



CITY OF TROUTDALE

"Gateway to the Columbia River Gorge"

AGENDA

CITY COUNCIL – REGULAR MEETING

Troutdale City Hall - Council Chambers
219 E. Historic Columbia River Hwy. (Lower Level, Rear Entrance)
Troutdale, OR 97060-2078

Tuesday, December 8, 2015 – 7:00PM

Mayor

Doug Daoust

City Council

David Ripma

Eric Anderson

Larry Morgan

Glenn White

Rich Allen

John Wilson

City Manager

Craig Ward

1. **PLEDGE OF ALLEGIANCE, ROLL CALL, AGENDA UPDATE.**
2. **CONSENT AGENDA:**
 - 2.1 **MINUTES:** October 13, 2015 Regular Meeting.
3. **PUBLIC COMMENT:** Public comment is limited to comments on non-agenda items. *Remarks shall be limited to 5 minutes for each speaker unless a different time is allowed by the Mayor. The Mayor and Council should avoid immediate and protracted response to citizen comments.*
4. **RESOLUTION:** A resolution approving the Legal Settlement regarding the property located at 950 Jackson Park Road.
Ed Trompke, City Attorney & Steve Winstead, Building Official
5. **DISCUSSION:** Summerfest 2016 Weekend Date
Cindy Passannante, WCGCC Events Chair
6. **DISCUSSION:** Policy direction for Regional Disaster Preparedness Organization (RDPO) City Representative.
Councilor Allen
7. **STAFF COMMUNICATIONS**

8. COUNCIL COMMUNICATIONS

9. ADJOURNMENT



Doug Daoust, Mayor

Dated: 12/03/15

City Council Regular Meetings will be replayed on Comcast Cable Channel 30 and Frontier Communications Channel 38 on the weekend following the meeting - Saturday at 2:30pm and Sunday at 9:00pm.

Further information and copies of agenda packets are available at: Troutdale City Hall, 219 E. Historic Columbia River Hwy. Monday through Friday, 8:00 a.m. - 5:00 p.m.; on our Web Page www.troutdaleoregon.gov or call Sarah Skroch, Acting City Recorder at 503-674-7258.

The meeting location is wheelchair accessible. A request for an interpreter for the hearing impaired or for other accommodations for persons with disabilities should be made at least 48 hours before the meeting to: Sarah Skroch, Acting City Recorder 503-674-7258.

DRAFT

MINUTES

**Troutdale City Council – Regular Meeting
Troutdale City Hall – Council Chambers
219 E. Historic Columbia River Hwy.
Troutdale, OR 97060**

Tuesday, October 13, 2015

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

Mayor Daoust called the meeting to order at 7:00pm.

PRESENT: Mayor Daoust, Councilor Ripma, Councilor Anderson, Councilor Morgan, Councilor White, Councilor Allen, and Councilor Wilson.

ABSENT: None.

STAFF: Craig Ward, City Manager; Ed Trompke, City Attorney; Steve Gaschler, Public Works Director; Erich Mueller, Finance Director; and Sarah Skroch, Acting City Recorder.

GUESTS: See Attached List.

Mayor Daoust asked are there any agenda updates?

Craig Ward replied there are no amendments to the published agenda.

Mayor Daoust stated before we get to the Consent Agenda I wanted to give recognition to an event that we just had, the Fall Festival of Art. Gary Fenske of Fenske Galleries, gave me a note that says "Fenske Gallery's Leonardo Da Vinci Exhibit and the Chamber's Art Festival had a wonderful attendance last week that brought many people into Troutdale. It was a great example of the power of art and how our united vision of creating Oregon's Art Capital in Troutdale will benefit us all. Thank you much, Gary Fenske." I think our Fall Festival of Art had a good first year.

Councilor Wilson stated I'd like to remove Item 2.4 from the Consent Agenda.

Councilor Allen stated I'm also interested in removing Items 2.2 and 2.3 from the Consent Agenda.

Mayor Daoust stated we will discuss Items 2.2, 2.3 and 2.4 after Agenda Item 3, Public Comment.

2. CONSENT AGENDA:

2.1 MINUTES: August 25, 2015 Regular Meeting.

2.2 RESOLUTION: ~~A Resolution expressing support for the Gorge Hub Project at Depot Park.~~

Pulled from the Consent Agenda and moved to the Regular Agenda after Item #3

2.3 RESOLUTION: ~~A Resolution providing for current FY 2015-16 Budget Transfers and Appropriation Changes.~~

Pulled from the Consent Agenda and moved to the Regular Meeting after Item #2.2

2.4 RESOLUTION: ~~A Resolution approving an Intergovernmental Agreement between Metro Regional Government and the City of Troutdale for funding the Fiscal Year 2015-16 Metro and Local Government Annual Waste Reduction Program.~~

Pulled from the Consent Agenda and moved to the Regular Meeting after Item #2.3

2.5 RESOLUTION: A Resolution granting a Temporary Construction Easement abutting NW Graham Road to the Port of Portland and accepting a Consent Instrument from the Federal Department of Health and Human Services.

2.6 RESOLUTION: A Resolution to Acquire Certain Personal Property and Settle Certain Litigation.

MOTION: Councilor Anderson moved to approve Consent Agenda Items 2.1, 2.5 & 2.6. Seconded by Councilor Allen. The motion passed unanimously.

3. PUBLIC COMMENT: Public comment is limited to comments on non-agenda items.

Claude Cruz, West Columbia Gorge Chamber of Commerce, stated I wanted to thank the City for collaborating on what I think was a very successful first year event for the Fall Festival of Arts. All indications are that it was very well received and enjoyed by everybody. Looking at it from the inside we can always see things to do better. We're looking forward to doing this next year. The City was really instrumental in giving us the use of the facilities at the park and the Cox Building. We ran with it and I think it was really good for the City overall. Thank you all for making it possible. That's on behalf of the Chamber and the group of artists who made this possible.

Rip Caswell, owner of Caswell Galleries, stated I wanted to say thank you to the Council and the City for all your support in the arts. It was a fantastic first event. I'd also like to publicly thank our Chamber of Commerce and Claude and Penny Cruz. They worked so hard. They were out late at night and early in the morning rallying the troops and physically working. I just wanted you to know what a great job our Chamber is doing for its businesses.

2.2 RESOLUTION: A Resolution expressing support for the Gorge Hub Project at Depot Park.

Councilor Allen stated I support the Hub and I support the efforts to get grants and to work with other jurisdictions, but I'd also like to see input from the Council.

Councilor White stated I think if we don't open it up for Council at some point that it's difficult for the rest of the business owners to chime in. I haven't heard from any business owners on this. They haven't had the opportunity to come and speak at a formal meeting. I have heard from them while talking to them on the street. I'm in full support in this idea

and I appreciate the effort that has gone into it. I'm worried we'll get too far into the design phase and not be able to address some of our concerns that we're hearing from the public and surrounding businesses. I think with that input we can add to the cycle Hub and it would only be beneficial. We've talked artistic designs for bike racks. On a personal note I'd like to see power in place because I think electric bikes are becoming popular. I think it would be a great way to get people to spend more time in our downtown if they were charging up a bike. That could be part of the design.

Councilor Wilson stated there would be charging stations for their phones so there's electrical power but how many power outlets I don't know. Maybe there needs to be more than they're thinking about.

Councilor Morgan stated the suggestion that Councilor White and I spoke about awhile back was for port-a-potties, potentially having a Troutdale Loo and having artists design that or work in collaboration. I talked with Steve Gaschler in Public Works and there are some options for us to explore but it might be at a cost. If there is an opportunity for Council to have input on that project in any capacity then I think it would be great. We could make it more artist focused.

Councilor Allen stated I would agree with that.

Councilor Anderson stated we all saw what happened last week with the Festival of the Arts, it was phenomenal. I think this is going to be equally as phenomenal. We're finding our niche but I also agree with what I've heard tonight. I don't know what the solution is. I don't know if the solution is to send Councilor White or Councilor Allen to articulate our concerns and expand upon the vision to the working group and try to incorporate that. It's a great point and I think if you ask the working group they probably want to get this done.

Councilor Morgan asked is there any way to ask the people here tonight that might be able to answer that question?

Councilor Anderson stated Craig, you're on the working group. What do you think about what you're hearing?

Craig Ward replied we can add things. I've expressed issues with restrooms before. I think port-a-potties are a first step. I think we can come back and talk about permanent restrooms at some point in the future. That isn't ruled out. I think the same thing is true for electrical connections. If you monitor what happens at Glenn Otto Park you will note that the people who use the electrical connections may not be the same audience that you first imagine. There are people who live casually around our community that would like to come in and plug in their electronics and charge them up. Just like they may want to come in and use our restrooms. That's a concern of mine. When it comes to art there is already the anticipation with this Hub design that there will be art. There's been a lot of discussion in the work group about a kind of art that fits a common theme for all of the Gorge Hubs. That hasn't been resolved yet but the expectation is that there will be significant art. We're not limiting ourselves from doing what we want with our park. What

you're doing is giving a clear signal to me, to the working group, to Claude and the Chamber who have a grant, to move ahead with the concept as proposed and we can always come in later and start adding bells and whistles to the underlying project. My recommendation is that you endorse this proposal and then we can talk about all the subsequent ones. I understand Council's desire to edit and to make this perfect but there's an old saying that perfect is the end of getting things done. We want to get things done, we want to apply for grants, and we want to move ahead with the design that we have. I think that I would put those ambitions for further enhancements to this design on the shelf until we have an opportunity to talk about it. I don't think that there's anything in this design that precludes things like permanent restrooms. While nobody particularly likes port-a-potties, they have a distinct advantage which is you can contract for them both for the rental of them and the maintenance of them so that burden doesn't fall on City staff. When the primary bike season is over they can take them away so we don't have permanent restrooms that are available there year round. We already have that at Glenn Otto Park. We've had conversations with the working group about most of these issues. I think the opportunity will always remain for us to come back in and amend the plan based on add-ons that we've decided we can afford. The question is are we going to move ahead with this design now or are we going to hold it up while we have more detailed conversations about the bells and whistles that we can add to this basic concept.

Mayor Daoust asked the grant would be for what? If the grant is for the design work then we could simply be a part of that. All it would take is 1 work session to get input from business people, the City Council, and the artists.

Claude Cruz replied it's more than 1 grant. The first is a smaller grant from Keep America Beautiful through Waste Management specifically to put some bike themed art in the park as well as some recycling. The bulk of the other grant is for design and I'm all for an inclusive process. I would welcome and embrace participation from any delegates from the City Council. I've tried to keep people apprised of how things are evolving but we always welcome input and what better time to accept that but during the design process which is really what the bulk of our RTO grant is intended to do. In the past the City has entertained funding for the implementation phase on the order of \$40,000. We're not there yet. Let's make sure we're not digging a hole in the wrong place by getting the right input including from the business community. A reminder to those that are not involved with the process directly, we've been asked as a City, as have all the Hub host cities, to place a sign indicating a Hub would be coming soon to your neighborhood to let people know what's coming. The Portland Wheelmen have funded putting nice bike repair stations at each of the Hubs. They've asked us to place that in advance of the Hub being in place. That may or may not make sense. The machinery is in motion. It needs to be better orchestrated and I'd very much want to incorporate input from the City so that everyone is comfortable that everyone is moving in the direction with general consensus.

Councilor Allen stated I'm hearing good ideas coming from Councilor White and Councilor Morgan. I would trust Councilor Morgan's judgement on whether or not to do a designed restroom or a port-a-potty. To help speed this along and still have Council input maybe we could have Councilor White and Councilor Morgan be actively involved.

Councilor Anderson asked am I hearing that you'd approve this with that condition?

Councilor Allen replied yes.

Councilor Anderson stated I would be ok with that.

Councilor Ripma stated I agree with everybody about the aspiration for more and better restrooms and art. I think this resolution that was on the consent agenda is perfectly good. It's consistent with everything that everyone's said. It's just expressing support for the idea and giving staff permission to go ahead with it. I also favor the resolution if that's what we're talking about.

Mayor Daoust stated I'm ok with the resolution, if we're going to bring in business input also. It seems to me like 1 work session would accomplish everybody's input rather than assigning individual Councilor's to provide input.

Councilor Anderson asked why can't we have the Councilor's work with the working group to solicit that input and bring it there?

Councilor Allen replied I'd be fine with that.

Councilor Anderson stated I just don't seen a need for a work session on this.

Councilor White stated I saw this as an opportunity for a downtown restroom. At the League of Oregon Cities Conference in Bend we went to Sister's and they had 2 of the nicest public restrooms in their downtown. They do beer festivals so they're quite important but they were extremely well done. They were visible so if you were shopping then you don't have to worry about finding a restaurant or having to order a sandwich to use a restroom somewhere. I thought it was a nice feature for that town. I don't like the idea of having port-a-potties that aren't easily visible from the downtown. As long as you think we can get adequate input. My main concern is that we didn't have the opportunity for the public to chime in on this the way that we were going about it. It's always a good idea to keep that public input window available.

Councilor Allen stated my concern is that we get down into this and we see the result and realize that if Councilors had been represented there that it possibly could have been better. Especially since we have toured other cities and looked at their ideas as well. I would feel more comfortable if we had at least a couple of Councilors actively involved in making sure that the project comes out well.

Councilor Morgan stated I've spoken several time with Steve Gaschler about this. The issue is going to be money and whoever is going to contribute that. It's going to be a great cost to have that functionality there. If that's our commitment to do that then I think it can be done. To the design phase, is it feasible for Rip, the Chamber, and the artists to collaborate around that? That kills 2 birds with 1 stone and I think we could move forward on both of those aspects.

Councilor Wilson stated as far as the art aspect of it, I think we really need a master plan of what we want for our City in art so we don't get a bunch of fragmented different concepts that don't really blend together. I really think we need to take a step back and look at that and talk about what we want the City overall to look like.

MOTION: Councilor Anderson moved to adopt a resolution expressing support for the Gorge Hub Project at Depot Park with the addition of Councilors White and Morgan to the working group to articulate the concerns of the Council shared here tonight. Seconded by Councilor Wilson. Motion passed unanimously.

2.3 RESOLUTION: A Resolution providing for current FY 2015-16 Budget Transfers and Appropriation Changes.

Councilor Allen stated when I look at this I'm seeing some fairly large numbers and it's quite a bit to get on a Friday and have to vote on it the following Tuesday. There is enough here that I'd like to see a little more accountability. I just can't sign a blank check without understanding it better.

Councilor Anderson stated I appreciate your point. My question though is to Craig, did we not know about this? Did we not take these actions incrementally throughout the course of the year?

Craig Ward replied no we didn't but I would like to have Erich Mueller come up and address this. Many of these items were discussed in general and it was clear that we didn't have an appropriate in the budget at that time and we would have to bring it back. We could probably point to quite a few examples of that where it was the Council's desire to move ahead with a particular item at that time but we noted that we would have to bring the item back.

Councilor Anderson asked are we going to run afoul with local budget law if we postpone this for 2 weeks?

Erich Mueller replied the short answer is no. All of these items are items that were a result of Council discussions or decisions that occurred since the budget was adopted. They didn't all by any means occur at 1 meeting. They've occurred in numerous occasions since the budget was adopted. I tried to outline the individual items. Some of them were direction given in Executive Session and others were direction given in various Work Sessions or Council Meetings.

Craig Ward stated if you have specific questions Erich Mueller is here and can answer them. The single largest one is a \$250,000 loan to the Urban Renewal Agency but I don't want to presume what your questions are.

Councilor Anderson stated that's an annual cost, correct?

Erich Mueller replied that's something that we've been doing annually and it goes back to the fundamental issues of the Urban Renewal Agency cannot collect the tax increment unless it's in debt. As part of the process we continue to advance money to the Urban Renewal Agency so that it's able to collect the tax increment. We're also using that money to fund the various costs associated with moving forward with the EPA brownfield cleanup and the legal costs associated with the ongoing Eastwinds negotiation. There are expenditures occurring out of the Urban Renewal Agency and this is where we're advancing the funds to. It's an annual item that we've typically done. We have a \$250,000 loan repayment coming from the Urban Renewal Agency in this fiscal year as well. This \$250,000 will get repaid next fiscal year. In my staff report I tried to mention that it is a loan and we continue to get repaid by the Urban Renewal Agency from the tax increment collection. As Craig pointed out, that's the single largest individual item.

