

Regular Meeting
January 5, 1998

CALL TO ORDER:

A regular meeting of the Beaverton City Council was called to order by Mayor Rob Drake in the Council Chambers, 4755 SW Griffith Drive, Beaverton, Oregon, on Monday, January 5, 1998, at 6:36 p.m.

ROLL CALL:

Present were Mayor Drake, Couns. Wes Yuen, Evelyn Brzezinski, Dennis Doyle, Forrest Soth, and Cathy Stanton. Also present were City Attorney Mark Pilliod, Chief of Staff Linda Adlard, Finance Director Patrick O'Claire, Human Resources Director Sandra Miller, Police Captain Richard DeHaan, Community Development Director Elaine Wilkerson, Operations-Maintenance Director Steve Baker, Administrative Chief Gary Nees, City Librarian Shirley George, City Engineer Terry Waldele, Traffic Engineer Randy Wooley, Building Official Brad Roast, Administrative Analyst Gina Cole, and City Recorder Darleen Cogburn.

CITIZEN COMMUNICATION:

Jack Young, 10770 SW Heron Circle, Beaverton, addressed the safety of children, especially grade school age, and called attention to 20 MPH limit in school zones. He noted that since he was there to represent the Traffic Commission (TC) on a different matter, he wanted to request that the Council continue to work diligently toward giving the School District the capacity to have school zone signs which read, "20 MPH when lights are flashing or when children are present." He said it was especially crucial around grade schools where the safety of children would urge such an effort.

Young reported that TC would be addressing the issue of double fines in school zones as a Traffic Control Board item at their next meeting. He said when they originally looked at whether the 20 MPH speed limit should apply under those circumstances, it was evident that enforcement was easier when flashing lights were operating. He noted that enforcement would be an issue with double fines, and that pursuing the matter seemed crucial.

Coun. Soth asked if Young had any information about whether all school zones in the City had flashing lights.

Young said they did not.

Coun. Soth said he thought part of the problem was approaching it from a flashing light standpoint.

Young replied that TC had been asked to come up with either one or the other, and they decided to come up with both. He reported that a day or two earlier a committee had met and said TC could not do that, but he noted that Portland did. He said since both Beaverton and Portland were inaugurating Photo Radar, why not also inaugurate this safety device.

Coun. Soth replied that some folks would be looking for the flashing light and if it was not there, they might think the 20 MPH did not apply.

Young asked if Coun. Soth wanted flashing lights in all school zones.

Coun. Soth said either flashing lights or some differentiation in the signs, so people would not be confused.

Young said they were told the flashing lights would work at certain times, and it might be necessary to have the signs read, "when children are present," to cover times when the lights would not be flashing, but the children were there.

Coun. Soth said he agreed because most of the grade schools were located on major collectors which were not 25 MPH zones. He noted there would certainly need to be enforcement.

Various comments were made regarding times other than school hours when children might be present.

PRESENTATION:

98-1 Tualatin River Advisory Committee Presentation

Kathy Christy, Washington County Commissioner, noted that she had received some information from the County recently regarding the issue Young had discussed, and she would pass it on to them. She said she was a member of the Tualatin River Advisory Committee (TRAC), and noted it was established in 1992 to manage the Tualatin River Water Quality Endowment Fund (Fund). She reported that the Fund was established when a group of citizens sued Unified Sewerage Agency (USA) for dumping water into the Tualatin River, which was not clean. She reported that part of the fine USA paid was \$1 million to fund projects to enhance water quality.

Christy said the Committee had a winter conference to gather information from citizens, and last year citizens requested information on what elected officials were doing for water quality in the Tualatin River. She explained that she was visiting councils to find out, and invited the Council to attend the February 14 conference. She also invited the City to apply for a grant to work on projects, such as the annual tree planting project done by the Friends of Fanno Creek.

Christy asked what the City Council was doing regarding water quality.

Coun. Stanton asked Christy if she was talking about the Tualatin River and its tributaries.

Christy said she was, and noted that they all qualify for grants.

Coun. Soth responded for the Council, and noted that he had served on the steering committee and task force for several years, which had established the \$3 storm drainage fee. He said he personally had tried to educate people, and used the illustration of washing the car or fertilizing the lawn where the run-off goes into the watershed. He encouraged making people conscious of the drainage that occurs in Washington County, even though the clay soil was not very good. He reported that he also observed the creeks as he passed them, and looked for obstructions, etc. to see what could be done to keep them flowing and as clean as possible. He expressed his interest in the expansion of the USA plants in order to take care of the winter run-off; the biggest source of pollutants when the treatment plants at Durham and Rock Creek can't keep up. He said he had also talked to various groups in an effort to educate people on these issues.

