

SPECIAL MEETING  
February 17, 1998

CALL TO ORDER:

A Special meeting of the Beaverton City Council was called to order by Mayor Rob Drake in the City Council Chambers, 4755 SW Griffith Drive, Beaverton, Oregon, on Tuesday, February 17, 1998, at 5:54 p.m.

ROLL CALL:

Present were Mayor Drake, Couns. Wes Yuen, Evelyn Brzezinski, Forrest Soth and Cathy Stanton. (Note: Coun. Yuen was not present for the executive session, but was present for the Special Meeting.) Coun. Dennis Doyle was excused. Also present were City Attorney Mark Pilliod, Chief of Staff Linda Adlard, Development Services Manager Irish Bunnell, Sr. Planner John Osterberg, Deputy City Recorder Sue Nelson, and City Recorder Darleen Cogburn.

EXECUTIVE SESSION:

Coun. Soth MOVED, SECONDED by Coun. Brzezinski that Council move into executive session in accordance with ORS 192,660, (1)(h), to discuss the legal rights and duties of the governing body with regard to litigation or litigation likely to be filed. Couns. Soth, Brzezinski, and Stanton voting AYE, the motion CARRIED unanimously. (3:0)

The executive session convened at 5:54 p.m.

RECESS: The executive session recessed 6:04 p.m.

RECONVENED:

The special meeting reconvened at 6:38 p.m. Coun. Wes Yuen arrived during the recess and was present for the special meeting.

CITIZEN COMMUNICATION:

There was no one present who wished to speak.

COUNCIL ITEMS:

There were none.

STAFF ITEMS:

There were none.

PUBLIC HEARING:

98-46 Miller Sanitary Service Appeal: Clarification of Land Use Order File:

CUP 96006 and APP 98001

Mayor Drake reviewed the legal discussion about the process for the meeting. He stated that all who had signed up to speak would be heard, and asked that they be respectful of other speakers.

Mayor Drake asked if any Council member wanted to abstain or declare ex parte contact. No Councilors wanted to abstain.

Coun. Soth reported that in preparation for the hearing he had done some research. He noted that he had observed a similar facility about five years earlier, in the East. He said he visited the Pride facility in Sherwood, and also went to the Miller site where Tom Miller explained the operation of the facility. He stated there was no conversation about the merits of whether or not they should do this. He said he also visited the Sequoia Condos to see what kind of impact there was, and noted he had done that over several days at different times, so he could get an idea of the noise. He noted that he had also walked the area, but had no conversation with anyone there. He reported that he had numerous phone calls, and told all callers that when an item was on the agenda he did not discuss it, because he felt all discussion should be in public. He noted that Ms. Laidlaw had reminded him that he was privileged to serve on Metro's 1% for Recycling Committee five years ago. He said he wanted to be informed and did not think those actions would disqualify him.

Coun. Brzezinski reported that she received 14 calls on her voice mail, 13 against the facility, and one caller left their name and phone number but she did not call back. She also visited the Pride facility.

Coun. Yuen stated that he did not feel restrained from talking to people, and took notes on his conversations. He listed the names of those who left messages on his Council voice mail (some whom he spoke with): Ms. Guise, Ms. James, Ms. Wolthammer, Ms. Denz, Ms. Labrand, Mr. Manning, Mr. Tuffts, Mr. Whitcome, Mr. Nash, Mr. Johnson, Ms. Monroe, all who were against the siting. He said he also spoke with Mr. Walton who suggested the Council support the Planning Commission (PC) decision. He reported that he had encouraged those he spoke with, to attend the hearing and testify.

Coun. Stanton reported that she had not listened to her voice mail because she had been caring for two ill people at home, and had only talked process with people she met in stores who wanted to discuss it.

Mayor Drake noted that he visited Pride Disposal, talked with David Branch, and also with Bob Lanphere and Elaine Spalding, who were both in support of the project.

Mayor Drake asked if there were any objections to the jurisdiction of council to hear this issue. There were no objections.

Mayor Drake finished outlining the hearing process.

Mark Pilliod, City Attorney, suggested that they identify letters received that day.