Councilor Wilson stated when I looked through this the other day, I didn't see anything in here that we didn't discuss. The lot appraisals, the voting membership for the disaster fund, the recommended legal settlement, Visionary Park, and the AFSCME contract. It is all stuff that we've already talked about in length over the last 6 months or so. I don't see any reason not to move forward with this.

Councilor Anderson stated we really can't do anything about it because what's done is done. It's eye opening in some areas.

Councilor Allen stated I see numbers that we did agree to and I'm seeing other numbers that are farther north than I had expected. It's more than I'm prepared to go through in just a few days. We received this on a Friday and its Tuesday now. That's not a lot of time to go over such large numbers to make sure that they make sense and I'm not sure that they do. I will want a little more explanation on this.

Mayor Daoust asked are there specific numbers?

Councilor Allen replied I'm just asking for time to go over this. I'm asking for some more explanation on this. There's some stuff that we've already agreed to but there are other numbers that I question. I question them enough to say that I'm not comfortable with passing this.

Councilor Ripma asked how about we set it over to the next meeting and try to put it on the consent agenda and invite Councilor Allen to talk with staff about any items he's concerned with? None of these seem that far out of line. Would you be satisfied by a 2 week delay?

Councilor Allen replied this kind of blows our budget cycle out of the water.

Councilor White stated I remember a large loan in the budget cycle for the Urban Renewal Agency. This is an extremely large number. I share Councilor Allen's concern.

Mayor Daoust stated I think it's kind of an eye opener summarized into 1 report. I would agree with Councilor Wilson that we've talked about these throughout the fiscal year and

it's just now summarized into 1 report. I would agree that maybe Councilor Ripma's solution is a good one to give Councilor's 2 more weeks to get the answers to specific questions and those answers can be sent out to the entire Council and put it on the consent agenda.

2.4 RESOLUTION: A Resolution approving an Intergovernmental Agreement between Metro Regional Government and the City of Troutdale for funding the Fiscal Year 2015-16 Metro and Local Government Annual Waste Reduction Program.

Councilor Wilson stated I would like Steve Gaschler to explain to us what we are and aren't agreeing to in the 2 different Intergovernmental Agreements.

Steve Gaschler, Public Works Director, stated this is the same agreement that was entered into last year which I was told was also done on the consent agenda. We believe it's the same agreement. It's the 6th consecutive year that Troutdale has declined to participate in the recycle at work program and is declining to receive recycle at work funding from Metro. It's the same deal that you've been doing for the last 6 years. There are no changes and that's why we agreed to put it on the consent agenda. There is a little bit of confusing language in here because it's a standard Metro agreement and some of the recycle at work program language is in here but just following that language it usually states not applicable or there's even a paragraph on page 6 of 10 that states that the City Council has agreed "after thorough discussion over the course of several meetings including 2 public meetings, the City of Troutdale Council voted against a proposed ordinance that would have adopted Metro's business recycling requirements at its Regular Meeting of September 27, 2011. The Council found that given the economic climate a high percentage of Troutdale businesses already recycling and Council Goals to encourage economic development, it could not support such an ordinance." I think Council's well on the record of not opting into that program. It's not part of this program. In some of the references here they say that in section B where it lays out what we're required to do, you'll see that the business recycling program is not part of that. It's public education and outreach and encouraging people to reduce the amount of waste and recycle where possible.

Councilor Allen stated in 2011 there were 2 things that I remember being talked about and 1 of them was a school that wanted to improve their recycling but we weren't going to get the money to help them. What I would like is that we check with schools and see if their programs are healthy or not and if we can be of assistance. The other things is that food recycling was part of that. At the time there was controversy about food recycling because there wasn't enough capacity and we had rejected it at that time thinking that we would come back to it if that had changed. My understanding is that there has been some improvements to that. I would be interested in considering the idea that developments that have restaurants with sufficient enough food to recycle at least have bins available to where they could recycle their food.

Councilor Morgan stated I agree 100% with Councilor Allen. As a part of Metro's long term goal they're going to eventually require cities to be in complete conforming of that, both residences and businesses, much like Portland. I wanted us to at least explore a

pilot program of some capacity with Waste Management for options for businesses and/or residents. With it being a mandate pretty soon it is going to sneak up on us and it should be provided as an option.

Councilor Allen stated I've run across 2 businesses that want to recycle their food but because they don't have a bin they can't.

Councilor Ripma asked we're getting \$7,548 from Metro for the programs that we're going to do and we're turning down \$6,108 for the recycle at work? It isn't that clear in the language. We are essentially adopting Exhibit A which is the intergovernmental agreement that specifically requires that we do the activities specified in Attachment A and Attachment B. Attachment B on page 5 of 10 has the recycle at work program as a requirement. It's not crystal clear to me that we're turning down the recycle at work program.

Steve Gaschler replied I didn't pull out last year's intergovernmental agreement and compare it word for word but I did ask my staff and they say there were no changes. I will agree that it's not the cleanest or clearest but if you keep reading on under budget information they talk about that and then if you go to B it talks about the recycle waste program and right after that it says not applicable. I agree that it's not the clearest but it's the format that we've been operating under for 6 years and it hasn't been a problem for Metro and it hasn't been a problem for us. I think we're all on the same page of what we are doing and what we aren't doing. This is about waste reduction and recycling. Food composting is a separate animal. They haven't quite figured out how they're going to do that and where they're going to take it. What I was told is that they're still working on that. Right now that is not part of this program because they don't have that all figured out. I think it's coming down the road but currently it is not part of this. I know they're working on it and hopefully they'll get the bugs worked out and we'll move down that road but it's not there yet.

Councilor Allen stated in that case I'd like for you to take my comments under advisement and not actually change the agreement.

Councilor White stated I know that staff has certain responsibilities, I'm wondering how does that offset the \$7,548? Are we spending more in staff time to fulfill that obligation or is it pretty much a wash?

Steve Gaschler replied to be honest with you we don't track it. I'd say it's pretty insignificant. My understanding is that most of that \$7,548 goes to public outreach and a big share of it goes to the Spring Cleanup.

MOTION: Councilor Anderson moved to adopt of a resolution approving an intergovernmental agreement between Metro Regional Government and the City of Troutdale for funding the Fiscal Year 2015-16 Metro and Local Government Annual Waste Reduction Program. Seconded by Councilor Wilson. Motion passed 6-1 (Morgan).

4. PUBLIC HEARING / ORDINANCE (Introduced 9/22/15): An ordinance creating Chapter 3.07 of the Troutdale Municipal Code to phase in a motor vehicle fuel tax over three years and to premise the same on voter approval.

Ed Trompke, City Attorney, stated this is the second reading of this proposed ordinance. The ordinance only becomes effective if the voters approve the motor vehicle fuel tax next month. The motor vehicle fuels tax phases in 1 cent per year over 3 years. All the money is used for the streets preservation fund here in the City of Troutdale which is done by contract work for neighborhood streets, arterials, all of the roads. The staff report talks about the cost savings that result. Every dollar spent in preservation such as slurries and seals save several dollars' worth of repair or reconstruction work later. It only becomes effective if the voters approve the gas tax.

Mayor Daoust asked are there any questions for staff?

Councilor Morgan asked this tax will not be able to sunset, it'll be in place forever? Secondly, does that mean if the State of Oregon acts as well then it would be on top of our current tax?

Ed Trompke replied you are right, it doesn't sunset by itself. But that doesn't say that it's in place forever because Council or the voters can change it through the legislative process. If the State were to adopt a gas tax then you might consider whether or not you want it because you would get a small percentage of the State gas tax but that is a declining balance and isn't sufficient to meet the needs of the City.

Councilor White stated 2 meetings ago we had a resolution on the consent agenda to correct a clerical error on the budget process and it was for a \$1,000,000 error and it had to do with Street Fund.

Ed Trompke replied I don't have any recollection of that so I can't answer that.

Steve Gaschler stated maybe I wasn't at that meeting, a \$1,000,000 error in the Street Fund?

Councilor White replied yes. Maybe you could give us a report on that but it'll be too late because we'll have to vote on this tonight.

Mayor Daoust opened the public hearing at 7:49pm.

There was no public input.

Mayor Daoust closed the public hearing at 7:49pm.

MOTION: Councilor Anderson moved to adopt an ordinance creating Chapter 3.07 of the Troutdale Municipal Code to phase in a motor vehicle fuel tax over three years and to premise the same on voter approval. Seconded by Councilor Morgan.

VOTE: Councilor Anderson – Yes; Councilor Morgan – Yes; Mayor Daoust – Yes; Councilor White – Yes; Councilor Allen – Yes; Councilor Wilson – Yes; and Councilor Ripma – Yes.

Motion Passed 7 – 0.

5. STAFF COMMUNICATIONS

Craig Ward stated I wanted to remind voters that we do have a ballot measure on the November ballot. We will have a reminder by postcard to all Troutdale residents to that effect as well coming out soon. It's not biased, it simply reminds people to vote.

6. COUNCIL COMMUNICATIONS

Councilor Anderson stated the Fall Festival of Arts that took place at Glenn Otto Park was beyond anything I had imagined. I had no idea it would be as well put together, as well executed, and as well attended as it was. If it wasn't before then it's obvious now that our niche or brand is being laid out right in front of our eyes. I heard no fewer than 3 people at that event say it was better than SummerFest and why are we wasting our time with SummerFest. The second thing is that tonight we passed Consent Agenda Item 2.6 that we have received some e-mails on and I would trust that there would be some communication back to some concerned citizens either by us or others because of the action we took tonight. Would that be reasonable?

Ed Trompke replied I don't recall any specific objections.

Councilor Anderson stated there were no objections, they were e-mails of concern that supported the action we took tonight. I would hope that the public can be made aware of the action we took tonight because I think there are more than 1 or 2 people that would appreciate knowing about it.

Ed Trompke replied I will prepare an e-mail for the Mayor to send.

Councilor Morgan stated it was brought to my attention at the League of Oregon Cities Conference that there was a National League of Cities that will be meeting next spring. I don't know if the Council has previously attended or not. There was some interest about attending it but I wasn't sure if the Council would be interested in pursuing that option or giving staff direction to look into that. The second item is that I know there was talk earlier this year about the long term home for City Hall. I don't feel like we've ever gotten the final answer for the old City Hall, whether it's solvent or not, whether it's structurally sound or not. I know that Councilor Ripma had pursued it and met with some engineers and our number was different from their number or vice versa. We're trying to scratch things off our list moving towards fall and winter. I think that would be something that we should pursue with seriousness to Councilor Ripma's point about a long term home for City Hall. Whether that be moving back to the old building or looking at other options.

Councilor Wilson stated at our budget meeting we pulled the funding, which I think was about \$70,000, to finish the review of old City Hall and that's why this is not moving forward.

Councilor Morgan stated I understand that but I know this has been a decision that's been going on for quite some time and it will continue to go on for quite some time. The Budget Committee also voted to restructure the uncapped rates and the Council passed it anyway. There is a way in this form of leadership to answer these questions.

Councilor Ripma stated I agree that any funds budgeted to pursue that right now were cut because we had other pressing things. I remain in favor of continuing to find out if old City Hall can be salvaged or not but I'm not really pushing it right now.

Mayor Daoust stated I think Councilor Morgan's point is that we need to push it because we've been sitting on it for too long. However Councilor Wilson's point is a valid one.

Councilor Wilson asked could we spend contingency funds by putting it on a future agenda?

Mayor Daoust replied we can.

Councilor Morgan stated wasn't the \$70,000 just a placeholder, it wasn't exact?

Craig Ward replied we had a scope of work and a contract with an architect that anticipated that we would do design work. There were several stages and that contract was approved by the Council. Then we decided to stop that process. I think that became memorialized in the decision at the Budget Committee meeting. As we know things get added back into the budget so nothing is ever dead. I will remind the Council that while we do have a 5 year lease on this space and the administrative offices building, and I think we're about 2 ½ years into that. It indexed according to a cost of living so it's been increasing slightly because the cost of living has been increasing slightly. At the end of 5 years we have to renegotiate that contract or find another home. It really isn't an issue that can last forever. At some point we're going to have to make some choices and for those choices a lot of money is going to be involved. We need to have sound architectural options that we can consider as to where our long term plans for a City Hall are or we really will have no choice but to continue to lease space. I don't think it really could or should sit on the shelf forever.

Councilor Allen stated although I may not be interested in spending \$70,000, I don't like to see a building just sitting there. I would be willing to discuss it.

Mayor Daoust stated I agree, policy wise we need to determine what to do with old City Hall.

Councilor Morgan asked is there a way to look at a first phase of what it would cost to reconstruct it without the design and adding square feet? Is there a way to quantify just that without spending \$70,000?

Craig Ward replied I'm sure that there is.

Councilor Morgan asked would a majority of the Council be opposed to Craig getting a scope of work just for the initial phase for an up or down number without any other bells and whistles attached to that? It doesn't make us spend money but we would know what it would cost for an engineer to look at the building and tell us how much it would cost to return there and what that scope of work would look like.

Craig Ward stated the last direction that I received from the Council was to move forward with the understanding that the square footage of the building would be 15,000. That's not the same thing as simply going in and reoccupying that space and bringing that building up to the minimum standards necessary to occupy it. At the moment we have somewhat contradictory direction and we will need to reconcile that.

Councilor Anderson stated I will support what Councilor Morgan desires but I would like to see how much it would cost to get that building to its highest and best use. I would support moving down that road to get a non-binding number to see what the highest and best use for that building is and how much it might cost to get it done.

Councilor White stated when we did the space needs analysis they kind of short circuited what I think the majority of the Council wanted to see happen with old City Hall. From my perspective it was to do as Councilor Morgan is suggesting and to find out what it would take to get that back on the grid, the way it was before we left the building and not making it 17,000 square feet. Working with what we have. I think that's the direction that we need to go with City Hall.

Councilor Allen stated we don't know what its future use is going to be so just getting it structurally sound.

Councilor Morgan asked we could agree to move forward on something like that?

The Council agreed.

Mayor Daoust asked do we have an appraisal on the building as is without any improvements?

Craig Ward replied we have an appraisal that's already dated. Typically appraisals are good for about 6 months and the appraisal we have is older than 6 months. I'm assuming you're talking about an appraisal as though we were going to sell it?

Mayor Daoust replied yes.

Craig Ward stated we do have an appraisal. It's dated but I suspect that it's not badly out of date but it establishes an estimated value of the property in its current form.

Councilor Morgan asked can we give staff direction to do this?

The Council agreed.

Craig Ward replied we'll develop a scope of work and I'll bring it back to you for confirmation that it's what you want us to do before we hire someone to do it.

Mayor Daoust stated we need to officially rename a subcommittee. What used to be known as the Charter Review Subcommittee is now called the City Organizational Review Subcommittee. The Councilors on that are Councilor Anderson, Councilor Morgan, and Councilor Wilson. I'm just making a point of the official name change.

Councilor White asked does that change the scope of work for that Committee?

Councilor Morgan replied it won't but it might be in the form of an ordinance change versus going out for a vote on some things. Either way it would come before the Council.

Mayor Daoust stated my second item is the Depot Museum. I think we need to discuss the City managing the Depot Museum. The only reason I'm bringing it up is because it's City property and it is empty and unmanned all week long. I think it's only open for a few hours on a couple days a week. Because of the quality of that museum, we should do something to manage it better. That may include hiring someone to man it. Maybe we should bring that up at the midyear budget meeting to talk about the expense of the City managing the Depot Museum to keep it open. I've heard more people say what a high quality that museum is and people are requesting to see it during the week and they're not able to. Next, I met with Multnomah County Chair Deb Kafoury. She wanted to make sure that we knew about 2 things that the County is going to bring up fairly soon and one is tobacco licensing. Multnomah County is going to try to get a better handle on the high rate of sales to minors when it comes to tobacco. They are going to propose a license fee of \$350 to \$600 per year to fund education and enforcement. Multnomah County will be conducting open houses on this and they'll make it a good relationship with businesses so it's not punitive but helpful, including the mom and pop stores.