Coun. Doyle reported that since he had been on both the Council and the Park Board, he had supported acquisition of land along streams, etc. to help that part of the environment. He noted the Park Board had also been trying to clean up some problem areas such as redredging Commonwealth Lake. He said he also tried to explain to people why the City allocated money to have the streets swept, so debris does not go into the streams.

Coun. Brzezinski noted that the Brookhaven Water Quality Project would also be something the Council had supported financially. She said that was one of three major projects of USA, and the Council had also worked with USA to develop citizen advisory committees for it.

Mayor Drake said that was part of the Systems Development Charges, the water quality and quantity assessments.

Coun. Yuen commented that he thought the gist of Christy's question was two fold: what had they been doing individually and collectively. He stated that he had not been doing either, but had voted for Brookhaven. He said he had not been very evangelistic about it, but noted that he had probably been doing things at a personal level that he was not aware of. He said a long time ago when he was Chair of the Five Oaks NAC, Debbie Garner spoke about a Surface Water Management program. He recalled some of the things she had told them about enhancing water quality, and said he probably had improved the way he did things.

Coun. Soth noted that federal regulations require natural things such as fallen trees, be left in streams to increase habitat, but some places on the Clackamas River had never been cleaned out. He said that some streams had become marshes rather than free-flowing, and asked if there was a conflict between taking things out to allow the streams to flow freely, and leaving the natural things in there which slow run-off and cause flooding (in some cases).

Christy said after the big flood that was part of the problem. She said she would ask that question at the conference. She noted that one of the

wonderful things that came out of the lawsuit was that in celebration of 25 years of the Water Quality Act, the Tualatin River was one of four rivers in the U.S. which were honored for being cleaned-up. She reported there would be a video available soon, showing the River in its current condition.

Coun. Stanton asked for clarification of the cost for the cleanup. She said she thought it was a large amount, and the citizens were still paying for it in their sewer bills.

Coun. Doyle said he reviewed the amounts given in the booklet Christy had given them, but he was not sure if it had been paid off.

Coun. Soth recalled what started it was someone from Lake Oswego had said the folks upstream had to stop dumping their effluent into the Lake. He noted they had forgotten to mention the 10,000 ducks on the Lake. He said the estimated clean-up costs at that time had been \$400 million, which included some of the expansions at Rock Creek, Durham and Hillsboro, to provide more overflow capacity during winter months.

Christy reported that of the \$1 million Endowment, they had granted over \$70,000, and would grant more this year. She said she appreciated their cooperation and responses.

COUNCIL ITEMS:

Coun. Stanton said she appreciated the staff's efforts for the Open House in December which not only provided cookies and punch, but also good information. She noted that it was well attended.

STAFF ITEMS:

There were none.

CONSENT AGENDA:

Coun. Doyle MOVED, SECONDED by Coun. Soth that the consent agenda be approved as follows:

- 98-2 Boards and Commissions Appointments
- 98-3 Traffic Commission By-Laws Amendment
- 98-4 Status of the Pending Variance Application for the New Beaverton Library: VAR 96015 and APP 96019

Contract Review Board:

- 98-5 Rejection of Proposals – Municipal Court Software System and Award Contract for Programming Support

98-6 Contract Award for Temporary Inspection Services

98-7 Contract Change Orders for Building Code Plan Review Services

98-8 SW Henry/Esplanade Road Sanitary Sewer Trunk Line Relocation – Bid Award and IGA with the Unified Sewerage Agency

Coun. Stanton asked Mark Pilliod, City Attorney, (regarding AB 98-4), regarding Section 4 of the resolution, if this was a canned stock section which was put in every resolution.

Pilliod said it appeared to be a form which was used in the past and noted that this one dated to 1994.

Coun. Stanton recalled that when they first addressed this issue, she had looked at Section 4 and thought it would have to be resolved some time. She noted that she thought the action on the consent agenda would void Section 4, without saying that was what they were doing. She stated she would be more comfortable saying that was what they were going to do.

Coun. Brzezinski said her interpretation was they were still trying to deal with the parking issue. She explained that she thought the argument made in the agenda bill for why the 180 day curtain should not come down, was reasonable, and did not agree that they were deleting Section 4.

Mayor Drake reported that Council had it within their power to waive the timeline. He reminded them of recent lot purchases in the area and said there was a concerted effort by the City to find a parking solution.

Coun. Stanton clarified that she just wondered if this was a stock section in the resolution. She stated that she was comfortable with the whole thing; they did not have to discuss it further.

Coun. Doyle asked, regarding AB 98-5, if the City would have possession of all the source code for the Municipal Court process at the end of the project.

Patrick O’Claire, Finance Director, said the source code was being developed by City staff, so it would be owned by the City.