Mayor Drake read the names of the writers who had submitted letters (in record) as follows: Henry Shafer, Henry Kane, Nancy LeBrun, Vynn Berg, Roscoe Lawless, Ruth Zahler, Mary Smith, Jim Wyland, Pavel Goberman, Warren Freece, and Harrold Freece (last two in favor of proponent).

Coun. Soth asked Pilliod to discuss the parameters of the hearing.

Pilliod explained that Council was to determine the meaning and the scope of the Conditional Use Permit (CUP) issued by the City in September 1996. He noted that in the middle of 1997, the City received a request from the Department of Environmental Quality (DEQ) seeking clarification of that CUP. He noted that despite a letter from the PC to the DEQ to clarify the extent or the meaning of the permit, as it related to domestic and putrescible waste, DEQ requested further clarification in November 1997. He said PC conducted a public hearing in January where they focused their interpretation on the words used in the CUP from 1996. He reported that they purposefully avoided examining whether there was anything in the record or facts that showed that issuing the CUP as it related to putrescible waste, satisfied applicable City requirements. He clarified that the Council could take a similar tact, in that they could interpret the meaning of the original CUP, which was approved by the Council in Oct 1996. He explained that in so doing the courts would probably determine that the Council had made a new land use decision. He said the Council could also examine the broader issue whether the Material Recovery Facility (MRF) Miller proposed to use, satisfied applicable City requirements in terms of processing solid and putrescible waste. He explained that in short, the Council could focus its attention on the interpretation, or it could re-examine the CUP, in so far as the issue of putrescible waste was concerned. He noted that the CUP was final in October and had not been appealed, so the City had already issued a statement, as to compliance with CUP criteria. He noted that the remaining question was whether or not the criteria had been satisfied with respect to putrescible waste.

Coun. Soth explained that he thought the question revolved around what the PC conditions were in 1996, as verified by PC in their recent public hearing. He said it was his understanding that was what was on appeal to Council, and if that was the issue, that was what they should address.

Coun. Brzezinski stated that she thought it was a broader issue, even though she recognized that made the potential length of the meeting much longer. She explained that during the 10-day window, all anyone had to appeal was the CUP as originally signed, which said no putrescible waste. She stated that people would not have appealed the putrescible waste issue because they did not know that was approved; it was only

after the 10 day window had passed, that the clarification issue came up. She said she thought it was through no fault of their (the neighbors') own, they did not have the opportunity to appeal it. She noted that for that reason she would rather it be broader than just focusing on the intent of the PC regarding Conditions 5 and 6.

Coun. Yuen stated that he appreciated Coun. Brzezinski's comments and found himself leaning in that direction. He explained that he had read the material and thought at first it was what PC meant: putrescible, but in re-reading the material, he realized that was not what it said. He noted that he thought a person could read it and not think it was to be putrescible. He reported that a later transcript said that was what the PC wanted to allow, but the minutes of the PC meeting which were published, (and the Council received in October 1996), would have led him to believe they (PC) meant no putrescibles. He agreed that it needed to be considered, and wondered how that would affect the hearing. He asked if it would change the way the hearing would be conducted, if they opened it up to consider the CUP.

Pilliod said he knew that at the PC hearing in January, people wanted to broaden it, and to some extent were denied the right to do so. He reported that he had told the applicant that the Council could broaden the discussion. He noted that the material, which had been prepared by the appellant, invited the broader review.

Coun. Yuen stated that it "begged the question" of whether or not those who were present were prepared to examine a broader issue. He said he did not want to be further unfair to people by, (at the current hearing) deciding to have a broader hearing than what was noticed. He said he did not want people to come back later and say they had not been prepared.

Coun. Stanton recalled that in October 1996, when they looked at this, she had asked about the process. She said she agreed with Coun. Brzezinski, that one of the reasons the appeal came forward was to go back to the beginning and allow for an appeal of the original decision. She stated that she was comfortable doing that, but suspected that it would not all happen that evening.

Mayor Drake asked Pilliod if they were talking about going back to the CUP in 1996, related to putrescible waste only.

Coun. Stanton noted that in reading the minutes from September 18, 1996, putrescible waste was not part of the discussion. She said construction of a building, land use issues, etc., were discussed.