Councilor Allen stated I thought we handled business licensing.

Mayor Daoust replied this is just for tobacco licensing. Evidently Multnomah County has the authority through the public health department to manage those businesses that sell tobacco.

Councilor Wilson asked do we have to have a meeting to accept this? I'm just wondering because we have home rule authority.

Mayor Daoust replied no, I don't believe that's the same for this particular thing. I asked that question and her answer was because it's managed through the public health department, we don't.

Ed Trompke replied I think it's based on a state statute that directs the health departments to enforce and adopt certain rules and procedures so the State has directed the County to do that which puts it as a state matter. It's not like a regular home rule matter.

Mayor Daoust stated the second item the Deb Kafoury brought up is the Business Income Tax. The business owners have been asking for 6 years for the County to increase the owner's compensation deduction from \$90,000 to \$100,000 and the County is at the point of wanting to take that into account this year. The only effect it would have on the City is if the County did put that into place, our revenue would probably go down about \$7,000 from \$900,000. The first hearing will be in November and it'll be effective in 2016. Multnomah County will speak to the West Columbia Gorge Chamber of Commerce about the business income tax change so that businesses are aware. My next item is the Halsey Corridor Plan between the 3 small cities. We got a \$100,000 grant from Metro to put a plan together for the Halsey Corridor and what we want it to look like 10 years from now. There will be a meeting on the 19th of October at 6:00pm at Bumpers. I'll be going, some business people will be going, and I'll choose a Councilor to go to that meeting. There will be quite a few people at that meeting so we can't overwhelm it. I'd like to address the national conferences that Councilor Morgan brought up. There is the 2015 National League of Cities (NLC) Congress of Cities and Exposition that's in Nashville, Tennessee in November and the Congressional City Conference in Washington D.C. in March 2016. The question has come up who can attend, how we can attend, and how many should attend? My recommendation would be for each Council member, including myself, to go to 1 NLC conference every other year with a maximum of 3 Councilors per year. That would spread it out a little bit and give us the opportunity to go to some of these national meetings. I have not been to any of these. Gresham goes and other City people go from small towns and cities in Oregon. I would encourage us to go but we need to keep in mind that for each person that does go, the cost is going to be about \$1,500 to \$2,000 to cover all of the travel expenses. If you have any thoughts on that, I would entertain other proposals.

Councilor Ripma asked how about having the Councilors pay their own way? You have to justify what we're going to learn.

Mayor Daoust stated if we were to go then I would propose that the City would pay for it.

Councilor Ripma stated I would question it until we know more.

Councilor Allen stated I don't know how much you would be gaining. Don't we normally talk to the Senators and Congressmen anyway?

Councilor Morgan replied I thought at the LOC Conference that you supported us going to national conferences based on some of the classes we attended.

Councilor Allen stated I don't know how much we would gain versus the expense. You might not make it through all of the Councilors due to elections.

Mayor Daoust replied not everybody has to go. If nobody wants to go then nobody has to go. If only 1 Councilor goes then so be it.

Councilor Anderson stated I like having the option.

Mayor Daoust stated Craig, you've been to D.C, what was that like?

Craig Ward replied I thought it was fascinating and I think it was useful. To interpret what you are proposing, we would need to budget something in the order of \$7,000 per year. Whether or not you want to go to Washington D.C. or one of the other national conferences, but I think it's a fascinating and educational experience. Whether or not you get the bang for the buck, I can't say. When you go to D.C. and talk with our local delegation you won't walk away with money since they cut out ear marks. But indirectly you learn a lot, you make contacts, and I think there's value. When you think about the amount of money that we manage as a City, this is a pretty nominal investment compared to any potential grant or allocation that you might be able to get out of the federal government. I support continuing education. I go to one national conference a year through the International City Managers Association and I learn a lot at those.

Councilor Ripma asked are we deciding this now? If we are then I feel it shouldn't be paid for by the taxpayers. The League of Oregon Cities is available to all of us.

Councilor Morgan replied that's paid for by the taxpayers.

Councilor Ripma stated going to Washington D.C. is another boondoggle. Those that accept a stipend could use it for that or pay for it on your own. I question that it's not really for the citizens of Troutdale to fund a trip. This should be an agenda item. We shouldn't discuss it and make a decision under Council Concerns.

Mayor Daoust replied I'm trying to get us off center. If we don't give direction to staff one way or the other then it'll just be an item where we kick the can down the road. What we could do with it is just put \$7,000 in the budget and talk about it at the Budget Committee meetings.

Councilor White stated I would support education. I would like to see reporting back and being evaluated to see if it is worthwhile. As long as it's done equally and all 7 of us have the opportunity to go. At the LOC Conference they said if you're not then you're not going to get a piece of the pie. We've never done it and we have a large budget for education and we rarely use it all.

Craig Ward asked am I being directed to put it into the budget adjustments that we're making this year?

Mayor Daoust replied yes.

Councilor Morgan stated I think it would be best to aim for the March conference.

Mayor Daoust stated the next item is that Mt. Hood Community College (MHCC) had a bond kickoff meeting last night. The college is planning on a General Obligation Bond of \$125,000,000 to go out in the May 2016 election. I'm not prepared to present all the details behind what they're going to do with the bond but I can e-mail it to you. The last bond that was passed for MHCC was back in 1974 for \$6,000,000. The school was built to handle 10,000 students and it now has over 25,000 students. My next item is a question for the Council about marijuana ordinances. If you've been reading the papers you'll notice that our neighboring cities are putting together ordinances. Fairview has recently done one prohibiting all pot oriented shops from opening in the City of Fairview until a public vote is taken in November 2016. They are basically restricting medical marijuana processors, dispensaries of medical marijuana, recreational marijuana producers, processors, wholesalers, and retailers until the November 2016 election where the citizens would vote on it. Personal use doesn't change and purchasing recreational and medical marijuana is not affected. These are just facilities that our neighboring cities are getting behind and not wanting until the public votes on it. The reason we can do this is the Oregon legislature passed House Bill 3400 in June giving us the authority to do this. It's a question before the Council. I haven't brought this before the Council because I don't know how you feel about wanting to pursue this or not.

Councilor Anderson replied this is a policy decision. I would say put it on an agenda as a resolution at a Council meeting of your choosing and let's hash it out there.

Mayor Daoust stated my next item is that there has been discussion about moving the farmers market to Mayor's Square. There's a new organizer and manager of the farmers market in Troutdale and he has some ideas that he wants to make it bigger and better. One of the questions that he has is moving it from the Depot to Mayor's Square on Saturday's. We have not addressed that yet and I'm bringing it up as something we probably should address. I don't have a problem with moving it.

Councilor White stated it's come up before and it was met with some resistance from the business community. We might want to involve them.

Councilor Wilson stated I think one of the reasons that there's been resistance is because there was nothing happening down there. If it's a legitimate farmers market you may be able to get their support. They would have to be versatile enough to either cancel it or move it to the old location when we're having a Saturday event there such as SummerFest, the Art Festivals, and the car shows. They would have to be versatile enough to not have it on weekends that we say we need Mayor's Square.

Mayor Daoust asked do we have any written agreement with the farmers market?

Craig Ward replied I don't recall one. We also don't have a written agreement for some of the car shows. Administratively it becomes a bit complicated to decide who's got dibs. Right now, because of where they're located, it's rarely a problem because they're not conflicting with other events that may be downtown. My guess is that they would assume that they are the default occupier of the space unless we tell them precisely when that will not be true. If we can do that then I think it can be administered. The car shows have

been somewhat inconsistent in the time that I've been here. We've had some that have been regular and then other ones that sort of pop up and suddenly we have a car show. I don't know that a farmers market is inconsistent with that, it's just that they would occupy a footprint that some of the car shows have been using. We know when the tree lighting is, we know when SummerFest is, and those are fairly easy to deal with.

Councilor Allen stated I heard you say it was under new management. Perhaps they have some different ideas that they want to explore. I don't want to have the past dictate the future necessarily on this one. It would be nice to find out what the business owners are thinking.

Councilor Wilson stated maybe they could make a presentation to us.

Mayor Daoust replied that's what I was thinking. The last item I have is that we've had an announcement out for our Committee and Commission vacancies and the applications are due this Friday. But here in lies the problem, we only have 6 applicants for 26 vacancies which includes 6 alternate positions. Sarah's going to extend the opening for applications until Monday, November 9th and we'll give it 1 more shot. We've already had an article in The Champion and I've recommended that we put another article in The Champion since it'll come out before November 9th.

Councilor Wilson stated The Outlook ad could be bigger too.

Mayor Daoust replied we have had 3 ads in The Outlook but maybe they should be bigger. It has also been on our Facebook page. Needless to say, we need to beat the bush for more Committee members.

Councilor White stated I'm looking for Council direction. On October 20th there is a 3 Cities Fire User Board meeting and we have not had our work session yet. I'm assuming Council wants to continue forward with the idea that was presented, the Dave Flood proposal.

Mayor Daoust stated the 3 Cities meeting is on October 26th at Fairview City Hall. I don't know if the agenda has gone out yet but it's pretty much finalized. At that meeting there will be the discussion from Gresham on how they're going to provide the 4 minute response time throughout our entire area. ESCI will also be there to discuss.

Craig Ward stated I requested a scope of work from ESCI for developing an operational plan, budget, and schedule for creating our own fire department. To me that is activating the approach in a sense that Mr. Flood presented but taking it to the next level where we would have some confidence that if we decided to go that route that we would know the mechanics of what will be necessary to make that happen. We don't have a budget for that so we need to discuss the scope of work. In order to get to that point we're going to have to have an IGA with Fairview and Wood Village for their share of that scope of work because it's a 3 cities partnership and they need to chip in. We will be discussing both of those items at the User Board meeting and then brining that forward for more discussion at the 3 Cities meeting the following week.

Councilor Anderson stated I'd recommend going forward with the Dave Flood proposal.

Mayor Daoust stated I didn't know that the User Board was going to make any kind of a decision on which type of a fire district we were going to be talking about.

Craig Ward replied at a staff level the understanding was that out of respect for the User Board's responsibility to be engaged on these issues, we were going to give them more or less a staff report on where we were. It is not in my opinion about implementing the Flood proposal. It's about an option to provide a better response time, which Gresham will give us a proposal on, or to do the detailed analysis to create our own fire department among the 3 cities. If that's what you mean by the Flood proposal, then we're entirely consistent with what you're asking for. The alternative to that is whether or not Gresham is prepared to improve their level of service so we can enhance response times. We'll hear about both of those at the User Board meeting on the 20th and the 3 Cities meeting on the 26th.

Mayor Daoust stated this Council really doesn't have to say if we want the Flood option for the discussion at the User Board, do we? We'll talk about it on the 26th with the other 2 cities.

Craig Ward replied that's my understanding. We were expecting a proposal from Gresham to improve our response time.

Councilor Morgan stated then ESCI will conduct a thorough proposal for all the options.

Craig Ward replied ESCI at my request drafted a scope of work. We will need a budget amendment to approve the expense for an intensive study that would have to be done. I don't recall what we have in the budget now.

Councilor Morgan stated \$70,000.

Craig Ward replied hopefully that will be enough. But we need to get a more detailed understanding of what that is and it presumes that we will have a partnership with Fairview and Wood Village on that. What we really need to have is a conversation about what all the 3 cities want out of a scope of work, what questions do you want answered, and then we'll have to go to bid for what firm will be selected to do that scope of work. ESCI is just 1 of several potential firms who would have an opportunity to bid on that. They are not a sole source provider. It's just a model for the kind of study that would be necessary to answer those detailed questions.

Councilor Allen stated I'd like to explore the technical ideas in the spirit of the Flood proposal. Do the other cities know about the technical details in the spirit of the Flood proposal?

Craig Ward replied I think all 3 cities have been briefed however I'm not sure if it was in an official public meeting or not. It's my understanding that at least the Administrator or Manager at these cities know as well as the members of the User Board.

Councilor White stated we'd be happy to do a presentation. I think it would be helpful. It's never been done officially at the other 2 cities. It was only done here.

Mayor Daoust replied right now the agenda only calls for an hour and a half meeting. If we add that onto the agenda how much time would you need?

Councilor White replied that's an hour and a half by itself.

Councilor Morgan stated Wood Village has indicated that they're not interested.

Mayor Daoust stated we'll undoubtedly talk about the Flood proposal at the 3 Cities meeting. It's just how much time we'll spend talking about it to bring everyone up to speed.

Councilor Allen replied it's more than just 4 minute response times. It's about trucks that can respond during the winter when you have a lot of accidents, and it's being able to pump from a river when you're fire hydrants don't work anymore because of natural disaster. There are a lot of technical aspects to the Flood proposal and it's more than just a 4 minute response.

Councilor Wilson stated I think that the Flood proposal should be made directly to the City of Fairview at 1 of their City Council meetings if the City of Wood Village isn't going to participate.

Craig Ward stated the Flood proposal while it has many good features, is not an operational plan that we can simply take off the shelf and build a fire service in a predictable amount of time. We'll provide all of the information to any consultant that we would hire and the Flood proposal would be 1 element of that.

Councilor White stated I'd like to see our work session get scheduled. I don't see it on the sheet of our upcoming meetings. It's our top priority. We're getting into these other meetings now without having first discussed it ourselves in a work session so we have firm direction.

Councilor Anderson stated I agree with you. I think we're going to have a lot more information post October 26th. Let's get it on a November work session agenda.

Craig Ward asked you want this on a November work session agenda?

The Council agreed.

Councilor White stated I've been hearing concerns about curb extensions from developers. I'd like to get some feedback from staff on when they're required or when we

do or don't have a say in them. I noticed some went in on the top of Buxton and I'd like more information on when those are going to be asked of the developer and when they're required or if Metro or the State are requiring it. If we could get a brief report or an e-mail from staff would be good.

Craig Ward replied we'll be happy to do a memo on that.

Councilor White stated on the October 20th Executive Session, I'd like to request that Ed be present at that meeting. On the 20th there is an Urban Renewal update and at the last Council meeting it was requested that we be given an Executive Session update.

Ed Trompke replied I will be out of town that day but I will be available by phone and I will call in if Sarah could set that up.

Craig Ward stated I'd like to go back to the issue of the work session in November. We have no meetings scheduled on November 3rd which I believe is election night. We have a regular Council meeting with several items on November 10th although some of them may be bumped and we could do a work session before or after that meeting. November 17th is the default night for Urban Renewal or work session meetings and we already have a couple of pretty weighty topics that night that have been delayed repeatedly. We could add the discussion about fire services but that will be a long meeting. I need some direction as to when you'd like to put in the fire services topic.

Councilor Wilson asked could we put it on December 15th? There doesn't seem to be anything scheduled, at the moment.

Mayor Daoust replied if we're all of with December 15th then I'm ok with it.

The Council was ok with December 15th.

Craig Ward replied we will schedule it for December 15th as the only item schedule so far.

Councilor White stated I wanted to take a minute to recognize Debbie Stickney our City Recorder that retired and I wish her well. She was a big help to myself and Councilor Morgan when we were working on the Flood proposal as far as getting archived information.

Councilor Allen stated my first item is regarding checks and balances. Craig, when you weren't here we had Commander Anderson step in for you. I let my fondness of Commander Anderson cloud my judgement. I don't feel it's a good idea to have people who don't actually work for the City in the role of Acting City Manager. I take it you couldn't get anyone else within the City to do it.

Craig Ward replied I actually talked to Ed about that because that was a concern of mine. Ed pointed out that it is very common. Hiring Interim City Managers is typically a person who is under contract working for the City and yet they are the City Manager. That did influence me. Scott has a history here even though he isn't a direct employee. One of

the challenges that we have is that the number of department heads who are direct staff with the City is down to 2 and so that leaves me with limited availability.

Councilor Allen stated it becomes an accountability issue. There's just no way we could hold him accountable if something went wrong, that's all. My next item is under public safety, we need to maintain professional standards in our law enforcement. I'd like you to spend some time talking to Commander Anderson about recent events. We want our people to feel protected by law enforcement and not unnecessarily threatened. If you would follow up with him, I would appreciate it.