Coun. Doyle asked if the specs for the in-house work would be equal to or greater than what they had anticipated from CIS Co. He asked if everything they needed would be included.

O’Claire said they were looking to bring specialized contractual services with specialized people for programming support. He explained this would help City staff, who were doing the designing and coding of the program, and said they would work from the same specs they had earlier.

Coun. Soth asked where the consultants who were hired a couple of

years ago fit in.

O'Claire said they were still providing guidance for this project and working on the imaging and document scanning for the rest of the City.

Coun. Soth asked if they were not aware of the shortcomings of the programs.

O'Claire explained that the software did not meet the City's criteria for what they wanted to do as far as being able to scan information into the system.

Coun. Doyle said he could understand them bringing it back in-house because it was apparent they were not going to get what was needed.

Coun. Doyle noted, related to AB 98-8, that it was enjoyable to see a "hungry contractor" who submitted a bid they could live with. He passed his congratulations to the firm for getting the job done in an effective way.

Question called on the motion. Couns. Yuen, Brzezinski, Doyle, Soth, and Stanton voting, AYE, the motion CARRIED unanimously (5:0)

PUBLIC HEARING:

97-18 APP 96019 New Beaverton Library Parking Variance Appeal (continued from 1/13/97)

Mayor Drake opened the public hearing.

There was no one present to testify.

Mayor Drake closed the public hearing.

Coun. Soth MOVED, SECONDED by Coun. Doyle, that the hearing on the appeal contained in AB 97-18, be continued to January 4, 1999.

Questions called on the motion. Couns. Doyle, Soth, Yuen and Stanton voting AYE, the motion CARRIED unanimously. (4:0) (Coun. Brzezinski was out of the room during the vote.)

WORK SESSION:

98-9 An Ordinance Amending Chapter Six of the Beaverton Code Authorizing the City Traffic Engineer and Traffic Commission to Establish Traffic Control Devices

Randy Wooley, Traffic Engineer, said that Gina Cole, Administrative Analyst, Jack Young, Traffic Commission (TC) Chair, and Eric Johansen, past TC Chair would participate in the work session. He noted that staff was hoping to get policy direction and hear any questions or concerns Council had. He said they would come back at a later date with a revised

ordinance (from their work that evening), for a first reading. He reported that the ordinance had been in the process of being developed for some time, and had been discussed by the TC for a considerable time. He said the City Attorney had helped them draft an ordinance from the work they had done. He reported that at their November meeting, the TC had recommended the ordinance they were reviewing.

Jack Young, TC Chair, noted that it had been in the works for several years and the TC had given the Council earlier drafts. He said the policy they gave Council in October 1996, had been complete as they had it that night with some clarifications and modifications. He called their attention to the flow chart (in record), and said they paid particular attention to the procedures with much effort put into the final work. He said staff had been very helpful.

Wooley noted that Terry Waldele, City Engineer, was also present to give any historical information needed.

Wooley explained that this was intended to codify and clarify existing procedures and clearly delegate the decisions of traffic control to the TC and staff. He continued that it provided for the appeal and approval processes; established a notice process (which was different from others), that was more suitable for traffic issues which affect the street users rather than just the adjoining property owners.

Wooley clarified that this was an appeal process for both staff and TC issues. He noted that it provided for appeal fees, which were a little different than other land use fees. He explained that the TC decided they needed fees so they would not get into frivolous appeals, but not so high that average citizens could not appeal. He noted that the draft said appeals heard by the Council would be heard *on the record* rather than *de novo*. He said the negative of *on the record* might be a little more confusing for citizens, with the more formal process, but TC felt that was an important aspect. He stated that the intent was to draft the ordinance so it followed the land use process, which people are familiar with. He said there were some exceptions such as the notice process and some changes to make the hearing process a little more friendly to citizens. He noted that much of the land use process was formal and mandated by state law, and there was concern to modify it where possible, since TC usually deals with citizens and neighborhood people.

Coun. Soth said he thought it was a well prepared document, and asked on page nine, paragraph C-4, regarding the appeal process and the fee, if there was a specific reason for the NAC being exempted from the filing fee. He clarified that he was asking because of a previous question (regarding another issue), if NACs should have free access. He stated that very often there were only a few people involved, not the whole neighborhood. He reported that they had discussed whether the NACs should pay a fee and if it should be a lower fee. He said he thought the lower fee was appropriate.

Coun. Soth noted that his other questions related to the issue of *de novo* or *on the record* hearings. He stated that he had participated in many of the *on the record* hearings and generally they required a verbatim transcript. He asked Pilliod if an *on the record* hearing could be done through using minutes, which do not always reflect the discussion that occurred.

Pilliod said he did not believe a verbatim transcript was necessary, but if a person did not think the minutes were complete, a transcript could be created from a tape. He said he understood that the TC members who were present thought the Council's record could be considered complete with all the exhibits.