Coun. Brzezinski explained that her position was that they should do what would have been allowed if the CUP had said that putrescible materials were allowed, because she thought an appeal would have been filed. She said she wanted the residents to have that opportunity.

Coun. Stanton said she agreed.

Mayor Drake noted that the opinion was three to one, to go forward regarding putrescible waste.

Coun. Yuen said he agreed, but the agenda bill indicated it was to be a limited hearing. He expressed his concerns that not all present were prepared.

Mayor Drake said in the comments he received, the real issue to the neighbors was putrescible waste, and this was the opportunity to address that issue. He stated that he thought that did afford the opportunity to those present. He reported that originally when DEQ asked for clarification, the agreement by Miller was it would be a limited review. He reported that he thought the original question was whether the PC meant putrescible waste, and the two options the attorney had given them was to have a limited review or an expanded review. He reiterated that what he had heard from people clearly indicated their issue was putrescible waste, and this would offer the venue to discuss putrescible waste.

Coun. Yuen recalled that Mayor Drake had said they would have a 20 minute presentation by those in opposition, and asked if it would be fair to ask that person how this change in the scope of the hearing would affect their presentation.

David Bennett, 1300 SW Fifth Avenue, Portland, said he was the attorney representing the Sequoia Park Condominium Unit Owners Association. He said he could caucus with his clients but could not speak for the others who were concerned.

RECESS: Mayor Drake called for a recess at 7:15 p.m.

RECONVENED:

The special meeting reconvened at 7:28 p.m.

Mayor Drake said he talked with Bennett and with Tom Miller, the applicant, and they all wanted to proceed.

Coun. Yuen asked if the Council needed to make a motion to set the scope of the meeting.

Coun. Soth said it was correct as it was, and said the notice of the hearing outlined the parameters of what he was speaking, but he had no objections.

Coun. Stanton said the notice for the meeting went out prior to the appeal, so she did not want to be tied to that.

Mayor Drake said the issue was putrescible waste and they would proceed. He noted that they received a packet from the applicant's

attorney, Dan Kearns regarding the DEQ request for clarification.

John Osterberg, Senior Planner, said he would summarize the issues, but not give a formal staff report. He explained that this was an appeal of a PC decision, which was a clarification of a previous decision, specifically two conditions of approval which discussed the acceptance of putrescible waste at the site. He reported that at two different meetings the PC said it was their intent to accept putrescible waste under their conditions of approval. He said those conditions described the way putrescible waste would be accepted if acceptable by DEQ and Metro. He noted that issue had originally gone to PC for an informal discussion in 1997. He noted that at a later time it went to a request from DEQ that it had to be more formalized, so the City decided to send out public notices and advise people of the need for clarification of the conditions in regard to putrescible and domestic waste.

Osterberg reported that PC held a public hearing and did state it was their intent to accept putrescible waste at the site; it was not an error in their original conditions of approval in their original land use order. He stated that PC acknowledged that the language in their land use order was deficient; it was not correct and that it added confusion to the matter, and what they meant to do they did not write very well.

Osterberg said PC agreed that the best thing to do was clarify the land use order and clarify that it was their intent to accept putrescible waste. He noted that the land use order did not appear dramatically different, however they would notice that in Conditions 5 and 6, key words and phrases had been changed to adequately express PC's intent. He stated that the reason for the hearing was an appeal of that decision. He noted that earlier that evening, some of the other elements were addressed by the City Attorney, and he would not go into procedure or process issues. He said staff had a short video of the Pride Disposal site, in Sherwood, and a video of the Miller site, both of which would show the interiors of the buildings and the operations. He noted that a zoning map was available if Council needed it for review. He reported that there was a brief overview of the chronology of the site and the condos (in the record), which covered from 1972 to the present. He noted that the land use designation and zoning were virtually unchanged since 1972. He reviewed the way the property had changed from Industrial Park to Light Industrial zonings, and said that Sequoia Park Condos were constructed in 1976 as apartments and converted to condos in 1980.

Osterberg reviewed the videos of both the Pride and Miller sites.

Osterberg reviewed the zoning map (in the record), and noted that West Beaverton shared the site with Miller; and noted the railroad property and residential properties in the area, including apartments and churches. . He said there were other areas in Beaverton where industrial zoning abutted residential areas. He said he would take any questions at that time.