Councilor Morgan asked did something happen?

Councilor Allen replied yes but I'm sure that Commander Anderson and our City Manager can take care of it.

Craig Ward stated I do meet with him weekly and we do discuss issues that pertain to the professional competency of our police department whether they were here or whether they are under contract. I'll be happy to continue to do that. If you could tell me the specifics privately, I would be happy to take that up with him directly.

Councilor Allen stated my next item is regarding The Troutdale Champion. We are within a year of the election time and our rule is that people that are up for election do not put articles in The Champion within that year. I also have concerns about the discussion about the U.S. Postal Service moving to Troutdale purely from the standpoint that we have a long list of things that we need to be doing, it does take up staff time, and I would not like to spend staff time on something that isn't sanctioned by the Council.

Councilor Wilson replied there's a window where a decision has got to be made. We need to keep moving to the point where it can get to us and I think that is schedule for the 20th.

Craig Ward replied I have it penciled in for a work session next week. We'll talk about the facts that we have on the table at that point. Since we're waiting for feedback from the Portland Development Commission regarding some questions that we've asked them that I think are pertinent to whether or not this is something that the Council will want to pursue. I hope that we will have that information next week.

Councilor Allen stated since we have a long list of items that we need to get to that we aren't getting to, I just ask that you ask for Council direction before spending staff time working out the details of such a deal.

Craig Ward replied that's the purpose of our meeting next week. If the Council wants us to stop having any discussions with the Portland Development Commission, I'm open to that. At this point, if you have questions about the viability of this potential project and how it might benefit us or not, that's the kind of information that we're trying to get thinking that would influence the Council's decision as to whether or not to pursue it.

Councilor Allen asked do 4 members of this Council want you to spend staff time on this?

Several Councilors responded yes. (I could clearly hear Councilor Anderson, Councilor Wilson, and Mayor Daoust respond but there may have been others)

Councilor Ripma stated I've already expressed my opposition to discussing it but I think we should wait until the 20th now because it's set up and we can get the facts. I don't think staff time is going to be spent between now and then. We're in the waiting and receiving mode from what I'm hearing.

Craig Ward replied there's always staff time. When we call somebody or send them an e-mail asking them a question, there's staff time. I don't think that there is going to be a substantial amount of time invested but there will be some. I don't want to mislead you that there won't be any time spent. We think that we're getting to the point where we'll be able to present the facts without a big investment of additional staff time.

Mayor Daoust stated its doing limited staff time to do due diligence to gather information so the City Council can make an informed decision next week on the 20th. That's all that it is.

Councilor Ripma stated the information that we're getting on this is all from the press. Mayor Daoust, you were on T.V. talking about negotiating a deal or objecting to the amount of money.

Mayor Daoust replied we haven't negotiated anything. I think we need to continue and have the work session on the 20th so you all know what we're talking about.

Councilor White stated I think Councilor Allen brings up a valid point. We've derailed our number 1 priority which is fire.

Councilor Allen replied we have a long list of things we aren't getting to.

Councilor Anderson stated sometimes we have to react. What little that I know about this is that we were approached, we didn't solicit this, and therefore we have to react. Just the same as if a private sector business were going to move into the TRIP property and they wanted to move in by January 1st. We would have to react. I don't like reacting, I like to be proactive. In this case, it is what it is and we'll find out more in a week.

Councilor Wilson stated we're at a point that I think we just need to keep moving forward so when the 20th comes along everyone is ready to talk. I haven't agreed with some of the things that have taken place but I think we just need to keep moving forward. Let's say yes or no and move off of this. I'm saying yes.

Councilor Anderson stated I'm saying yes.

Mayor Daoust stated yes.

Councilor Ripma stated the meeting next week is a good idea but spending staff time between now and then is not a good idea. Part of the problem is that we learned about Charlie Hales original proposal in the press a month ago or more and then you and Craig started running with it at least to the extent of meeting and talking and learning without ever coming to Council to say do you want us to even talk about this. When you brought this up under Council Concerns last meeting I said I'm afraid you're negotiating and you say you're not negotiating when right on television you were. We have not been informed about what's going on for too long and I would rather that it stopped where it is. We have a meeting on the 20th and I don't object to that.

Councilor Morgan stated I want nothing to do with this argument. We didn't solicit the Dave Flood proposal, it evolved. This is the same thing. We spent staff time, lots of staff time to vet the Flood proposal.

Mayor Daoust stated we have a work session on the 20th and staff can spend as much time as they need to prepare what we need to see in front of us.

Councilor Wilson stated I wanted to tell Claude that not only did the Art event at Glenn Otto went well but also First Friday was a tremendous and then Sunday when the event continued. The retailers downtown have expressed that business on Sunday when the event was happening was great. I understand that there were some sales at the event and there was music. It was tremendous all the way around and I want to thank you. They had alcohol monitors everywhere. There was 1 little issue but I think it was handled quickly. What you put together was good for the City.

7. ADJOURNMENT

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

Meeting adjourned at 9:03pm.

DRAFT

Doug Daoust, Mayor

Dated: _____

ATTEST:

DRAFT

Sarah Skroch, City Recorder



CITY OF TROUTDALE



STAFF REPORT

SUBJECT / ISSUE: A Resolution approving the legal settlement regarding the property located at 950 Jackson Park Road

MEETING TYPE:
City Council Regular Mtg.

MEETING DATE: December 8, 2015

STAFF MEMBERS: Steve Winstead and Ed Trompke

DEPARTMENT: Community Development Department, Legal Department

ACTION REQUIRED
Resolution

ADVISORY COMMITTEE/COMMISSION RECOMMENDATION:
Not Applicable

PUBLIC HEARING
Yes

Comments:

STAFF RECOMMENDATION: Adopt Resolution Approving Settlement Agreement

- Exhibits:**
- A. Settlement agreement
 - B. Declaration of restrictive covenant
 - C. Letter of building official Stephen Winstead, dated June 25, 2014, determining Shed B complies with the Building Code under certain conditions
 - D. Letter of Miller Consulting Engineers dated September 30, 2015, approving flood-worthiness of Shed B's design and construction
 - E. Floodproofing certificate dated October 7, 2015
 - F. Inspection and maintenance plan
 - G. Flood emergency and operation plan
 - H. Inspection card completed by Stephen Winstead
 - I. Letter to Christine Shirley of DLCD dated November 25, 2015, outlining case status

Subject / Issue Relates To:

- Council Goals
 Legislative
 Other (describe)

Authorizes City Manager and staff to execute Settlement Agreement and related documents to accept compliance measures taken by landowners James and Nina Kight that conform their

Reviewed and Approved by City Manager:

Shed B structure to code requirements, and issue class "U" occupancy permit, which together settle all actual, threatened, and potential claims between the Kights and the City.

Issue / Council Decision & Discussion Points:

- ◆ Consultants for the Kights identified construction and other restrictions on the use of the Shed B structure to bring Shed B into compliance with applicable floodplain, building code, and zoning regulations.
- ◆ The landowner has altered the structure of Shed B to conform it to code requirements.
- ◆ City and landowner have agreed on conditions which, if followed, will allow lawful use of Shed B. These conditions will be recorded in Multnomah County deed records to bind current and future owners. Future buyers will receive notice of the restrictions in a title report, when they negotiate to purchase the property.

BACKGROUND:

The City of Troutdale participates in the nationwide flood insurance program (NFIP) as to parts of the city which lie in the Sandy River floodplain (among other areas). Pursuant to the program Troutdale has enacted floodplain management standards. Troutdale's compliance with these standards is overseen by Oregon's Department of Land Conservation and Development (DLCD or the Department), through an agreement with the federal government.

On March 5, 2013, DLCD determined that an outbuilding—Shed B—located at 950 Jackson Park Road, had been granted permits and constructed in violation of the requirements of the NFIP. The Department's concerns were based on two principal findings: 1) that the NFIP does not allow dwelling units to be constructed with basements in the floodplain, and 2) that Shed B was a dwelling unit constructed with a basement in the flood plain, and that if the Shed B is not used for residential purposes, the basement was not properly documented or inspected to prove it is flood-proofed (i.e. constructed to withstand the forces of floodwaters from the Sandy River).

The City issued a letter to revoke the previously issued certificate of occupancy, and the Kights took three actions: they appealed the revocation, they issued a tort claim notice, threatening to seek damages for what they claimed were inconsistent city actions, and they proposed to resolve the dispute by settlement.

The city's Building Official, Planning Director and legal counsel communicated with the landowners' representatives to determine whether the Kight's proposed remedy would (and could) conform with law, and whether it could be implemented in a way that would prevent, to the maximum extent possible, future use of the structure in violation of law. After analysis of the Troutdale Development Code, the state Building Code, and FEMA regulations, and after extensive discussions and negotiations with the Kights, they arrived at a proposed settlement. The terms are embodied in two documents: 1) a Settlement Agreement, outlining remedial construction activities that landowners have completed, and 2) a restrictive covenant, setting out forward-looking restrictions on use of landowners' Shed B.

DISCUSSION:

A. Actions undertaken by landowners and city

Under the settlement agreement and restrictive covenant, landowners have converted Shed B to a nonresidential accessory structure. Additionally, the landowners have completed the required dry flood-proofing features so that the portion of Shed B below the 100 year flood elevation (the foundation) will withstand physical forces of floodwaters. The city inspected the work, and determined it complies with requirements of law. These measures allow the city to issue a new occupancy permit for Shed B as a commercial "U" class building (in this case, a commercial building for a small or limited home occupation). See, the attached Exhibit C.

The settlement documents operate broadly as follows:

First, by virtue of issuing a new occupancy permit, both Shed B's above-grade and below-grade areas will be usable only for nonresidential purposes. The proposed occupancy classification "U" allows commercial (nonresidential) uses. The "U" occupancy will not allow a landowner to install residential facilities such as cooking or sleeping facilities in Shed B, or to use Shed B for residential purposes such as preparing food or sleeping. Any future use of Shed B in such ways would be code violations, and the city may take enforcement action as may be appropriate at that time.

Second, the landowner has removed or modified above-grade and below-grade building features to eliminate potential for the area to be utilized for a residential use. Landowner removed certain appliances, and also replaced oven-sized openings in cabinetry with pull-out drawers and shelving. Deed restrictions (more on this below) as well as the building code will prevent use of plumbing below grade for bathroom purposes.

The following actions have been taken by the landowners to convert the below-grade area into an equipment room. These measures include:

- Landowner has removed furnishings such as carpeting and wall covering below grade, leaving exposed building materials such as concrete surfaces in their place;
- Certain building mechanical equipment will remain in the below-grade area, and landowners will post signs on the door to the below-grade area indicating the area is a mechanical room allowing equipment only, and no storage;
- The landowners have provided the city with a "Flood Emergency Operating Plan" and an "Inspection and Maintenance Plan."

B. Legal requirements and analysis

To remedy Shed B's code violations, the city required the landowners to demonstrate that Shed B complies with floodplain, zoning, and building code regulations. These regulations appear below, along with facts and circumstances which demonstrate that Shed B meets the requirements.

1. The below-grade area must satisfy the FEMA requirements in a floodplain.

a. Legal standard

Under 44 CFR 60.3(a)(3), all buildings in a floodplain “shall (i) be designed [or modified] and adequately anchored to prevent flotation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy, (ii) be constructed with materials resistant to flood damage, (iii) be constructed by methods and practices that minimize flood damages, and (iv) be constructed with electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.”

b. Analysis

The landowners have supplied a letter from Miller Consulting Engineers dated September 30, 2015. In it, engineer Kevin McCormick explains that he has reviewed the landowners' engineering data and analysis originally generated by the landowner's design engineer, Troy Lyver, in support of Shed B's building permits. The Miller firm concluded that Lyver's earlier work was sound, and concluded that Shed B was designed and constructed to withstand the forces of Sandy River floodwaters. This satisfies subsections (i) through (iii) of the rule set forth above.

Subsection (iv) of the rule requires building mechanical equipment to be located or designed to prevent water from entering or accumulating during a flood. In Shed B, the mechanical equipment is located below grade, in a water-proofed foundation enclosure that will prevent entry of floodwater.

FEMA regulations require that the landowners create two operations plans and file them with the city: an inspection and maintenance plan, and a flood emergency and operation plan. The City has received these, and submitted these plans to DLCD, which has not objected to them.

In sum, the city has determined that Shed B, as a commercial building, when used to house only a home occupation, can, and after recording the restrictive covenant, will meet the requirements of the NFIP as implemented by the city's floodplain regulations for an accessory building of class “U” occupancy in the floodplain.

2. The below-grade area must be usable only for non-habitation purposes.

a. Legal standard

Under Oregon Residential Specialty Code section R324.1.4, the following non-habitation uses are allowed in enclosed spaces below grade in a dwelling: vehicle parking, building access, and storage

As a “U” class occupancy, the Shed B building cannot be occupied as a residence. But since Shed B was originally constructed with a number of residential features both above and below grade, the landowners were required to demonstrate they have eliminated

residential aspects of Shed B (and they must maintain commercial use). These measures extend to the above-ground residential aspects of Shed B. The landowners needed fewer remedies above-grade (essentially, the owners needed to remove the possibility that kitchen-sized appliances such as ovens or stovetops can be fitted into the cabinetry or operated there).

b. Analysis

The landowners' compliance measures under this standard are set forth in the June 25, 2014 letter of the Building Official. In that letter the building official interpreted the building code with respect to Shed B and concluded the shed may be occupied as a class "U" accessory building. Richard Rogers, with the state Building Codes Division, accepted Mr. Winstead's interpretation.

The landowners' compliance measures are also recited in the attached settlement agreement and restrictive covenants, also attached. As illustrated in these documents, the landowners have removed finishings from the below-grade area of Shed B, and have rendered this area usable only as a mechanical equipment room. In addition, the restrictive covenants bar current and future owners from using any part of the structure for any residential use (the "U" occupancy permit bars residential use) other than a home occupation. The home occupation use is also limited to prohibit outside employees and any substantial amount of customer use (primary contact is by phone or email). If the number of employees or customer traffic increases, the building code designation would need to change, and the parking situation might require modification (which would require permits). Either would require an application and review by the city.

The city's building official and zoning compliance personnel retain plenary authority to investigate and enforce the building code and the development code. Under this authority the officials are free to discuss Shed B with the landowners or other persons. The officials may investigate any suspected violation of code provisions or the occupancy permit, which include the recorded covenants, the expected maintenance standards, the settlement agreement, and routine code conditions (such as that landowners will seek necessary permits from the city to construct future improvements such as new electrical circuits).

In sum, the city staff has concluded that Shed B is usable only for non-residential (non-habitation) purposes consistent with a "U" class occupancy permit and city codes, but a limited home occupation use is allowed.

3. The floor area of Shed B is limited to 1,000 square feet.

a. Legal standard

Under Troutdale Development Code (TDC) Section 5.010(C)(2), an accessory structure may not exceed "1,000 square feet in floor area."

b. Analysis

The TDC defines "floor area" as "the area of all floors included within the surrounding exterior walls of a building or portion thereof, exclusive of vent shafts and exterior courts." The landowners have provided a figure that the above-grade square footage of Shed B, exclusive of vent shafts and similar features, is approximately 970 square feet. The building official has inspected the premises and agrees that this assertion appears to be a reasonable estimate. The 970 square foot figure is allowed by TDC 5.010(C)(2).

As to whether the below-grade area should be counted, the code is not straightforward, as it depends on whether the very limited use of this area, in compliance with FEMA "crawl space" requirements, requires counting. What is more, the TDC uses a different but similar term—"gross floor area"—in some contexts, for instance to limit the size of a retail store to 15,000 square feet of "gross floor area" in the central business district. The TDC does not define the term "gross floor area" and does not explain what the two terms mean in relation to each other.