Pilliod responded to Coun. Soth's first question regarding the reason for the appeal fee waiver for official NACs, and said that was because it seemed prudent to follow what was in the land use process. He noted that an appeal to Council from BDR was waived by statute.

Coun. Soth commented that without a fee of some kind for NACs, there was a possibility that other groups would also want to be exempt.

Coun. Yuen noted that he had submitted Coun. Soth's question, also. He said in the copy of the Development Code he had, it said the fees were to be established by City Council, and it may at its discretion, waive those fees. He said it did not make a reference to specific fees, or to specific fees for certain parties. He said he felt they should keep things as consistent as possible so it would be easier for citizens.

Young said it had been the TC view that it was a citizen involvement focus, and if the City wanted to encourage the NACs as a vehicle for citizen participation, the NACs would be the logical place to involve all citizens. He said the waiver of fees for NACs had been a longstanding CCI issue.

Coun. Brzezinski reported that in December, the CCI Chair and Vice-Chair discussed their proposal with the Council, to waive appeal fees for NACs. She noted that the Councilors who were present were not "gung ho" about waiving the fees. She said she thought they would be going back to CCI to discuss it. She repeated her suggestion from that meeting, that possibly there could be a fund in the budget which NACs could draw from for the fees. She explained that her problem with waiving the fees was that it still cost staff time and dollars, regardless of who was appealing, and basically everyone should pay it. She stated that she realized NACs did not have a budget like a corporation, to pay fees and hire attorneys. She suggested that since the Council was not "gung ho," they should look at other options.

Young stated that there was a huge difference between quasi judicial hearings and Traffic Commission, and there was a sense that they should have no fee at all. He noted that the \$250 fee was to be responsible for what it costs to be in business. He clarified that in this ordinance they

were asking to exempt NACs from Traffic Commission, but not Planning Commission. He said he was afraid they were getting caught up in the idea that TC issues were the same as PC or BDR issues.

Johansen asked what kind of standing they wanted to give the NACs in the City, and said they had expressed they wanted the NACs to be strong. He said philosophically this was one of the ways they could encourage participation. He noted that the notion of a fund to draw on was an interesting concept, but was concerned it would be quickly depleted. He suggested they would not recover the costs on many of these appeal issues in the City, so he would be more inclined to look at recovering more fully from those who were financially benefitting from the activities occurring in CDD. He explained that he was referring to the developers, who very likely were not City residents.

Coun. Yuen stated that he appreciated what they said, but his feeling was the discussion on fees was a separate policy issue. He noted that from the length of time they had spent on this one issue, considering the length of the document, it seemed as if it was distracting them from the rest. He said he thought this was outside the ordinance, and suggested they have a more serious discussion of fees at another time.

Young asked if he was suggesting he did not want fees to be part of the Code.

Coun. Yuen said that was correct.

Coun. Doyle asked TC members present if they had heard from citizens or NACs who had been stifled in their efforts to be heard. He reported that in the three years he had been on Council, he had not heard that, and noted that when the Council had been asked to waive an appeal fee for a NAC, they always had.

Johansen said he could not recall a situation where that came up.

Coun. Yuen recalled that during the past year, on the rezone of one phase of Waterhouse South, quite a few neighbors came to the meeting and testified about why the Council should not approve the rezone. He explained that the problem was they were making the right arguments at the wrong hearing. He related that when he told the neighbors that, they said they could not afford the appeal fees to appeal it separately, so they tagged on to that appeal. He said this was a neighborhood not a NAC, so it was another issue of concern, but this was not the correct time to discuss it.

Johansen suggested the decision should come from Council, since TC had discussed it at length, and he was not sure they would give more direction.

Coun. Soth suggested that on page nine, paragraph four, related to the appeal fee, language such as, "an appropriate fee for an appeal may be

instituted in accordance with policy established by City Council, and also the fee may be waived by action of the Council.” He said he thought this would accomplish what Coun. Yuen wanted, which was to keep appeal fees out of the ordinances and put them in the policies of the City.

Coun. Yuen thanked Coun. Soth, and referenced his item #8 in his notes (copy in record), (referencing Sections A & C on page 95 of the Development Code), and recommended they tie the new language as closely as possible to that.

Young responded that it was the case in all the groups he had been part of, with long-standing membership, that is where much of the NAC and CPO issues with fees were generated. He said there was not necessarily a current flood of appeals. He stated that there was a lot of this, including the fees section, where TC would be thrilled for the Council to define things. He said they had wrestled a long time to reach the figure of \$250, and they were not wedded to that, or to it being in there.