Coun. Stanton said she noticed the storage boxes (in the video), and he (Osterberg) had said they would move to the center of the area. She asked if they would stay in the center.

Osterberg said he was told that the containers could be outside and others would be inside the building, but not stored along the south property.

Coun. Stanton asked if she was correct in understanding that the southern entrance was not an entrance, the bays they saw open were not entrances, but the furthest south one was a washing bay.

Osterberg said the farther south end was a truck wash area, and the next closer section would be used as tool room. He said the trucks with the waste would not be going any farther south than the third door for any waste delivery.

Coun. Soth asked what the roaring sound was he had heard at the location; was it Hwy. 217.

Osterberg said it was Hwy. 217, and in the distance was the railroad.

Coun. Soth said that was one of the things that struck him was the 217 noise, and noted that afternoon, a train did go past.

Coun. Brzezinski asked, regarding the operations at the Pride facility, would that be considered full operation; were they doing all the kinds of things they would do at Miller's.

Osterberg said he had asked that question, and that was a full representation of what they would do at Miller's. He said trucks were bringing in two different types of material while he was there, a combination of mixed paper and plastics, not separated. He said the owner said it was not always the same, some times there would not be any sorting of residential garbage, and if the sorting line was busy with other materials, they would send it straight to a land fill. He said in some cases, they would store it for a short period of time (two hours).

Coun. Brzezinski asked if there was putrescible waste.

Osterberg said there was putrescible waste; that was what they saw in the video, which the big caterpillars push onto the line.

Coun. Brzezinski noted that she did not see any of the workers wearing masks or any other kind of protection, and wondered if that was correct.

Osterberg said he thought he saw some wearing ear protection on the sorting line, but not the others.

Coun. Yuen reported that he had requested and received The Solid Waste Plan and Solid Waste Control documents. He wondered if the

regulation of these types of businesses, was done by the City, or if it would be deferred to Metro.

Osterberg said the City regulated it in terms of permits and franchise.

Coun. Yuen asked if the City regulated to the extent that was indicated in Conditions 5 and 6 in the PC land use order.

Osterberg said the City did not have those sorts of regulations which applied generally to all facilities in Beaverton.

Mayor Drake noted that Bruce Warner, of Metro, was present and invited him to speak, since he could probably answer that question.

Bruce Warner, Director of Regional Environmental Management for Metro Solid Waste, said he thought the question had a couple of answers. He explained that the City had regulatory authority under its land use provisions, and could set limitations under their land use order, for governing the operation of that facility at that particular location. He clarified that both DEQ and Metro had authority to regulate solid waste processing facilities in the Metro area. He noted the facility would require a franchise from Metro. He said Metro had the ability to attach conditions to such things as odor, dust, vectors, etc.

Coun. Yuen again asked if the City had the right to impose their own conditions, and who would supersede.

Osterberg said the City regulated land use, and it was a land use decision to be determined by the City. He clarified that the City could not defer to Metro or DEQ the land use decision, but there might be conditions where the City might say they would allow something, unless it was prohibited by Metro or DEQ. He said he thought PC was trying to get to the issue of there being multiple players.

Warner said the City could impose conditions related to land use, and Metro would honor those requirements and limitations.

Mayor Drake said Miller was talking, give or take, 90 tons per day, but the Council could tack on that condition. He noted that some people were concerned that Miller could sell out to another company and allow a big conglomerate to process more. He suggested the City could restrict tonnage and/or number of trucks.

Warner and Osterberg both agreed that was possible.

Coun. Yuen asked what was specifically prohibited by Condition 6-C.

Osterberg said it sounded like he wanted to know about the Oregon Administrative Rules (OAR) related to this issue.

Coun. Yuen read from the document, and said he would like to know what

they were prohibiting.

Osterberg searched the document and there was discussion among the Councilors.

Pilliod said it was contained in Condition 5 under letter A.

Mayor Drake read from the document, the modified land use order (in the record).

Coun. Stanton asked if anyone had a copy of the applicable OAR, since she would like to know what it said about putrescible waste.