Thus, the city must interpret the meaning of the term "floor area" as it is used in the context of a "U" class accessory structure in a residential zone, which in this case is a "U" class building for a home occupation business

The city Planning Director has authority to interpret the meaning of "floor area" in this matter, (See TDC 17.020) and has stated that, the interpretation is limited to the facts of this matter. Director has determined that the below-grade portion of Shed B is an area similar to spaces used for mechanical equipment (ventilation), in that it is not allowed for uses other than servicing the remainder of the building with heat, air etc. As a result, the meaning used in this context will not apply to other factual contexts. The factual context here includes the limitations on use set out in the restrictive covenant, restricting the use of the below-grade area so that it must comply with FEMA crawl space requirements, and serve only as a mechanical room, and not a storage or habitation area.

In adopting this Resolution, the City Council is accepting this interpretation, and its extremely limited applicability. In adopting this Resolution, the Council reserves the right to reinterpret the term, as allowed by law.

Accordingly, in calculating the 1,000 square-foot allowance for an accessory structure, the City Council may calculate the area of the structure net of the area that has limited use as a FEMA crawl-space and is used for HVAC and related service to the building.

Under this limited interpretation of the definition, Shed B complies with the 1,000 square foot limitation of the TDC. The landowners have provided information that the above-grade square footage of Shed B, exclusive of vent shafts and similar features, is approximately 970 square feet. The Director found that the below-grade area was not intended to fall within the definition of "floor area." Accordingly, the city staff has found that Shed B satisfies the code.

SUMMARY:

The Resolution will authorize the City Manager to execute the settlement agreement and restrictive covenants in substantially the form attached to the Resolution. Afterwards, the city will

approve a "U" class occupancy permit for Shed B, and the appeal filed with the Land Use Board of Appeals will be terminated. With that, the city will be able to close its file on Shed B other than for routine matters related to continuing compliance with all regulations and requirements expected of any land owner.

PROS & CONS:

- A. Adopting the proposed resolution to approve a settlement agreement and recorded covenants will allow the city to recognize a landowner's code-compliance measures constructed at the owner's own cost. It will also allow the city to control its costs by ending the existing land use appeal litigation, and preventing any case from being filed to recover claimed damages or costs incurred by the landowners. It will also allow the city and the landowners to agree that neither the city nor the landowners will file future litigation related to the city's revoking the original residential occupancy permit and replacing it with a "U"--class occupancy permit.

- B. Not adopting the proposed resolution to approve a settlement agreement and recorded covenants will result in Shed B remaining an unlawful structure. The city's costs to litigate that issue are likely to be substantial, and exceed any benefit the city may gain in foregoing the opportunity to resolve the matter under the proposed terms.

RECOMMENDATION

Staff members recommend adoption of the resolution.

<p>Current Year Budget Impacts: <input type="checkbox"/> Yes (describe) <input checked="" type="checkbox"/> N/A</p> <p>Future Fiscal Impacts: <input checked="" type="checkbox"/> Yes (describe) <input type="checkbox"/> N/A Approving the Resolution will allow the city to avoid expenditure of funds on building code enforcement, development code enforcement, and legal services currently needed to respond to the existing appeal, and threatened claim for damages.</p> <p>Community Involvement Process: <input type="checkbox"/> Yes (describe) <input checked="" type="checkbox"/> N/A Given the unusual nature of this matter the Council wishes to consider this settlement agreement and recorded covenants in an open session so that the public may provide input and be aware of their elected officials' views and actions as to the documents.</p>
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SETTLEMENT AGREEMENT AND MUTUAL RELEASE

BETWEEN: The City of Troutdale, Oregon (“City”)
AND: James Kight and Nina Kight (“Kights”)
CONCERNING: An accessory structure constructed within the floodplain (“Shed B”)
Located at 950 Jackson Park Road in Troutdale, Oregon
(See legal description on Exhibit A).
DATED: October 5, 2015 (“Agreement Date”)

RECITALS

A. On or around February 11, 2011, the Kights completed construction of an accessory structure (“Shed B”), consisting of an approximately 970 square foot component above grade (the “Above-grade Portion,” and an approximately 976 square foot full-height, floodproofed component located below grade (the “Below-grade Portion”). City issued a certificate of occupancy (“CO”) on or around May 11, 2011.

B. On or around February 5, 2013, the State of Oregon Building Codes Division (“BCD”) sent City a letter, advising City of BCD’s opinion that Shed B may violate Chapters 1 and 3 of the Oregon Residential Specialty Code, and stating BCD’s opinion that the City must revoke the certificate of occupancy for Shed B.

C. On or around March 5, 2013, The State of Oregon, Department of Land Conservation and Development (“DLCD”) sent city a letter, advising City of DLCD’s opinion that Shed B may violate sections of the National Flood Insurance Program standards, and sections of Troutdale’s Floodplain Management Standards. The letter also stated DLCD’s opinion that the city must cause these violations to be remedied.

D. In response to the opinions of BCD and DLCD, the City inspected Shed B on or around April 23, 2014. Afterwards, on May 23, the City sent the Kights a letter (the “Revocation”) revoking the CO. The Revocation alleged violations of the Residential Code, the Building Code, and Troutdale Development Code including its floodplain regulations (collectively, the “Violations”).

E. In response to the Violations, on June 13, 2014, the Kights filed a notice of intent to appeal the Revocation to the State of Oregon Land Use Board of Appeals. This started an administrative appeal case (the "LUBA Appeal") under Oregon land use statutes. On March 18, 2015, the city requested remand of the LUBA Appeal for reconsideration.

F. On or around August 20, 2014, the Kights, through their attorney Andrew Stamp, gave notice to City of the Kights intent to assert one or more Tort claims against City (the "Claims"), alleging that City caused damage to the Kights real property and improvements on this property.

G. The Kights and the City (collectively, the "Parties") wish to resolve all disputes arising out of or connected to inspection, review, approval, permitting, construction, or occupancy of Shed B, including but limited to the Revocation, the Violations, the LUBA Appeal, and the Claims.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises and covenants contained in this Settlement Agreement and Mutual Release ("Settlement Agreement"), the Parties agree as follows:

1. **Scope.** This Settlement Agreement resolves and releases all claims between the Parties arising out of, or connected to, the permitting, inspection, construction, or occupancy, of Shed B.

2. **LUBA Appeal.**

A. *Withdrawal for reconsideration:* The Parties agree that city filed a notice with LUBA withdrawing the CO for reconsideration by City under OAR 661-010-0021.

B. *Conditions for approval on reconsideration:* A reapproved CO will contain the following conditions:

- **Evidence that the structure is "non-residential."** City will draft and the Kights will cause to be recorded a restrictive covenant ("Restrictive Covenant") that requires the following construction measures be undertaken, and the conditions created thereby to remain effective unless terminated as

provided in the Restrictive Covenant. The Shed B structure shall at all times comply with all building codes (currently as a type U commercial structure and all applicable zoning and land use regulations (currently as an “accessory structure” to a residence)).

- Kights will erect signage on the door leading into the Below-grade Portion, announcing that the area is a “Mechanical room” and allowing “Equipment Only,” and “No Storage.” This sign(s) will also list the document number applied to the Restrictive Covenant by the Multnomah County Recorder, and state “Keep Door Closed.”
- Kights will avoid installing any material that covers any part of the floor, ceiling, or wall surfaces within the Below-grade Portion. Such surfaces must remain exposed concrete. Drywall surfaces exposed as of the Effective Date must remain exposed.
- Kights will not install any carpeting or other floor coverings from the floor of the Below-grade Portion.
- **Floodproofing Certificate.** During the time the CO is on reconsideration, the Kights will provide the City with a “Flood Emergency Operating Plan” and “Inspection and Maintenance Plan,” as provided in FEMA regulations.
- **Substantial impermeability.** The Kights must provide City with information sufficient to demonstrate that Shed B is substantially impermeable to the passage of water, as required by FEMA regulations.
- **Flood resistant materials below Base Flood Elevation (BFE).** The Kights must provide City evidence that Shed B has been constructed with flood-resistant materials below the BFE, as required by FEMA regulations and building codes.
- **Building Utilities above BFE completely enclosed in building’s watertight walls or flood resistant.** The Kights must mark the BFE with paint on the

Below-grade Portion walls. Moreover, the Kights must ensure that any mechanical equipment installed in that area is completely enclosed by watertight walls or are otherwise flood resistant. The required evidence includes installation of the flood-proof shutters, followed by a water based testing including filling the window wells with water and satisfactory inspection of watertight performance as required by FEMA regulations and/or building codes. The City's building inspector will provide inspection and sign off when complete.

- **Structural components are capable of resisting flood forces.** The Kights must provide information from a registered professional engineer in Oregon (ZCS Engineers' report will suffice) and explain how Shed B's structural components resist hydrostatic forces in a flood, as required by FEMA regulations.
- **Water and sewer lines designed to minimize flood infiltration.** Shed B's existing sewer line must be a pressurized pump system that complies with applicable regulations. The Kights must provide information that satisfies this condition to the satisfaction of the City building inspector.
- **Adequate drainage provided.** The Kights must procure and provide to the city a statement from an architect or engineer that demonstrates water will drain away from the building. A topographic plan may suffice, if available, in the judgment of the city building inspector.
- **Design professional certificate that the building will not result in (1) any increase in flood levels and (2) water quality will not be impaired.** The Kight's must procure and provide to the city a certificate or other evidence from an engineer or architect that the building will not result in any increase in flood levels, and that the building will not impair water quality, as required by FEMA regulations.
- **Evidence of the 50 foot vegetated buffer and 100 year flood plain elevation.** The Kights must provide evidence of the required 50-foot

vegetated buffer. The Kights will provide engineering evidence of the 100 year flood plain elevation.

- **Evidence of balanced cut and fill.** The Kights must procure and provide to the city a report explaining how balanced cut and fill activity on the Kight's property was used to construct Shed B. If such cut and fill activity was not observed, City may require excavation and removal to create a balanced cut and fill result.
- **Minimized development in the flood management area.** The Kights must provide a written representation that there was no site for the Shed B other than in the Flood Management Area (FMA). At a minimum, the information shall state: 1) whether the Kights considered alternative locations, and if so, state why those locations were not chosen; 2) whether construction of Shed B minimized fill in the FMA, and whether the Kights considered segmented block wall and built up soil.

3. **Building size.** City agrees that if the Kights satisfy all conditions of this Settlement Agreement, including but not limited to building modifications, the City is prepared to consider the Below-grade Portion as non-usable space, for purposes of compliance with the Troutdale Development Code, TDC Section 5.010 C 2, which limits the size of any accessory building in the residential zone.

4. **Release of claims.** The parties to this Settlement Agreement, together with all related and affiliated entities and persons, upon satisfaction of all the terms and conditions of this Settlement Agreement, release one another from any claims they have or may have arising out of the inspection, review, approval, permitting, construction, or occupancy of Shed B, including, but not limited to, any and all claims, demands, causes of action, actions, violations, code enforcement prosecutions, declaratory actions, rights, writs, liabilities, contract obligations, damages, attorney fees, costs, interest, torts, suits, debts, sums of money, processing fees, administrative charges, defaults, accountings, reckonings, bills, covenants, controversies, agreements, promises, variances, trespasses, and executions whatsoever, at law or in equity, known or unknown, or based upon misrepresentation or mistake, which any party now owns or holds, or at any time before owned or

held, or may in the future own or hold, against one another including, but not limited to, all such claims that are related in any way, directly or indirectly, to the inspection, review, approval, permitting, construction, or occupancy of Shed B, including but not limited to any claims pleaded or alleged or that could have been pleaded or alleged in the CO, Violations, Revocation, LUBA Appeal, or the Claims. The foregoing release does not affect any violations of the terms of this Settlement Agreement or any regulation, including zoning regulations that may be in force in the future, provided that the city is bound to its finding regarding the Below-grade Portion, so long as the Kights comply with this Agreement.

5. Binding agreement. The release of claims embodied in Section 5, above, of this Settlement Agreement, extends to the Kights' heirs, successors in interest, and assigns, and to the City's councilors, officers, employees, contractors, agents, and any other party in privity with the City regarding the matters described in this Settlement Agreement. The terms of the Restrictive Covenant will run with the land.

6. Dispute resolution. The Parties will use these procedures, in the order stated, to resolve disagreements about the terms of this Settlement Agreement:

- a. Informal discussions between Respondents and members of City staff.
- b. Discussions between counsel for the Kights on the one side, and city staff or members of the city attorney's office on the other side.
- c. Mediation between the Parties, facilitated by a neutral party agreeable to both sides, the cost of which neutral is to be equally shared by the Parties.

7. Code amendments. This agreement may be modified in writing, approved by both parties, to comply with future amendments to the City of Troutdale Development Code.

8. Enforcement of this Settlement Agreement. The Parties stipulate that violation of this Settlement Agreement may be enforceable in a court or other venue of proper jurisdiction over a claim, by way of municipal code violation, action at law, or equitable remedy.

9. **Disputed claims.** The Parties agree that the claims encompassed by this agreement are disputed and that execution of this Settlement Agreement is not an admission of any wrongdoing on the part of any party.

10. **No admission of liability.** The Parties to this Settlement Agreement agree that the consideration and mutual releases provided in this Settlement Agreement do not constitute an admission of liability on the part of any of the parties and that liability is expressly denied.

11. **Entire agreement.** This Settlement Agreement sets forth the entire understanding of the parties with respect to the subject matter of this Settlement Agreement and supersedes any and all prior understandings and agreements, whether written or oral, between the parties with respect to such subject matter.

12. **Waiver.** A provision of this Settlement Agreement may be waived only by a written instrument created by the party waiving compliance. No waiver of any provision of this Settlement Agreement shall constitute a waiver of any other provision. Failure to enforce any provision of this Settlement Agreement shall not operate as a waiver of such provision or of any other provision.

13. **Severability.** If any provision of this Settlement Agreement is determined to be invalid or unenforceable in any respect for any reason, the validity and enforceability of the remaining provisions of this Settlement Agreement shall not in any way be impaired.

14. **Governing law.** This Settlement Agreement shall be governed by and construed in accordance with the laws of the State of Oregon.

15. **Venue.** Any action brought to enforce this Agreement shall be brought in Multnomah County Circuit Court, however the city may allege violations of Troutdale's ordinances administrating or in Troutdale Municipal Court.

16. **Voluntariness.** The Parties represent and agree that each fully understands his/her/its right to discuss all aspects of this Settlement Agreement with his/her/its attorney, and each has voluntarily entered into this Settlement Agreement freely of his/her/its own will and without coercion.

17. **Counterparts.** This Settlement Agreement may be executed in counterparts, each of which, when taken together, shall constitute fully executed originals. Facsimile and e-mail (scanned) signatures shall operate as original signatures with respect to this Settlement Agreement.

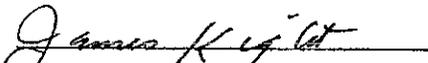
18. **No precedent.** This Settlement Agreement shall not be allowed into any proceeding as interpretive precedent relating to claims or assertions raised by any person, or relating to any property located in the City of Troutdale, except the Kight property.

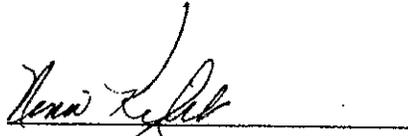
19. **Understanding of Terms.** The Parties agree that they have read and understood and voluntarily accept the terms of this Agreement. The Parties further agree that this Settlement Agreement shall be construed as broadly as possible to encompass the Parties' mutual intent, which is a full and complete release of all claims, known, unknown, or which could have been known.

20. **Construction of Agreement.** Because the Parties have mutually participated in the preparation of this Agreement, the rule of construction that contracts shall be construed against the drafter shall not apply to the interpretation of this Settlement Agreement.

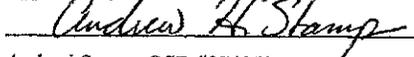
**PLEASE READ CAREFULLY. THIS SETTLEMENT AGREEMENT INCLUDES A
RELEASE OF ALL KNOWN OR UNKNOWN CLAIMS.**

Craig Ward
City Manager
City of Troutdale


James Kight


Nina Kight

Approved by counsel for the parties:


Andrew Stamp, OSB #974050
Attorney for James Kight and Nina Kight

Edward H. Trompke, OSB #843653
Attorney for City of Troutdale

AFTER RECORDING RETURN TO:

City of Troutdale
c/o City Manager
219 E. Hist. Columbia River Hwy
Troutdale, OR 97060

Until a change is requested,
All tax statements shall be
sent to the following address:

James Kight
950 Jackson Park Road
Troutdale, OR 97060

This space is reserved for recorder's use.