Mayor Drake noted that staff had refined it down to four issues, and maybe it would be best to cover the broad policy elements. He noted that Coun. Yuen had done a fine job with his comments, and possibly staff could mull it over and send a draft back to the Council for approval, rather than go through it line by line.

Coun. Doyle said he also was impressed with the document, and said he appreciated the debates which had been in their minutes. He agreed it should not go back to TC.

Wooley suggested they talk about the general issues and said one of those was codifying and clarifying procedures.

Mayor Drake asked if the Councilors were comfortable with moving on in this manner.

Coun. Yuen stated that he had raised an issue that he wanted to be sure it did not interfere with the normal day to day activities of the Operations crews. He noted that the code did talk about the extreme conditions of police and fire, but those extreme conditions could also occur with road work crews. He explained that he was concerned it was written so that before the road crews could go out and work on an extreme case, they would have to call City Hall.

Wooley stated that it would all work and clarified that the language they put in was to note that police and fire already had the authority under emergencies, and the maintenance crews would be there to support them. He said he wanted to make sure the staff decision was not just the traffic engineering division, but the Operations Director and the Mayor would also have the authority to establish detours, etc.

Coun. Yuen asked if in a disaster, the road crews would have to call Operations and get permission to put up signs, or if they could go ahead

and take care of it. He was concerned that this could bureaucratically tie them up.

Wooley explained that the crews could take care of immediate situations and then contact their office for long-term fixes on such issues. He noted that in an extreme emergency such as flood or earthquake, the Emergency Management policy would kick in.

Coun. Yuen clarified that during a disaster event, the Emergency Management procedures would supersede the things they were discussing.

Mayor Drake clarified that staff would respond to the situation immediately, and then appropriate people would be notified. He noted that the decision was made at the base or street level in terms of safety of the public, and employees were empowered to do what is needed immediately.

Coun. Stanton said she had a statement to make related to who she was, and asked about a policy issue, on page two, under "Major Issues." She read it as follows: "any of the following *except something that had been proposed in a private development.*" She noted this went to the heart of something they had talked about earlier, which was where TC fell in the queue. She clarified that Planning, BDR and Facilities Review were all pre-development, but TC dealt with things that were already "on the ground." She recalled that some time ago, Daryl Steffan, Project Engineer, had explained about the "football" in south Beaverton and what would be happening. She said they saw a fatal flaw with that situation and told him to get the County to fix it before the road went in, but he said he could not. She explained that if such a situation was not fixed before it happened, they might as well schedule it for TC in the future, because there would be problems. She said she hoped someday TC would be able to look at those kinds of things ahead of time, especially as they annex new areas.

Coun. Brzezinski stated that she agreed with the decision not to mail the Hearing Notices, but expressed her concern about posting the site, because she thought most people were whizzing past too fast to see them. She explained that it was not like an empty plot of land where such postings were more visible.

Wooley said they would find out soon how well it worked, because currently the Murrayhill and Teal area had signs on small barricades along the road to let people know about an issue there.

Mayor Drake reported that he had seen those signs when he went by and thought if people did not see them on the first time through, they would pull over and read them the next time. He thought it was very noticeable and effective, and regular users of the area could not miss them.

Coun. Doyle noted that anything they could do to make signs more visible

was terrific. He commented that in traveling to different areas, he thought some of the signs were only visible to gnats and thought they could do better.

Young noted the City's signs were very informative. He said they could be larger, but it was a "Catch 22," because signs are considered pollution, so if signs were larger, then they would really be pollution. He commended the signs and said he thought they were doing a good job.

Coun. Stanton expressed her concern about the paragraph that said "failure to provide notice in the matter set forth herein shall not invalidate any action." She said that sounded like they were saying they had to do it but if they didn't, it did not matter, and she was not comfortable with that even though it was the legal thing to do.

Mayor Drake suggested that if that was her concern, then she should find out what the others thought about it changing it.

Coun. Stanton explained that this was kind of a moral issue for her because if they were supposed to do it they should do it, but on the other hand, if someone said they did not see the posting in all the places, she did not want to have to re-notice. She stated she was not comfortable with exempting them from their own rules.

Mayor Drake said he did not disagree, and maybe they should discuss this internally.

Coun. Yuen commented that he also appreciated the signs, and as "just a citizen" the signs were helpful, but if they made them so big they could be read as people drove past, then they would be reading instead of driving. He noted that he both agreed and disagreed with Coun. Stanton. He explained that in a perfect world people would read signs, but in the imperfect world, signs got blown down, torn down, etc. He reported that there had been situations at PC and BDR where people came in and said it was "unfair, unethical, you are a bunch of crooks, etc.," because there was not a sign up, when the sign had been put up. He explained that the City could not post a guard to see that it stayed and that everyone could read it while they were driving past. He said it was unfortunate, but sometimes they had to put these types of clauses in because of the kind of world we live in.