Warner said he did not have it with him, but possibly they could get it and answer them a little later in the meeting.

Coun. Yuen explained that was his question, because unless they knew what they were prohibiting, how could they know whether it was accepted or not. He stated that in reading through the document, it was extremely confusing. He explained that he was trying to see if they even needed to include Conditions 5 and 6, which no one could understand. He stated that if there were conditions they could not understand, they could not enforce them because they would not know what they were enforcing.

Mayor Drake said he thought they were using the OAR so it would be a universal description, so that if it was DEQ, Metro, or the City, the description would be the same. He noted this was something anyone could pull out and use as a definition.

Coun. Yuen stated that he needed to know what it meant. He asked how what they saw at Pride would be different or the same at Miller. He wondered what would be different at the Miller facility if they did not process putrescible waste.

Osterberg said the applicant would be the best person to ask. He explained that the Pride facility was larger and responded to the specific hauler that was bringing materials into that site, and also to the way various jurisdictions regulate recycling.

Coun. Yuen noted that Conditions 5 and 6 seemed to impose conditions which were not land use related. He asked Osterberg to discuss if Conditions 5 and 6 enabled Miller to do anything differently than their current permits allowed. He asked if the enabling feature was the construction of the building or Conditions 5 and 6.

Osterberg related that in the original testimony (PC hearing), there was a discussion between Miller and his attorney at that time, Ed Sullivan, and Steve Donovan, Chair of PC, that Conditions 5 and 6 would allow Miller to continue to use the site as he had in the past. He said it was also his understanding that the amount of putrescible waste was much smaller; a very small element of putrescible waste that was going on at the site, but

it was tiny in comparison to the other types of dry waste he was processing there. He noted there was a certain amount of moving material from one truck to another truck so it could be moved out in different vehicles. He clarified that this would be a greater increase of activity of sorting recyclable materials out of residential waste; substantially greater than at the current time.

Coun. Yuen asked if Miller could have continued with these activities without PC tacking on Conditions 5 and 6. He noted that the City did define solid waste; he understood why PC said they could do putrescible, because solid waste included wet and dry. He explained that what he did not know, was whether or not Miller's existing license would allow them to do this type of sorting. He said if that were the case, then Conditions 5 and 6 were essentially allowing them to do what they already could do. He said the thing that would allow them to do the added amount of sorting was the larger facility, not Conditions 5 and 6.

Pilliod explained that what was confusing was that Coun. Yuen was asking if somehow, Conditions 5 and 6 in isolation, were somehow operative to allow Miller to process certain waste streams. He said the PC order from January clarified PC's understanding of what they meant in 1996. He clarified that without Conditions 5 and 6, the CUP would allow Miller to go to DEQ and demonstrate that his proposed MRF and its activities (sorting) was compatible with the City land use regulations. He continued that DEQ could then have issued its own permit. He said if Miller had not come to the City and gone directly to DEQ, he could not have demonstrated to the DEQ that his facility was compatible with the City land use regulations. He noted that up to that time, it was his (Pilliod's) understanding that Miller's activity was limited to the reload activity that Osterberg had described, and the collection and transport of curb side recyclable materials. He said prior to these proceedings with the City, Miller did not currently engage in the material recovery activity he was proposing, which was regulated by DEQ. He reported that the DEQ required a compatibility statement from the City, which the City translated as a CUP.

Coun. Yuen said that was closer to what he wanted. He explained that he was trying to understand whether or not Miller's existing franchise agreement, and the City's existing solid waste management plan, might have already allowed him to do this. He said he understood Pilliod to have said that the construction of the facility did not allow Miller to do it, he did need to get permission from the City.

Mayor Drake reported that the City was initially approached to make an administrative decision, but they thought it needed a public hearing.

Coun. Stanton noted that the noise at the Pride facility was loud, and a different kind of noise than at Miller, and wondered if the Pride facility noise was representative of what it would be like at Miller.

Osterberg said Pride was much larger, and they accepted much more

material, and therefore more trucks were present. He said there would be similar types of noise, but the operation was on a smaller scale so the noise would be less.