DECLARATION OF RESTRICTIVE COVENANT

James and Nina Kight, Grantor

Location: 950 Jackson Park Road, Troutdale, Oregon 97060

1. Introduction. This Declaration of Restrictive Covenant (“Covenant”) is made this ____ day of October, 2015 (“Effective Date”), by **James and Nina Kight**, tenants by the entirety (“Grantor”), for the purpose of creating a restrictive covenant upon the real property embodied in the deed attached as **Exhibit A** (the “Property”). This Covenant binds Grantor and Grantor’s heirs, successors, and/or assigns (collectively, “The Grantors”).

2. Shed B. The Beneficiary of this Covenant is the public, by and through the City of Troutdale. The restrictions of this Covenant are directed towards occupancy and use of the building identified in City of Troutdale Occupancy Permit No. _____, attached as **Exhibit B**. This building is referred to herein as “Shed B,” as it was in the underlying land use application.

3. Restrictive Covenant. Shed B is subject to the following limitations:

- a) The building shall at all times possess the characteristics of occupancy class “U” under the Oregon Structural Specialty Code (“Code”), or in the event class “U” is discontinued, the class most closely resembling class “U” under future amendments to the Code.
- b) The Grantors must reserve the lowermost level (“Below-grade Portion”) of the building, within the concrete foundation, as non-usable space,

categorized for FEMA purposes as a crawlspace devoted solely to installing, maintaining and operating the building's mechanical equipment (the "Crawlspace Mechanical Room").

- c) Grantors must at all times erect and maintain a sign measuring at least 14 inches by 18 inches, visible at all times and mounted to the surface of the door which is outside of the Crawlspace Mechanical Room, written in the English language with letters at least one inch high and printed in a bright color different from the sign's background color, containing the following messages:
- "Mechanical Equipment Only"
 - "No Residential Storage"
 - "Keep Door Closed"
- d) Grantors must install and maintain at all times a device that automatically closes the door between the Crawlspace Mechanical Room and the rest of the Shed.
- e) Grantors must remove and avoid installing any material that covers any part of the floor, ceiling, or wall surfaces within the Crawlspace Mechanical Room. Such surfaces must remain exposed concrete. Drywall surfaces exposed as of the Effective Date must remain exposed.
- f) At no time may Grantors, their guests or licensees, or any other person, use any part of the Crawlspace Mechanical Room for residential dwelling purposes encompassed within the "Residential Group R" uses of the Code.
- g) In accordance with FEMA Technical Bulletin 3-93, adhere to the processes and procedures stated in the flood emergency operation plan and maintenance and inspection plan. **Exhibits C & D.**
- h) Maintain FEMA required Plans.
- i) Maintain FEMA required window sealant devices;
- j) Maintain FEMA required structural integrity

4. Covenant to Run with the Land. The restrictions contained in this Covenant are set forth as benefits, burdens and rights appurtenant to the Property, and shall run with the land and bind and inure to the benefit and burden of the Property and the Grantors and their heirs, successors, and/or assigns.

5. Troutdale Development Code Amendment. If the City of Troutdale amends the Troutdale Development Code in ways which allow use of Shed B for Residential Group R uses under the Code, nothing in this Covenant prevents Grantors from seeking amendment to or elimination of this Covenant under the land use jurisdiction of the City of Troutdale. However, the following provisions apply:

- a) The Covenant continues to apply notwithstanding changes to the Troutdale Development code unless and until the Grantors obtain a land use decision or limited land use decision of the City of Troutdale that allows changes to or elimination of this covenant pursuant to conditions of approval, and this Covenant is placed into evidence and both this Covenant and any modifications are referred to specifically in such conditions.
- b) Grantors are responsible for any and all costs that may arise under this Section 5.
- c) No change to this Covenant may be recorded with the Multnomah County Recorder unless and until the land use appeal period has run without appeal, or appeal has been filed, all subsequent appeal periods have passed.
- d) No change to this Covenant is good until such time as a land use decision approving such change is recorded with the Multnomah County Recorder.

6. Severability. The provisions of this Covenant are independent and severable. The invalidity or unenforceability of any portion or portions hereof shall not affect the enforceability or validity of any other provisions.

7. Exhibits. The Exhibits recited within this Covenant are true copies and are incorporated into this Covenant by reference.

8. Enforcement and nonwaiver. The State of Oregon and the City of Troutdale may enforce any provision of this Covenant through an action at law, an application for injunctive relief, or both. Any such enforcement action must be filed in the Circuit Court for the State of Oregon, Multnomah County. Moreover, any failure to enforce any provision of this Covenant at any time does not waive any right to enforcement afterwards.

/// /// ///

IN WITNESS WHEREOF, THIS Covenant has been executed on the date indicated above.

James Kight Date

Nina Kight Date

ACCEPTED:

City of Troutdale

By: _____

Date

Approved as to form:

City Attorney

STATE OF OREGON)
) ss.
County of _____)

I certify that I know or have satisfactory evidence that James Kight is the person who appeared before me, and said person acknowledged that he signed this instrument, and on oath stated that he was authorized to execute the instrument.

Dated: _____

NOTARY PUBLIC FOR OREGON
My Commission Expires: _____

STATE OF OREGON)
) ss.
County of _____)

I certify that I know or have satisfactory evidence that Nina Kight is the person who appeared before me, and said person acknowledged that she signed this instrument, and on oath stated that she was authorized to execute the instrument.

Dated: _____

NOTARY PUBLIC FOR OREGON
My Commission Expires: _____



Building Codes Consultancy, inc.
6950 SW Hampton Street
Suite 330
Tigard, OR 97223
T 503-969-8333
F 503-620-8119
swinstead@mac.com

June 25, 2014

Richard Rogers
Oregon Building Codes Division
1535 Edgewater Street NW
PO Box 14470
Salem, Oregon 97309-0404

REQUEST FOR INTERPRETATION FOR A SHED CONSTRUCTED AT 950 SE JACKSON ROAD.

Mr. Rogers,

The City of Troutdale has contracted with Building Codes Consultancy for consulting services including Building Official. We have been working through the issues stated in BCD's letter dated February 5, 2013 concerning the structure located at 950 Jackson Park Road. In order to declare that this is not a residential structure the owner's counsel has provided the following measures for consideration:

1. If there is a 220 line that runs to the "kitchenette" area, the Kights will remove and or dismantle any 220 outlet that may exist, they will disconnect the 220 line in the panel and they will remove any 220 breaker in the panel that may have been installed to serve the "kitchenette" area. So you are aware, I believe a 220 line may have been installed for an AC compressor. Please confirm that you will permit the 220 volt AC circuit to remain.
2. The Kights will purchase and arrange for the installation of the required window covering to complete required flood proofing of the basement area.
3. The vent and electrical installations on the outside of the structure will be raised above the floodplain elevation and/or finished floor elevation.
4. The Kights will record a deed restriction or other instrument that places any future purchaser of the property on notice that (1) the structure shall not be used or modified in a manner that would be considered a dwelling or sleeping unit, (2) the

basement area shall not be used for storage associated with any home occupation, (3) the flood window coverings will be maintained on the premises and deployed at all times when a flood hazard is reasonably threatened, (4) the terms specified on the next page of this letter, and (5) the city will approve no permits that reverse any of the terms of this letter, or any other terms of the agreement resolving this matter. (The agreement and deed restriction will have terms addressing zoning issues, such as a prohibition on any customer vehicles parking on the property, in order to help limit the number of people on the premises, and to ensure ADA compliance.)

5. That the Kights and/or any future owners may not use and/or store materials in the basement area that are related to an approved or unapproved home occupation use. (The Kight's and/or other future owners would, however, be permitted to store and/or use the basement area for purposes limited to and associated with their residential occupancy of their primary dwelling.)
6. The Kights will be required to demonstrate they have complied with the items outlined above.

These measures would permit the structure to be identified as non-residential. Non-residential structures are permitted to have basements constructed below the BFP (Base Flood Plain) provided the basement is considered waterproof and is designed for equalization of hydrostatic flood forces in accordance with Section 2.6.2.2 of ASCE 24.(OSSC 1612.5)

The remaining issue is the occupancy group. If this structure is considered a "U" occupancy and the office an accessory occupancy we are limited to 10 percent of the area of the story in which the used is located. (OSSC 508.3) The area of the first floor is 1016 according to the applicant. This would allow an office of 102 square feet. This would not permit the plan as constructed since there are 2 offices with a total square footage of 264 SF.

Occupancy has been determined by the concept of equivalent risk as addressed in the commentaries. This concept maintains that, in part, an acceptable level of risk against the damages of fire respective to a particular occupancy type (group) can be achieved by limiting the height and area of buildings containing such occupancies according to the building's construction type (i.e., its relative fire endurance). If we consider the impact of what a "home occupation" permit does, I believe we can call this a "U" occupancy and not "B" occupancy based on acceptable risk. My original opinion was based upon the outcome of my on site inspection that had the building full of people and the owner stating "welcome to my office". In reality a permit for the use was approved as a home occupation.

The stipulation surrounding the licensing of a home occupation has significant limitations of use. The following are the limitations:

Kight Residence

1. No nonresidential employees or any persons other than members of the family residing within the dwelling shall engage in a home occupation therein except as provided for under sections 5.140 through 5.190 of this chapter.
2. Customer and client contact shall be primarily by telephone, mail, or in their homes and places of business, and not on the premises of the home occupation. No sale of merchandise shall be made on the premises.
3. No more than 25% of the gross floor area of the residence shall be used for the home occupation. If a home occupation is conducted within an accessory structure, the home occupation shall not exceed the gross floor area of the residence.
4. Must comply with all other City, County, and State requirements. [Adopted by Ord. 550, ef. 9/25/90; Amended by Ord. 653, ef. 9/12/97; Amended by Ord. 731, ef. 6/26/03]

If these limitations are exercised, this structure could be considered a "U" since it really is being used by no one else other than the family with no employees or customers. In addition, signage is prohibited and parking for any business is prohibited. The business home occupations are limited to those activities which are customarily carried on within a dwelling or accessory structure, and which are operated entirely within a building by a member of the family residing in the dwelling unit as a clearly secondary and incidental use of such property. The home occupation must not change the residential character of the dwelling.

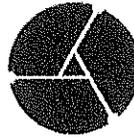
If the owner does decide to have employees and customers on site then the structure would be considered "B" occupancy. Under those circumstances, the City would cite the owner and have him make the necessary changes.

Conclusion

As Building Official for the City of Troutdale, it is my interpretation that the structure can be classified as "U" miscellaneous occupancy. It is non-residential in terms of the R3 occupancy requirements.

Regards,


Stephen Winstead, Building Official



MILLER
CONSULTING
ENGINEERS

September 30, 2015

Mr. Jim Kight
950 SE Jackson Park Road
Troutdale, Oregon 97060

**Subject: Structural Peer Review of Accessory Structure Foundation
950 SE Jackson Park Road, Troutdale, Oregon
MCE Project Number: 151031**

Dear Mr. Kight:

As you have requested, Kevin M. McCormick, S.E. of Miller Consulting Engineers, Inc. (MCE) has reviewed the supplied calculations and drawings prepared by Mr. Troy Lyver, P.E., S.B. and additional documentation supplied by Mr. Andrew Stamp, the attorney for Mr. and Mrs. Kight.

This is a structural peer review report and is based on review of the supplied documentation as well as supplemental calculations performed by Miller Consulting Engineers to verify the adequacy of the design.

In order to determine the structural adequacy of the concrete foundation it is necessary to establish the correct base flood elevation (BFE) and basement floor elevation for the building. Based on the documentation prepared by W.B. Wells, the base flood elevation for the project site is 43.3 feet. The top of the basement slab is at an elevation of 38.1 feet. The City of Troutdale has the BFE for this site at 42.43 feet, which is less than what was noted by the survey. Therefore, the higher elevation was used in the analysis.

In accordance with FEMA document TB3-93, a structure that is below one foot above the base flood elevation must remain watertight. This is defined as the flood waters not entering the building envelope. Second, the building walls must be substantially impermeable to the passage of water. This is defined by the Army Corp of Engineers definition that no more than 4 inches of water may penetrate the building walls within a 24-hour period, if there are no devices provided for its removal.

The basement walls have windows and formed vent blocks in them. The vent blocks have been infilled with concrete to seal them and the windows are to be sealed with a FEMA approved flood barrier system when flooding is anticipated. In order to keep flood water out of the below-grade area, the use of the concrete walls and the shutters that seal the windows will meet the requirement for the building being watertight up to an elevation of one foot above the base flood elevation. Use of the concrete walls and slab conform to

FEMA publication 102, which approves the use of cast-in-place concrete as a flood wall device. According to the engineering and detail prepared by Mr. Lyver, PE/SE, the floor slab was integrated with the basement walls by chipping away around the perimeter creating a key joint and sealing that key joint between the wall and the slab. This sealing of the interface and the keying of the joint will minimize water intrusion into the basement area. Based on this type of construction, this portion of the structure would be in compliance with FEMA document TB 3-93.

The next requirement is that all of the structural components of the building must be capable of resisting specific flood-related forces. As with any structure or element that is submerged beneath the water table or in a flood plain, it must be designed to resist the forces from a flood.

The hydrostatic force is the horizontal force that is applied to the side walls or, in this case, the below-grade walls of the structure due to water pressure. The calculations by Mr. Lyver, PE/SE were reviewed and found to be not entirely correct for the loading conditions on this structure. The below-grade walls were analyzed for the correct height of water for hydrostatic pressure, as well as an increased soil level above the top of the base flood elevation and were found to be structurally adequate. There is sufficient reinforcing steel in the walls to restrain these hydrostatic and soil forces. The building walls are structurally adequate and will not fail during a flood event.

The next force we are dealing with is the buoyancy or hydrostatic uplift force on the below grade slab and beams. The engineering design performed by Mr. Lyver, PE/SE was found to be very conservative in the fact that an increased buoyancy force (extra water depth) was being used for the slab and beam design. This force was recalculated by Miller Consulting Engineers and the slab and beam elements were found to be structurally adequate to withstand the buoyancy forces.

The next force that is to be addressed is the hydrostatic uplift or buoyancy force on the building. This calculation was originally done by Mr. Lyver, PE/SE; however, the calculation was incorrect and there were some incorrect design assumptions used on both sides of the equation. The design was recalculated by Miller Consulting Engineers using the correct below-grade slab elevation and the correct base flood elevation. Based on the volume of the submerged area in comparison to the weight of the structure, the building is capable of withstanding hydrostatic uplift forces and will not float or come out of the ground during a flood event. The design is in compliance with the FEMA documents and the building code.

When the element or, in this case, the concrete walls are below the base flood elevation and there is significant velocity to the water, the building would be subjected to hydrodynamic or impact forces from floating debris. In accordance with FEMA TB 3-93, Oregon Risk Map, and the FIRM for the City of Troutdale there is no significant applied force due to hydrodynamic loading. Per the Oregon Risk Map, the velocity of the river at



this location at peak flood is about 3 feet per second. Using FEMA TB 3-93, a 1,000 pound object moving at 3 feet per second will have an impact force of 100 pounds. This force is insignificant in comparison to other design loads.

One of the other requirements that is presented within the FEMA documents is that construction of the building does not increase the flood levels or impact the water quality. This structure is constructed with concrete below the base flood elevation. Concrete does not have any effect on the water quality. In calculating the potential change in water elevation, one needs to consider the width of the river at its flood stage and the varying cross sections from the base flood elevation. Based on the City of Troutdale's FIRM index, the width of the river at the location of this building is approximately 1,400 feet wide at a flood elevation of 43.3 feet.