Mayor Drake said staff would work on it.

Coun. Soth noted that if they looked at other notice requirements, they would find some similar intent and language to keep from invalidating the whole thing. He commented that on Section A, related to the mail, they could change it to "by internal distribution to the Council," rather than by regular mail.

Coun. Yuen noted that he had raised several concerns on this section and asked Council to note them and the responses.

Coun. Stanton said on page 8, #6, she did not know what criteria Tri-Met would have that the City would have to consider.

Wooley explained that it related to bus pull-outs, etc., which the City was bound to follow.

Coun. Stanton said she would put her other concerns related to this in writing for Wooley.

Mayor Drake said they would move on to Appeals.

Wooley explained that the biggest thing was establishing an appeals process for staff decisions.

Coun. Yuen noted that one thing he had mentioned (his item #4), on page 5 under "Minor Issues," was the portion of the paragraph which said a person may request a "review." He explained that he had also noted another place in the document where they had used the word "review," he thought the obvious meaning of "review" was "appeal." He said he thought they should be changed to "appeal" rather than "review," because people had a notion of what an appeal was, but the notion of a review did not carry the same connotation; no finality. He said if they really meant appeal, that was what they should say.

Coun. Stanton said on that that note, the final written order and decision, as in #11 on page 8, and #13 on page 9, she thought they were synonymous, but what was stated in #10 and #11, was that a decision was not the final order. She explained that since the decision was not the final order and could change based on the final order, she would like it clarified.

Young asked if the final order was what the Council decided.

Coun. Stanton said according to #11, the TC would sign the final order.

Young said he was suggesting that the final written order, was what the Council was given to make their final order from.

Coun. Stanton explained that because of how it was written in those sections, she was concerned that the average citizen would not know what was meant by each. She stated that most people would hear the decision at PC, BDR, or TC and assume they knew what the decision was, but according to this they would not know until the Council approved it.

Young said he did not understand the question because he understood that there was no order from any body that was not finally approved by the City Council.

Coun. Stanton said he was right, but her concern was that a final written

order would go to the Council, to become part of the Consent Agenda, but people might think it was final when it left TC.

Young asked if they changed the word "order" would that work for her.

Coun. Stanton said her whole issue was about the word "decision," in #10, which was what the TC would come up with, but it might or might not be identical to the decision the citizens heard when it went to the Consent Agenda.

Mayor Drake said he thought they could provide some clarification on that.

Coun. Yuen noted that his point on #13, also pertained to paragraph 10 on page eight, and said he thought that section needed to be clarified. He explained that if they were talking about the Parliamentary Procedure by which at the next meeting of that body, those voting "yes" could call up, on their own motion, a reconsideration of that issue for a later time, then he thought that was fine. He noted, however, that what not what this section said, and they would be better off saying nothing. He said if it was something else, he needed to hear that, because what was written in paragraph 10 scared him. He explained that it should scare the others, because it said that no decision was done, until the Chair actually wrote it down. He clarified that sometime between when the vote was taken, and the TC Chair wrote the final order, anything could be changed, but there was not process to tell how. He said he hoped that would not happen, but it could. He said if they simply had the normal Parliamentary Procedure in mind, they should strike #10.

Mayor Drake asked if all of that applied at the same point, where it could be considered or they could choose to reopen the hearing, modify the decision, etc.

Coun. Yuen noted they did not have that language in the Development Code.

Coun. Soth suggested that in paragraph 10, they strike the last sentence. He noted that what bothered him (and had been expressed), was a change without reopening the hearing or notification for people to hear about it. He suggested they put in language such as "the decision of the TC shall be reflected in an appropriate final written order, signed by the Chair which incorporated those decisions which had been made in the hearing..." He explained that would eliminate any changes without reconsidering.

Pilliod said he had heard comments first about what they called the action by TC, where they otherwise had a staff level, minor issue decision being made, and the analog was the PC review of an administrative decision, (which was also called a review, not an appeal). He stated that unless they thought there was a serious need to divert from the process and terminology used in the Development Code, it did not matter whether they

called in an appeal or a review.

Pilliod clarified that on the section modifying the decision prior to the adoption of a final order, what he thought he was hearing was that if at some time after an announced oral decision, the TC wanted to reconsider by appropriate motion, they could do so. He said they could modify the language to make it clearer, and his idea was for the last sentence of #10 to read, "at any time prior to the adoption of the final order pursuant to paragraph 11 of this subsection, the hearing body may, by appropriate motion to reconsider, modify or change its decision or choose to reopen the hearing." He clarified that reconsidering did not necessarily require the hearing be reopened. He suggested they think about this and discuss it further.

Mayor Drake said he thought that was what the Council was concerned about, and this had given them good direction.