Coun. Stanton reported that she read that the doors into the facility would be closed except when trucks came and went, but at Pride they were open all the time. She wondered if the trucks were coming every 20 minutes all day long, so they might as well leave them open. She noted that was a question for Miller, for later. She asked Osterberg to look up the OARs for her. She asked if Miller and West Beaverton had both done sorting and picking in 1990 and 1991, during Metro's requirement to determine the percentages of different types waste.

Osterberg said he was not familiar with that.

Mayor Drake asked if Bruce Warner knew, even though he was not with Metro at that time.

Warner said he did not.

Coun. Soth recalled that at that time West Beaverton was engaged in a yard debris program, and that had to do with a "waste audit," which went to the types of things that could be picked out. He clarified that the purpose of the waste audits was to see what percentage of any given load or waste stream would be considered a recyclable product.

#### Applicant's Presentation:

Daniel Kearns, attorney representing Miller Sanitary, noted that he had submitted many documents during the course of the proceedings and a memo that day (in the record). He noted that he did not expect the Council to read the memo at that time, but would summarize it in his comments. He noted that attached to the memo were excerpts from the City Code and Comprehensive Plan. He reported that Tom Miller was also present to respond to questions. He noted that Miller was the fourth generation of his family in the business, and his son Dean was the fifth generation, and they had a long history in the City.

Kearns said there were three issues to consider: 1) Miller's current facility which had been operating for the past 20 years, and the normal operations there; and 2) separate from that was what the City approved under the CUP in 1996. He noted that many concerns pertained to what they had been doing for 20 years, and reminded them that this was an industrial zone and facility and those uses had been part of it for a long time. He said the thing that prompted this situation was a question from DEQ, and DEQ had said it was not crystal clear: did the City mean to allow putrescible waste, and the PC answered that. He stated that option A was to answer the narrow question, and option B was how should they address the concerns they heard from many neighbors. He said the third issue had to do with interpreting the decision rendered in 1996.

Tom Miller said he was the owner of Miller Sanitary, and had come prepared to give historical background, but thought they had that. He said there seemed to be confusion about what the current activity was and what was being proposed. He clarified that they have six residential, two commercial, four recycling, and two big drop box trucks, plus two yard debris truck, run in and out every day. He reported that they usually come back two times per day. He noted they do "truck to truck transfer," and the recycling, which was already separated, was off-loaded into large bins. He stated that all the other vehicles go out and do their duties and off-load to a Metro facility, returning to his facility at the end of the day. He said the storage of recyclables were in open top boxes with some on site as long as a week, and others which were moved twice per day. He said the drivers return to the facility and consolidate the loads, and take a significant load each time they go to market. He said the reload truck which was consolidated, was emptied daily, .

Miller said one of the major issues around the whole dilemma was the putrescible waste issue. He reported that when they came to the City in September 1996, they discussed with PC what materials would go through the proposed facility. He stated that at that time and since that time, they had related to everyone exactly what the materials would be. He said in terms of putrescible waste, they knew it was a material that would make the facility viable. He stated that they wanted to be forthright: it was ugly work and an ugly material, but was not 100% of what they did; it was a component of household waste. He clarified that the sources of large quantities of putrescible waste such as restaurants, would go directly to the dump!

Kearns said he wanted to make sure that the record from before was clear, make sure they understood how the building would operate, and the impacts from it. He gave the facts which were summarized in his memo (in the record). He stated that the property was zoned light industrial, Miller's had been operating for over 20 years, and it predated the Sequoia Park Condos. He said they did not want to say that those neighbors did not have rights, but the bottom line was his client wanted a place to operate. He said if Miller violated the conditions, or if the impacts on the neighbors were too severe, the City would deal with that.

Kearns said in 1996, Miller applied for a permit for the facility. He reported that Miller convened a neighborhood meeting, even though that was not required, and several who lived in Sequoia participated in that process. He noted that at every land use hearing he had ever attended, people complained that they did not get notice, that it was flawed, but the record would show the process was followed. He reviewed several points in the record. He read from staff reports and documents in the record. He said all were present and participating the process, and if they had read the decision it did allow the processing of putrescible waste. He noted that the Council affirmed the PC decision, DEQ asked for clarification, and PC reaffirmed that putrescible waste was allowed. He said neighbors who did not live there then, or did not understand, became alarmed when they read the DEQ notice. He stated that the bottom line

was that it was important for people to have their procedural rights to appeal land use decisions, but the Council has the duty to provide that right close to the time the decision was made. He said if this action was the appeal right, it was approximately two years after Miller had worked with the process. He reported that Miller had invested approximately \$2.5 million in the facility. He noted that one clear Condition was 17, which required Miller to get a DEQ permit prior to operation.