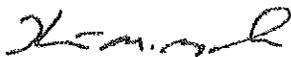
Using simple geometry with the width of the river bed at about 100 feet (normal river) and assuming a triangle cross section of zero and a drop of 39.3 feet to the surface of the average river bed (Oregon Risk Map and FIRM for City of Troutdale) at approximately 1,300 feet away, the approximate flooded river cross section is 30,000 square feet. Using a width of 250 feet results in a volume of water at the structure's location of approximately 7,350,000 cubic feet. Due to the portion of the building above original soil level, but below the base flood elevation, the displaced water is approximately 7,800 (3,050 for structure and 4,750 raised planting beds) cubic feet. This means that at the structure's location there is a change of one-tenth of one percent in river volume. This translates into a change in river elevation of one-quarter of an inch at this subject property. This would be insignificant in comparison to the global flood elevation for the river.

To summarize, based on our review it appears that the structure has been designed and constructed to resist the potential forces imparted by the flooding of the river.

If you have any additional questions or comments, please feel free to contact us.

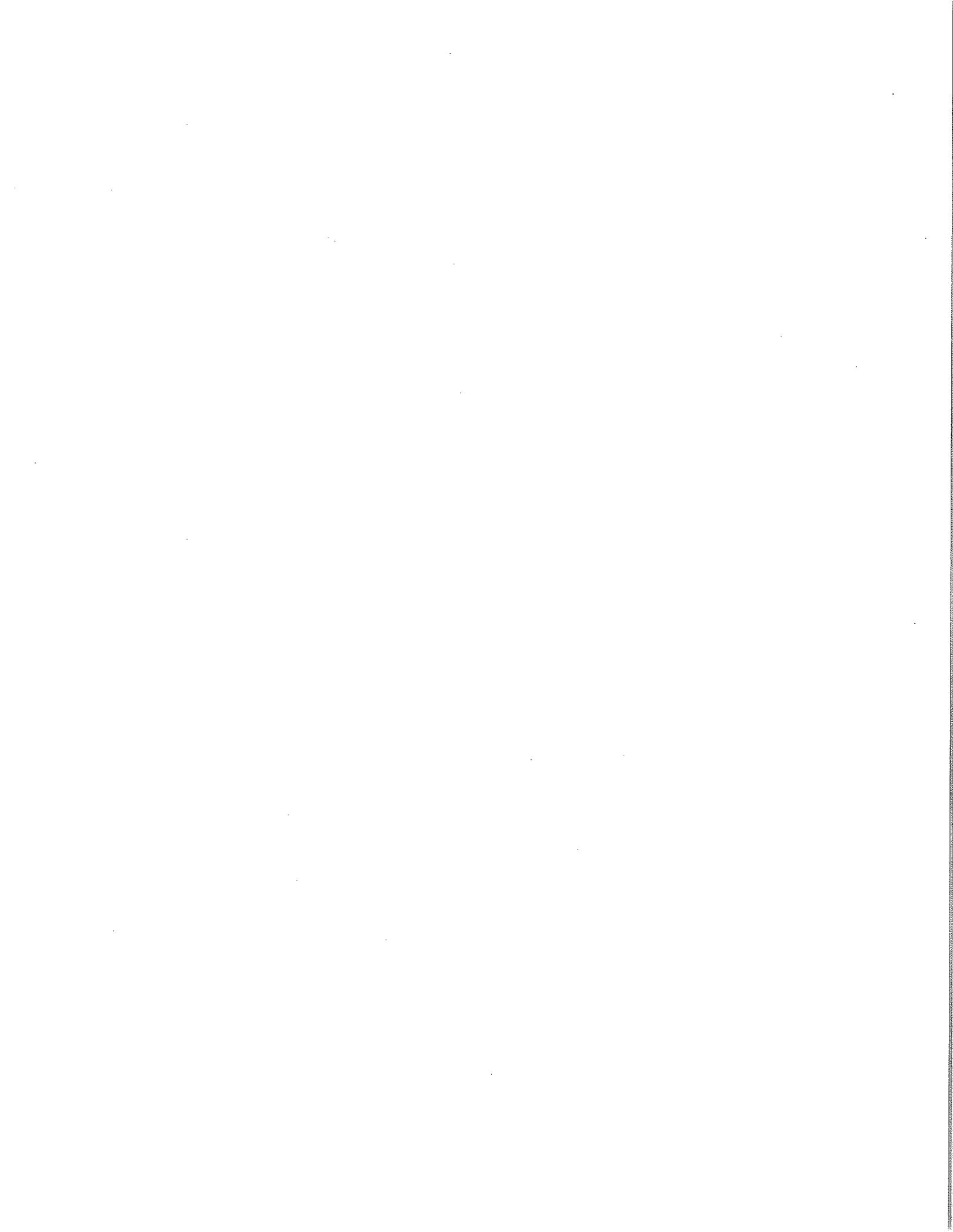
Sincerely,

Miller Consulting Engineers, Inc.



Kevin M. McCormick, S.E.
Managing Principal





U.S. DEPARTMENT OF HOMELAND SECURITY
FEDERAL EMERGENCY MANAGEMENT AGENCY
National Flood Insurance Program

**FLOODPROOFING CERTIFICATE
FOR NON-RESIDENTIAL STRUCTURES**

OMB No. 1660-0008
Expiration Date: July 31, 2015

The floodproofing of non-residential buildings may be permitted as an alternative to elevating to or above the Base Flood Elevation; however, a floodproofing design certification is required. This form is to be used for that certification. Floodproofing of a residential building does not alter a community's floodplain management elevation requirements or affect the insurance rating unless the community has been issued an exception by FEMA to allow floodproofed residential basements. The permitting of a floodproofed residential basement requires a separate certification specifying that the design complies with the local floodplain management ordinance.

BUILDING OWNER'S NAME JIM KIGHT		
STREET ADDRESS (Including Apt., Unit, Suite, and/or Bldg. Number) OR P.O. ROUTE AND BOX NUMBER 950 SE JACKSON PARK ROAD		
OTHER DESCRIPTION (Lot and Block Numbers, etc.) TAX LOT 1000		
CITY TROUTDALE	STATE OREGON	ZIP CODE 97060

SECTION I - FLOOD INSURANCE RATE MAP (FIRM) INFORMATION

Provide the following from the proper FIRM:

COMMUNITY NUMBER	PANEL NUMBER	SUFFIX	DATE OF FIRM INDEX	FIRM ZONE	BASE FLOOD ELEVATION (In AO Zones, Use Depth)
410184	0217	H	12/18/2009	AE	43.3 FEET

Indicate elevation datum used for Base Flood Elevation shown above: NGVD 1929 NAVD 1988 Other/Source: _____

SECTION II - FLOODPROOFING INFORMATION (By a Registered Professional Engineer or Architect)

Elevations are based on: Construction Drawings Building Under Construction Finished Construction

Floodproofing Design Elevation Information:

Building is floodproofed to an elevation of **44.3** feet (In Puerto Rico only: _____ meters). NGVD 1929 NAVD 1988 Other/Source: _____
Elevation datum used must be the same as that used for the Base Flood Elevation.)

Height of floodproofing on the building above the lowest adjacent grade is **46.9** feet (In Puerto Rico only: _____ meters).

For Unnumbered A Zones Only:

Highest adjacent (finished) grade next to the building (HAG) **44.6** feet (In Puerto Rico only: _____ meters)

NGVD 1929 NAVD 1988 Other/Source: _____

(NOTE: For insurance rating purposes, the building's floodproofed design elevation must be at least 1 foot above the Base Flood Elevation to receive rating credit. If the building is floodproofed only to the Base Flood Elevation, then the building's insurance rating will result in a higher premium.)

SECTION III - CERTIFICATION (By a Registered Professional Engineer or Architect)

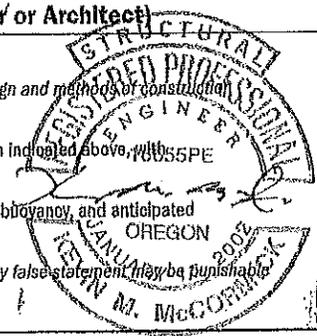
Non-Residential Floodproofed Construction Certification:

I certify that, based upon development and/or review of structural design, specifications, and plans for construction, the design and methods of construction are in accordance with accepted standards of practice for meeting the following provisions:

The structure, together with attendant utilities and sanitary facilities, is watertight to the floodproofed design elevation including above-wall walls that are substantially impermeable to the passage of water.

All structural components are capable of resisting hydrostatic and hydrodynamic flood forces, including the effects of buoyancy, and anticipated debris impact forces.

I certify that the information on this certificate represents my best efforts to interpret the data available. I understand that any false statement may be punishable by fine or imprisonment under 18 U.S. Code, Section 1001.



CERTIFIER'S NAME KEVIN MCCORMICK	LICENSE NUMBER (or Affix Seal) 16655	EXPIRES: 12-31-2016
TITLE MANAGING PRINCIPAL	COMPANY NAME MILLER CONSULTING ENGINEERS, INC.	
ADDRESS 9570 SW BARBAR BLVD, SUITE 100	CITY PORTLAND	STATE OR.
		ZIP CODE 97219
SIGNATURE <i>Kevin M. McCormick</i>	DATE 10-7-2015	PHONE 503-246-1250

Copies should be made of this Certificate for: 1) community official, 2) insurance agent/company, and 3) building owner.

**Inspection and Maintenance Plan for Accessory Structure
at 950 Jackson Park Road, Troutdale, Oregon 97060**

1. The basement of the accessory structure must be inspected on an annual basis.
 - A. Check to ensure the following:
 - i. No visible cracks in the concrete.
 - ii. No evidence of water leaking into the structure.
 - iii. No evidence of mold or mildew.
 - B. Flood shields must be inspected to make sure they fit properly and that gaskets and seals on the shields are in good working order. Missing or deteriorated gaskets should be replaced with materials that are designed for use with the dry floodproofing shields.
 - C. Each shield is labeled to match the appropriate labeled window. The shields must be stored in the dry flood proofed unfinished basement of the accessory structure.
 - D. There are no sump pumps or generators in the accessory building.
2. An inspection of the exterior of the building is also necessary to verify that no additional penetrations have been made below the DFE to which the dry floodproofing measure protects. The surrounding landscape must be kept free from excessive vegetation. There are no levees or berm surrounding the accessory structure.

Current owners:

Jim and Nina Kight

(503) 661-5736 home line

(503) 880-5760 cell phone

FLOOD EMERGENCY AND OPERATION PLAN
For Property located at
950 Jackson Park Road, Troutdale, Oregon 97060

1. Chain of command and responsibilities.

- **Current homeowner Jim & Nina Kight**
 - ✓ Have current names and phone numbers of all property residents
Jim Kight (503)880-5760 cell
Nina Kight (503)539-4250 cell
Brent Kight (503)753-3235
 - ✓ Insure that all residents of the property are accounted for
 - ✓ Notify alternate emergency contacts
Pearl Werezuk (503)422-8840 cell
Randy Yuros (360-433-8004 cell
Nita Yuros (360)771-1721
- **Planned means of ingress**
 - ✓ If on property, enter accessory structure through front or patio door—**keyed alike and available to all alternates to provide entry into the accessory structure**
 - ✓ If not on property, enter via Jackson Park Road and through gate to access accessory structure
 - ✓ If Jackson Park Road is not passable, entry can be made through Glenn Otto Park adjacent to property
- **Responsibilities of Jim Kight**
 - ✓ Enter accessory structure, retrieve shields from dry flood proofed unfinished basement and transport to matching labeled windows outside structure.
 - ✓ With help of other persons on site, mount the respective shield on the correct windows and secure according to manufactures specifications.
 - ✓ Once shields are mounted correctly, account for all people on property and vacate property
- **Responsibilities of Nina Kight**
 - ✓ Turn all utilities off
 - ✓ Assist in getting shields in place
 - ✓ Vacate property with all people on site
- **Responsibilities of Brent Kight**
 - ✓ Assist with getting shields in place
 - ✓ Vacate property with all people on site

NONE OF THE PROPERTY RESIDENTS HAVE ANY OTHER EMERGENCY RESPONSE DUTIES DURING A FLOOD EVENT.

ALTERNATES WILL FOLLOW THE RESPONSIBILITIES OF THE PROPERTY RESIDENTS IN THE EVENT THE PROPERTY RESIDENTS ARE UNABLE TO CARRY OUT THEIR RESPONSIBILITIES

SHIELDS WITH ALL MOUNTING COMPONENTS ARE IN THE DRY FLOOD PROOFED UNFINISHED BASEMENT LABELED TO CORRESPOND THE MATCHING LABELED WINDOWS.

THE RESPONSIBILITIES OF EACH PROPERTY RESIDENT WILL BE REVIEWED ON AN ANNUAL BASIS TO INSURE THEY ARE FULLY AWARE OF THEIR DUTIES AND KNOW THE OUTLINED PLAN AND PROCEDURE IN THE EVENT OF A FLOOD WARNING

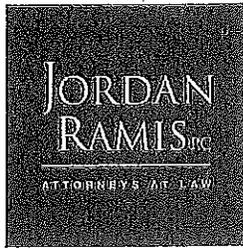


City of Troutdale

Inspection Request

Permit Specialist 503 674-7229

Inspection Type: <i>Flood Plain - WATER MAIN INSPECTION</i>		Permit No.:	
Address: <i>950 SE JACKSON PARK ROAD</i>		Inspection Date: <i>10-8-15</i>	
Contractor: <i>JIM FIGHT</i>		Contact No.:	
Permit Type	Passed	Failed	Comments/Corrections
Building	X		<i>WATER TEST ON WATER MAIN ENCLOSURE WAS WITNESSED AND APPROVED. INSTALL DRAINAGE PROVIDED DID NOT PERMIT THE WATER TO PENETRATE TO A POINT ABOVE THE CEILING SILL. DIRECT WATER PRESSURE ON THE WATER MAIN COVER DID NOT REVEAL ANY LEAKAGE INTO THE BASEMENT. OTHER WORKS PROTECTED/IN LINE STORED IN THE BASEMENT AND THE FLOOD ELEVATION WAS MARKED.</i>
Electrical			
Fire Prevention			
Mechanical			
Plumbing			
PWKS			
Inspected By: <i>STEPHEN WINDSTAD</i>		Date: <i>10-8-15</i>	



Lake Oswego
Two Centerpointe Dr., 6th Floor
Lake Oswego, OR 97035
503-598-7070
www.jordanramis.com

Vancouver
1499 SE Tech Center Pl., #380
Vancouver, WA 98683
360-567-3900

Bend
360 SW Bond St., Suite 510
Bend, OR 97702
541-550-7900

FILE COPY

November 25, 2015

Christine Shirley
Department of Land Conservation and Development
635 Capitol Street NE, Suite 150
Salem, OR 97301-2540

Re: **Remedy and Compliance Report**
Structure located at 950 Jackson Park Road, Troutdale, Oregon (Shed B)
Shed B Matters

Our File No. 51513-72857

Dear Christine:

I represent the City of Troutdale and am following up your March 5, 2013 letter regarding the structure referred to as "Shed B." A copy is enclosed for your convenience. The city and the landowner have engaged for the past 2 years in activities (summarized below) bringing Shed B into compliance with the NFIP and Troutdale's Floodplain Management Standards.

The compliance activities are detailed in the documents attached to this letter. In sum, the city and the landowner are executing a settlement agreement that identifies and rectifies the deficiencies pointed out in your March 5, 2013 letter. These remedial steps achieve compliance for the following broad reasons:

- Landowner has removed interior finishings, such as drywall, from the below-grade areas of Shed B. Moreover, landowner will record deed restrictions to limit use of this area only to a FEMA-defined "crawl space" for the building's mechanical equipment;
- Landowner has provided engineering calculations sought by DLCD. The calculations demonstrate that the structure satisfied required floodproofing structural conditions, such as strength and buoyancy. In addition, shutters to avoid water inflow will operate for the intended purpose;
- Additional recorded deed restrictions, above and beyond those required to floodproof the below-grade areas, will allow use of the structure for non-habitation purposes only, under use and occupancy group "U" classification (a commercial code). Under Section 312 of the Oregon

November 25, 2015

Page 2

Structural Specialty Code, group "U" uses include accessory uses such as sheds. The city sought and received an opinion from the Building Codes Division of the Department of Consumer and Business Affairs that this designation was warranted.