Coun. Yuen suggested they strike the words "preliminary oral," (from the second line), because he did not think that was what they made. He clarified that they make a decision, and they may later choose to reconsider it.

Pilliod noted that terminology appeared twice in subsection 10, and noted the reason for the added language "preliminary oral," was to distinguish it so a person did not say they had announced a decision, and expect to go straight to Council or court. He clarified that until the decision was placed in a written form, it was not final, and stated that he was not saying that the hearing body was not deciding, because they were. He said he wanted to make it clear that if someone was planning to take it to a higher body for review, this was not the point to do that; not until it was written.

Coun. Stanton said she understood that, and she would agree to leave the word "oral" in, but wanted the word "preliminary" out. She explained that preliminary meant that it was subject to substantial change, and she wanted to give the citizens a substantial measure of assurance that what they heard was what was going to happen. She said this reminded her of the Miller Sanitary issue.

Coun. Yuen stated that the discussion was interesting and the comments by Pilliod had led them in a direction he would like to pursue at another time. He explained that he was interested in the idea that a hearing body could change a decision, up to the time it was put into written form.

Mayor Drake asked Council not to refer to Miller Sanitary because it could come to Council on appeal.

Coun. Yuen said he appreciated Mayor Drake's words of caution on Miller Sanitary, and stated he did not think the City had performed in a way that was defective. He expressed his concern that this language could lead people to believe the City wanted to enact a policy that would allow changes to be made without people knowing it.

Young expressed his concern about taking the word "preliminary" and isolating it in terms of one's own perception of the word, as opposed to it being alive as Pilliod was suggesting. He used the example that before you could play a violin you had to take it out of the case, which was a preliminary step, not changing a routine but part of a sequence of events that led up to a final outcome. He suggested that was what this was trying to do, and said he was hoping the document would take on more of an organic rather than specific meaning.

Mayor Drake said he thought staff had good direction on this.

RECESS: Mayor Drake called for a recess at 8:31 p.m.

RECONVENED:

The regular meeting reconvened at 8:43 p.m.

Mayor Drake said they would move on to the section regarding *de novo* vs. *on the record*.

Coun. Doyle commented that in reading the document, he was happy to see they were coming up with a consistent policy to follow *on the record*, if they decided to do it with other processes and procedures.

Mayor Drake clarified that the Council could call issues up *de novo* if they wished.

Young noted that they did this because they wanted to demand more of themselves, and this would raise the level of participation and asked more of all the participants. He explained this was asking the citizens to take their involvement seriously, and asking the Council to involve themselves in general when considerations range outside the usual traffic issues. He noted that if all controversies were heard by Council as if it were the first hearing, then the role of the TC would be only to make decisions on less serious matters. He said citizens would be led to believe the best use of their time was to appear before Council, not TC. He explained it would dilute the role of TC and put unnecessary burden on Council because citizens might be less likely to appeal at all if they were persuaded to be more diligent the first time around (at TC).

Coun. Yuen said it was not his intent for the session to become a philosophical discussion, but since it had, he had two comments. He noted that one was that the language was only slightly premature, because it anticipated a later action on the City Council to incorporate that *on the record* hearings appeal to all aspects of the hearings process, rather than to a specific trial. He said his other comment was that what TC had come up with was an excellent compromise. He noted that it gave Council the option to call issues up *de novo*, and it was the best language he had seen.

Coun. Yuen commented that since they had raised the issue he would comment. He stated that after being on PC and Council, he did not ever feel that the Commissioners were being "blown off" because someone could appeal to the Council. He noted that he was a little put off by what he had heard that night, and said he thought the citizens took their opportunities to come to the PC, BDR, and hopefully TC, very seriously. He reminded the Council that one of the reasons they had appeal fees was to make people take appeals seriously. He stated that he would be more appreciative of the notion of *on the record* appeals because of the merits and the technical aspects of such appeals, rather than requiring *on the record* appeals in order to make people take them seriously.

Coun. Soth noted that years ago, Council did hear most appeals *on the record*, and one of the reasons it was changed was the cost of the transcript, particularly for land use issues. He said a *de novo* hearing was cheaper. He explained that he thought *on the record* made a lot of sense and had been assured by Pilliod that verbatim transcripts were not necessary. He stated that people needed to take their best shot at the TC level, and if it went to Council they should not introduce new material.

Coun. Doyle noted that he was always uncomfortable with not having the benefit of the experience and expertise of those on the Boards who looked at these things and heard the testimony. He stated that he often wondered how the Commission would act on the new information, which was why *on the record* made sense.

Johansen noted that when they dealt with Williamsburg, the neighborhood backed out of the TC process and went to Council. He explained that as part of the PC process, at the start of the meeting the Chair stated that only the issues raised at that meeting could be appealed to a higher body, which notified those present that it was a serious hearing.

