farm. They will be acknowledging that the property on the east side of Mt. Hood Community College qualifies for the program.

John Anderson stated we have a work session scheduled to discuss fire services on November 23rd. Because of Ballot Measure 37 cities need to have ordinances in place by the implementation date, which is December 2nd. We would also like to hold a Regular meeting and place a public hearing for this ordinance on the agenda.

Marnie Allen stated we will prepare the ordinance so that you can adopt it at one meeting with an immediate effective date so that the ordinance will be in place by December 2nd which is the implementation date of Measure 37.

7. COUNCIL CONCERNS AND INITIATIVES:

Councilor Ripma thanked the voters for reelecting him.

Councilor Thomas congratulated the Mayor, Councilor Ripma, Councilor Daoust and Robert Canfield on their election victory.

Mayor Thalsofer thanked the Troutdale voters for reelecting him and for the confidence they have shown in him. Mayor Thalsofer congratulated Councilor Ripma and Councilor Daoust.

Mayor Thalsofer asked everyone to keep the young men and women in our armed forces in our prayers and thoughts.

Councilor Kight stated Veteran's Day is coming up on November 11th. We all need to be mindful of all the men and women who have already made that ultimate sacrifice along with the current conflict that is going on in the Middle East and to take a moment to reflect upon those people who have given their lives protecting our freedom.

Councilor Kyle stated Reynolds Learning Academy will be holding a rummage sale this weekend to raise funds for their second graduation ceremony at 20234 NE Halsey. It will be held on 11/13 from 9am – 4pm and on 11/14 from 10am – 2pm. If you have items to donate you can call the Reynolds Learning Academy at 503-667-4673.

Councilor Daoust thanked the voters of Troutdale for reelecting him.

8. ADJOURNMENT:

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

Meeting adjourned at 9:15pm.

Paul Thalsofer, Mayor

Approved November 23, 2004

ATTEST:

Debbie Stickney, City Recorder