The steps for compliance are as follows:

1. Between today's date and December 8, 2015 the city will approve the settlement agreement in substantially the form as attached to this letter;
2. On December 8, 2015, the city council of Troutdale will, in a public session, consider the settlement agreement, the proposed recorded covenant, and other supporting information, and instruct city staff whether to execute the documents;
3. Between December 8 and December 31, 2015, the city and the landowner will record the restrictive covenant, issuance of an amended or new occupancy permit for Shed B as a class "U" building, and take steps to end the land use appeal filed by landowner in connection with the occupancy permit revocation.
4. With issuance of the class "U" occupancy permit and dismissal of the LUBA appeal, the city will close its file in the matter, except for matters related to continuing compliance with all regulations.

As the parties wish to bring this matter to the city council soon, on December 8, please contact me right away if there are any questions about the compliance measures. Once the city reissues the occupancy permit, I will send you a copy for your file.

Thank you for your assistance with this matter. As I hope you can see, your efforts were instrumental to the parties' ability to achieve compliance.

JORDAN RAMIS PC



Edward H. Trompke

Admitted in Oregon

ed.trompke@jordanramis.com

OR Direct Dial (503) 598-5532

Enclosures, as follows:

- Letter from DLCD dated March 5, 2013, outlining compliance steps to City of Troutdale

November 25, 2015

Page 3

- Letter from City of Troutdale to landowners, dated May 23, 2014, stating inspection report and revoking occupancy permit for Shed B
- Letter from City of Troutdale to landowner, dated July 21, 2014, delivering instructions for complying with steps outlined by DLCD
- Settlement Agreement being approved by city and landowner
- Restrictive Covenant to be recorded in substantially this form
- Floodproofing certificate dated October 7, 2015
- Letter from Miller Consulting Engineers dated September 30, 2015, analyzing information and delivering opinion that Shed B has been designed and constructed to resist floodwater forces
- Inspection card completed by Troutdale building official Steven Winstead, dated October 8, 2015, indicating that landowner had marked the flood level in the shed, and that Shed B passed building inspection
- Inspection and maintenance plan
- Flood emergency and operation plan

cc: Craig Ward
Andrew Stamp
Steve Winstead

RESOLUTION NO.

RESOLUTION APPROVING THE LEGAL SETTLEMENT REGARDING THE PROPERTY LOCATED AT 950 JACKSON PARK ROAD

THE TROUTDALE CITY COUNCIL FINDS AS FOLLOWS:

1. The city revoked an occupancy permit issued for the structure known as Shed B which the landowners constructed on the premises located at 950 Jackson Park Road, Troutdale.
2. The landowners objected to the revocation and appealed the matter to the Land Use Board of Appeals, also reserving their rights to file other actions, by filing a tort claim notice.
3. The city and the landowners have negotiated a resolution of the disputes between them, including a Settlement Agreement, attached hereto, and restrictive covenants limiting the uses of Shed B. In addition, the landowners have made physical modifications to Shed B which allow the city to issue a certificate of occupancy as a commercial building for a home occupation.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF TROUTDALE:

Section 1. The City Council adopts the facts and analysis in the staff report dated December 2, 2015.

Section 2. The City Manager is authorized and directed to execute the settlement agreement in substantially the form as attached to this Resolution, together with other documents contemplated in the Settlement Agreement, and to take any further action to implement the Settlement Agreement.

Section 3. This Resolution takes effect on the date of passage entered below.

YEAS:
NAYS:
ABSTAINED:

Doug Daoust, Mayor

Date

Sarah Skroch, City Recorder

Adopted:

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

BETWEEN: The City of Troutdale, Oregon (“City”)

AND: James Kight and Nina Kight (“Kights”)

CONCERNING: An accessory structure constructed within the floodplain (“Shed B”) located at 950 Jackson Park Road in Troutdale, Oregon (See legal description on Exhibit A).

DATED: October 5, 2015 (“Agreement Date”)

RECITALS

A. On or around February 11, 2011, the Kights completed construction of an accessory structure (“Shed B”), consisting of an approximately 970 square foot component above grade (the “Above-grade Portion,” and an approximately 976 square foot full-height, floodproofed component located below grade (the “Below-grade Portion”). City issued a certificate of occupancy (“CO”) on or around May 11, 2011.

B. On or around February 5, 2013, the State of Oregon Building Codes Division (“BCD”) sent City a letter, advising City of BCD’s opinion that Shed B may violate Chapters 1 and 3 of the Oregon Residential Specialty Code, and stating BCD’s opinion that the City must revoke the certificate of occupancy for Shed B.

C. On or around March 5, 2013, The State of Oregon, Department of Land Conservation and Development (“DLCD”) sent city a letter, advising City of DLCD’s opinion that Shed B may violate sections of the National Flood Insurance Program standards, and sections of Troutdale’s Floodplain Management Standards. The letter also stated DLCD’s opinion that the city must cause these violations to be remedied.

D. In response to the opinions of BCD and DLCD, the City inspected Shed B on or around April 23, 2014. Afterwards, on May 23, the City sent the Kights a letter (the “Revocation”) revoking the CO. The Revocation alleged violations of the Residential Code, the Building Code, and Troutdale Development Code including its floodplain regulations (collectively, the “Violations”).

E. In response to the Violations, on June 13, 2014, the Kights filed a notice of intent to appeal the Revocation to the State of Oregon Land Use Board of Appeals. This started an administrative appeal case (the "LUBA Appeal") under Oregon land use statutes. On March 18, 2015, the city requested remand of the LUBA Appeal for reconsideration.

F. On or around August 20, 2014, the Kights, through their attorney Andrew Stamp, gave notice to City of the Kights intent to assert one or more Tort claims against City (the "Claims"), alleging that City caused damage to the Kights real property and improvements on this property.

G. The Kights and the City (collectively, the "Parties") wish to resolve all disputes arising out of or connected to inspection, review, approval, permitting, construction, or occupancy of Shed B, including but limited to the Revocation, the Violations, the LUBA Appeal, and the Claims.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises and covenants contained in this Settlement Agreement and Mutual Release ("Settlement Agreement"), the Parties agree as follows:

1. **Scope.** This Settlement Agreement resolves and releases all claims between the Parties arising out of, or connected to, the permitting, inspection, construction, or occupancy, of Shed B.

2. **LUBA Appeal.**

A. *Withdrawal for reconsideration:* The Parties agree that city filed a notice with LUBA withdrawing the CO for reconsideration by City under OAR 661-010-0021.

B. *Conditions for approval on reconsideration:* A reapproved CO will contain the following conditions:

- **Evidence that the structure is "non-residential."** City will draft and the Kights will cause to be recorded a restrictive covenant ("Restrictive Covenant") that requires the following construction measures be undertaken, and the conditions created thereby to remain effective unless terminated as

provided in the Restrictive Covenant. The Shed B structure shall at all times comply with all building codes (currently as a type U commercial structure and all applicable zoning and land use regulations (currently as an “accessory structure” to a residence)).

- Kights will erect signage on the door leading into the Below-grade Portion, announcing that the area is a “Mechanical room” and allowing “Equipment Only,” and “No Storage.” This sign(s) will also list the document number applied to the Restrictive Covenant by the Multnomah County Recorder, and state “Keep Door Closed.”
- Kights will avoid installing any material that covers any part of the floor, ceiling, or wall surfaces within the Below-grade Portion. Such surfaces must remain exposed concrete. Drywall surfaces exposed as of the Effective Date must remain exposed.
- Kights will not install any carpeting or other floor coverings from the floor of the Below-grade Portion.
- **Floodproofing Certificate.** During the time the CO is on reconsideration, the Kights will provide the City with a “Flood Emergency Operating Plan” and “Inspection and Maintenance Plan,” as provided in FEMA regulations.
- **Substantial impermeability.** The Kights must provide City with information sufficient to demonstrate that Shed B is substantially impermeable to the passage of water, as required by FEMA regulations.
- **Flood resistant materials below Base Flood Elevation (BFE).** The Kights must provide City evidence that Shed B has been constructed with flood-resistant materials below the BFE, as required by FEMA regulations and building codes.
- **Building Utilities above BFE completely enclosed in building’s watertight walls or flood resistant.** The Kights must mark the BFE with paint on the

Below-grade Portion walls. Moreover, the Kights must ensure that any mechanical equipment installed in that area is completely enclosed by watertight walls or are otherwise flood resistant. The required evidence includes installation of the flood-proof shutters, followed by a water based testing including filling the window wells with water and satisfactory inspection of watertight performance as required by FEMA regulations and/or building codes. The City's building inspector will provide inspection and sign off when complete.

- **Structural components are capable of resisting flood forces.** The Kights must provide information from a registered professional engineer in Oregon (ZCS Engineers' report will suffice) and explain how Shed B's structural components resist hydrostatic forces in a flood, as required by FEMA regulations.
- **Water and sewer lines designed to minimize flood infiltration.** Shed B's existing sewer line must be a pressurized pump system that complies with applicable regulations. The Kights must provide information that satisfies this condition to the satisfaction of the City building inspector.
- **Adequate drainage provided.** The Kights must procure and provide to the city a statement from an architect or engineer that demonstrates water will drain away from the building. A topographic plan may suffice, if available, in the judgment of the city building inspector.
- **Design professional certificate that the building will not result in (1) any increase in flood levels and (2) water quality will not be impaired.** The Kight's must procure and provide to the city a certificate or other evidence from an engineer or architect that the building will not result in any increase in flood levels, and that the building will not impair water quality, as required by FEMA regulations.
- **Evidence of the 50 foot vegetated buffer and 100 year flood plain elevation.** The Kights must provide evidence of the required 50-foot

vegetated buffer. The Kights will provide engineering evidence of the 100 year flood plain elevation.

- **Evidence of balanced cut and fill.** The Kights must procure and provide to the city a report explaining how balanced cut and fill activity on the Kight's property was used to construct Shed B. If such cut and fill activity was not observed, City may require excavation and removal to create a balanced cut and fill result.
- **Minimized development in the flood management area.** The Kights must provide a written representation that there was no site for the Shed B other than in the Flood Management Area (FMA). At a minimum, the information shall state: 1) whether the Kights considered alternative locations, and if so, state why those locations were not chosen; 2) whether construction of Shed B minimized fill in the FMA, and whether the Kights considered segmented block wall and built up soil.

3. Building size. City agrees that if the Kights satisfy all conditions of this Settlement Agreement, including but not limited to building modifications, the City is prepared to consider the Below-grade Portion as non-usable space, for purposes of compliance with the Troutdale Development Code, TDC Section 5.010 C 2, which limits the size of any accessory building in the residential zone.

4. Release of claims. The parties to this Settlement Agreement, together with all related and affiliated entities and persons, upon satisfaction of all the terms and conditions of this Settlement Agreement, release one another from any claims they have or may have arising out of the inspection, review, approval, permitting, construction, or occupancy of Shed B, including, but not limited to, any and all claims, demands, causes of action, actions, violations, code enforcement prosecutions, declaratory actions, rights, writs, liabilities, contract obligations, damages, attorney fees, costs, interest, torts, suits, debts, sums of money, processing fees, administrative charges, defaults, accountings, reckonings, bills, covenants, controversies, agreements, promises, variances, trespasses, and executions whatsoever, at law or in equity, known or unknown, or based upon misrepresentation or mistake, which any party now owns or holds, or at any time before owned or

held, or may in the future own or hold, against one another including, but not limited to, all such claims that are related in any way, directly or indirectly, to the inspection, review, approval, permitting, construction, or occupancy of Shed B, including but not limited to any claims pleaded or alleged or that could have been pleaded or alleged in the CO, Violations, Revocation, LUBA Appeal, or the Claims. The foregoing release does not affect any violations of the terms of this Settlement Agreement or any regulation, including zoning regulations that may be in force in the future, provided that the city is bound to its finding regarding the Below-grade Portion, so long as the Kights comply with this Agreement.

5. Binding agreement. The release of claims embodied in Section 5, above, of this Settlement Agreement, extends to the Kights' heirs, successors in interest, and assigns, and to the City's councilors, officers, employees, contractors, agents, and any other party in privity with the City regarding the matters described in this Settlement Agreement. The terms of the Restrictive Covenant will run with the land.

6. Dispute resolution. The Parties will use these procedures, in the order stated, to resolve disagreements about the terms of this Settlement Agreement:

- a. Informal discussions between Respondents and members of City staff.
- b. Discussions between counsel for the Kights on the one side, and city staff or members of the city attorney's office on the other side.
- c. Mediation between the Parties, facilitated by a neutral party agreeable to both sides, the cost of which neutral is to be equally shared by the Parties.

7. Code amendments. This agreement may be modified in writing, approved by both parties, to comply with future amendments to the City of Troutdale Development Code.

8. Enforcement of this Settlement Agreement. The Parties stipulate that violation of this Settlement Agreement may be enforceable in a court or other venue of proper jurisdiction over a claim, by way of municipal code violation, action at law, or equitable remedy.

9. **Disputed claims.** The Parties agree that the claims encompassed by this agreement are disputed and that execution of this Settlement Agreement is not an admission of any wrongdoing on the part of any party.

10. **No admission of liability.** The Parties to this Settlement Agreement agree that the consideration and mutual releases provided in this Settlement Agreement do not constitute an admission of liability on the part of any of the parties and that liability is expressly denied.

11. **Entire agreement.** This Settlement Agreement sets forth the entire understanding of the parties with respect to the subject matter of this Settlement Agreement and supersedes any and all prior understandings and agreements, whether written or oral, between the parties with respect to such subject matter.

12. **Waiver.** A provision of this Settlement Agreement may be waived only by a written instrument created by the party waiving compliance. No waiver of any provision of this Settlement Agreement shall constitute a waiver of any other provision. Failure to enforce any provision of this Settlement Agreement shall not operate as a waiver of such provision or of any other provision.

13. **Severability.** If any provision of this Settlement Agreement is determined to be invalid or unenforceable in any respect for any reason, the validity and enforceability of the remaining provisions of this Settlement Agreement shall not in any way be impaired.

14. **Governing law.** This Settlement Agreement shall be governed by and construed in accordance with the laws of the State of Oregon.

15. **Venue.** Any action brought to enforce this Agreement shall be brought in Multnomah County Circuit Court, however the city may allege violations of Troutdale's ordinances administrating or in Troutdale Municipal Court.

16. **Voluntariness.** The Parties represent and agree that each fully understands his/her/its right to discuss all aspects of this Settlement Agreement with his/her/its attorney, and each has voluntarily entered into this Settlement Agreement freely of his/her/its own will and without coercion.

17. **Counterparts.** This Settlement Agreement may be executed in counterparts, each of which, when taken together, shall constitute fully executed originals. Facsimile and e-mail (scanned) signatures shall operate as original signatures with respect to this Settlement Agreement.

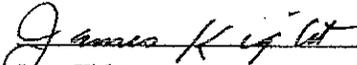
18. **No precedent.** This Settlement Agreement shall not be allowed into any proceeding as interpretive precedent relating to claims or assertions raised by any person, or relating to any property located in the City of Troutdale, except the Kight property.

19. **Understanding of Terms.** The Parties agree that they have read and understood and voluntarily accept the terms of this Agreement. The Parties further agree that this Settlement Agreement shall be construed as broadly as possible to encompass the Parties' mutual intent, which is a full and complete release of all claims, known, unknown, or which could have been known.

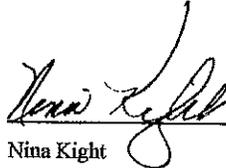
20. **Construction of Agreement.** Because the Parties have mutually participated in the preparation of this Agreement, the rule of construction that contracts shall be construed against the drafter shall not apply to the interpretation of this Settlement Agreement.

**PLEASE READ CAREFULLY. THIS SETTLEMENT AGREEMENT INCLUDES A
RELEASE OF ALL KNOWN OR UNKNOWN CLAIMS.**

Craig Ward
City Manager
City of Troutdale

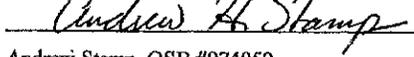


James Kight



Nina Kight

Approved by counsel for the parties:



Andrew Stamp, OSB #974050
Attorney for James Kight and Nina Kight

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Attorney for City of Troutdale