Kearns said Miller's investment to date had been allowed by the permit. He reviewed the materials the Council had and continued to read through the report, as well as the staff summary (all in the record). He said if they looked at the interpretation PC gave, they would see that PC allowed putrescible waste as long as DEQ, Metro, or another generally applicable requirement allowed it. He stated that it might have been the case of too many lawyers, or others working on the decision, and noted that the PC statement was consistent with the permit; the current CUP allowed for putrescible waste. He noted that on April 30, Osterberg responded in writing that the City was allowing putrescible waste. He continued to review his letter (in the record).

Kearns reported that Miller followed the permit, and invested a considerable amount of money in furtherance of that, and noted they were sensitive to neighbors' concerns about the impacts, and the design of the facility. He asked for the opportunity to see if it worked.

Kearns noted that he had attached Code sections to his memo and reviewed some of them as well as the Conditional Use standards, which they had paid close attention to. He said they went to great lengths to design the facility, and said the regulations did not require it to be constructed so the neighbors would not even know it was there. He noted that he had attached land use policies (to his memo), and said that the section on Light Industrial zones had a lengthy set of standards which would be applied. He called attention to the end of his memo which listed conditions which memorialized the conditions (pages 7 and 8), and what they had agreed to all along.

Kearns pointed out the tonnage limitation, and said it was not a proposal to import 85 tons of putrescible garbage; it would be between 15 and 20 tons per day. He said the anticipated total waste stream would be 85 tons, and it would increase, up to the year 2005, to 105 tons per day, and for the foreseeable future, 150 tons per day.

Kearns stated that noise was another issue, and one of the negotiated things was a masonry wall, which Miller and the Condo owners agreed should be increased by three feet in height. He said there was substantial background noise because of Hwy. 217 and the railroad tracks. He reported that a sound study had been done in June 1996, and the background sound was 72.5 – 76.8 decibels, which was consistent with freeway-type noise. He said the loudest noise from the proposed operation would be 80 decibels, which was inside the building, which was built very tight with insulation and tight fitting doors.

Mayor Drake asked, if the 80 decibels was inside sound, what would the average person hear at the fence line.

Kearns said he did not have that information; the study was done by the manufacturer of the equipment, and at 10 feet away it was 85 decibels.

Miller said the highest readings were taken within 10 feet of a truck with a back-up alarm sounding while emptying the load.

Mayor Drake reported that he could barely hear the equipment outside the building when he was at Pride, but he knew it was a different facility than Miller's. He asked if there was a comparable facility to Miller's, both inside and out.

Miller explained that at the time they were taking the readings locally, all they were trying to do was have a baseline to measure for comparison purposes.

Kearns said the loudest sound out of it would be back-up beepers. He cited OAR 340-35-0035, which specifically exempted backup alarms from the noise test. He reported that the building was designed to comply with the standards.

Kearns noted that odor and dust were other big concerns and Hwy. 217 generated lots of dust. He said the facility would not be a source of dust or odors because of how it was constructed. He reported this was not like the Pride facility; it was a smaller and simpler facility, with a wash-down facility. He said it would be cleaned out and cleaned up every day; they would not see, as at Pride, piles of garbage around.

Kearns noted that currently milk jugs were stored outside but with this facility they would be compacted and put in a closed sealed container, so if there was any odor, they would have smelled it by now. He said this would be improved in the new facility.

Coun. Stanton asked if the container for milk jugs would be sealed when it was not full, and wondered how many times it would be opened and closed.

Miller said it would only be opened and closed during the course of loading it.

Kearns said rats and maggots were of concern, but did not think that would be a problem because the facility would be cleaned out and washed down regularly. He reported that there were usually rat baits put out and they had a contract with a professional pest control company who was certified to take care of that issue, if the application of pesticides was required.