Coun. Stanton noted that she was basing how she felt about it on the good discussion they had regarding the hearings for the Comprehensive Plan Amendments (CPA). She stated that she was comfortable with *on the record*.

Coun. Brzezinski reminded them that she had voted in favor of *on the record* for the CPA, but thought that was for a one-year trial, and suggested they wait to see how that worked before they decided on this.

Coun. Stanton reminded them that the decisions coming out of PC were predevelopment, and TC was dealing with existing issues, so she was comfortable with having *on the record* for TC. She noted that if after a year, they wanted to change it, they would be able to do that. She also reminded them that the Council could have *de novo* any time they wanted.

Mayor Drake stated that what he thought he heard in terms of staff direction was *on the record* with the option for *de novo*.

Coun. Yuen stated that he did not favor that and would prefer a trial period, because they would error logically by implementing in a permanent basis that which was in a trial basis in another part of the City.

Mayor Drake said that was a good point, and said he understood that it would be a trial period, since the other was on trial.

Coun. Yuen said that would be fine as long as it was understood that it was a trial.

Young suggested that the opportunities for appeal to TC would be minuscule, and it could be changed to *de novo* as they wanted.

Coun. Stanton asked on the issue of City-wide issues that go to TC and automatically go to the Council, on page 6, where it says "the City *shall* hold a public hearing to decide the issue," could they use *may* instead of *shall*. She noted that if it was an automatic *shall*, it would force people to go to two places (for hearings), when there was not always a need for another hearing.

Wooley noted that issue of *shall* and *may* had been discussed by the Commission, and explained this was there for clarity. He said if it was not clear if it would be a hearing or a Consent item, they would need to schedule it as a Consent, and then if the Council wanted it to be a hearing, the time period would be much longer. He said it would help with explaining the process to citizens.

Coun. Yuen said he liked Coun. Stanton's suggestion, because *may* did not mean they would not decide to do it every time. He reminded them that Mayor Drake often took things that came through on Consent and pulled them off as an action item so they could discuss them. He said he would be more comfortable with *may*.

Wooley noted that City-wide issues were a relatively small percentage of what the TC heard, and the Council would already have them on a Consent Agenda, and probably would want to have a hearing on such issues.

Coun. Soth said *may* appealed to him, because the Council could already call up something on its own motion anytime.

Mayor Drake asked those who wanted *may* to raise their hands, and noted that Couns. Soth, Stanton and Yuen indicated that was their wish.

Young reported that TC favored *may*.

Coun. Brzezinski said she would reserve the right to argue for *shall* when it came back for their action.

Mayor Drake said staff would work with these directives and come back with the final version, or another work session if necessary.

ORDINANCES:

Second Reading and Passage:

Pilliod read the following ordinances for the second time by title only:

97-349 An Ordinance Amending Ordinance No. 1800, the Comprehensive Plan, by Redesignating Property Commonly Known as the Beaverton Creek Community Area from Campus Industrial (CI) and Commercial © to Multiple Use (MU) Designation, and by Amending the Comprehensive Plan Text to Add new Provisions Pertaining to Multiple Use Designations; CPA 96001

97-350 An Ordinance Amending Ordinance 2050, the Zoning Map, From Campus Industrial (CI) and Office Commercial (OC) to Station Community-Multiple Use (SC-MU) and Station Community-High Density Residential (SC-HDR), for Property Commonly Known as the Beaverton Creek Community Area; RZ 960004

97-351 An Ordinance Amending Ordinance No. 2050, the Development Code, to Add New Provisions for Multiple Use Districts and to Repeal Section 79 Pertaining to Transit Oriented Development; TA 960002

Coun. Soth MOVED, SECONDED by Coun. Doyle that the ordinances embodied in ABs 97-349, 97-350, and 97-351 now pass. Roll call vote. Couns. Yuen, Brzezinski, Doyle, Soth, and Stanton voting AYE, the motion CARRIED unanimously (5:0)

OTHER BUSINESS

Coun. Brzezinski noted that she was the Council Liaison to the Library Foundation, and had neglected to call the Council's attention to the *Buy a Book Campaign*.

Coun. Brzezinski recalled that the Council had wanted to do citizen surveys every two years, and thought the last one may have been nearly two years ago. She noted that she hoped they would be doing one this spring. (Upon review of these minutes, Coun. Brzezinski asked that her request for citizens' surveys be changed to every three (3) years.)

ADJOURNMENT:

There being no further business to come before the Council at this time,
the meeting was adjourned at 9:15 p.m.

Darleen Cogburn, City Recorder

APPROVAL:

Approved this 30th day of March, 1998

Rob Drake, Mayor