Kearns said there was an aerial spray/misting system of water and citric

acid, to keep the odors and dust down, which could be installed if dust and odors became a problem. He said they could also install a negative-pressure ventilation system, so air would not be blown out, but instead, sucked up into a filter.

Mayor Drake asked if that was what he saw at Pride, which looked like a vent over a kitchen stove. He reported that Pride staff told him that it sucked up enough dust and debris that they have to empty a 50 gallon barrel every 1.5 days.

Miller said he thought that was it.

Coun. Soth said he thought that was more properly described as a dust collector in the bag house, where dust was coming off the pick-line.

Kearns said a general ventilation system could be installed if they needed it.

Kearns said chemical contamination was a concern, and said the entire floor would be washed down, into a cistern, not down into the wastewater system. He stated that it would not be any more hazardous than a swimming pool.

Kearns said they would not be using pesticides, but a pest control company might do it for them

Kearns reported that traffic would not increase because this would reduce the number of truck trips. He explained that as the trucks went in they would be sorted and the recyclables taken to the recycle market and instead of 15 smaller trucks going back out, the residual waste would go into a container and out in one bigger truck. He stated that Miller had purchased two new trucks for the large containers. He said they voluntarily used a route along Alger to access the site, so there would be reduced impact on neighbors, and noted that was included as a Condition. He stated that hazardous materials were a concern but the facility was not allowed to accept hazardous materials. He explained that if the pick line was contaminated, it could be stopped and cleaned out in 90 minutes. He reported that in regard to seismic concerns, the Portland metro area was a seismic three zone, and they could not get a permit without complying with the codes related to that. He said the wastewater system was all centralized and it did not discharge directly to the system, but was filtered first, so there would not be any surface or ground water contamination. He then asked Miller to describe how he designed the waste stream to minimize the putrescible waste, and how the facility would deal with the impacts.

Miller said he had covered part of it earlier, and said it had to do with preparing for operation of this facility. He reported that they had consolidated the routes (primarily for commercial customers), and developed a routing strategy which isolated those materials to the largest extent possible, and would direct them directly to a Metro facility. He

noted that the remaining materials had a much dryer aspect to them, with more materials which could be recovered. He said he thought they had probably bored the Council to tears so it might be a better process to answer questions. He said if they needed further information, he would get it to them, but this might save time.

Mayor Drake noted that Miller had originally talked about 80 to 90 tons, and now he said it would be going to 150 tons per day, which was a big increase, even though putrescible would be only part of it. He said he did not know how the Council was thinking but noted that Coun. Doyle had discussed setting some ceiling on the uses.

Miller said the primary reason was that there was no end (to garbage), and it was a limit that he was agreeing to, but if he was able to demonstrate no impact, he did not want a limit.

Mayor Drake stated that he believed Miller was a good business man, and a good citizen, but they did not know what kind of impact it would truly have. He said he was not sure how a person living next door would feel about the Council giving a maximum of 90 tons for a year or two, if they decided to give Miller a chance. He asked about a test period, since it might turn out that no one knows they are there, or it might turn out to be a bigger problem than they think.

Miller said he would be amenable to a reasonable test period, with the understanding that if he was a "good boy," he could expand.

Mayor Drake asked how much more traffic Miller believed there would be.

Miller said considering that all trucks start and end at the facility, and he had purchased two more trucks, there would be 10 - 15 truck trips daily.

Mayor Drake asked if they were talking truck trips.

Miller explained that on the safe side he would say *round trips* and say 20.

Mayor Drake said he understood that trucks were going down Griffith instead of going down Fifth Street, but that was not Miller trucks. He asked if that was correct.

Miller said that was correct, and all of his parking was on-site and off-road.

Coun. Stanton said she did not know decibels, but she did know from 72-76 currently, the ambient noise at Miller Sanitary. She noted that 80-85 for the new facility, was 10 more decibels, but that did not mean a thing to her in terms of sound. She asked if the change in intensity of decibels was the same as with seismic measurement.

Kearns said he did not know.

Coun. Stanton asked if, in 1990-91, the haulers did some wet sorting on-site to find out what was in the waste stream.

Miller said they participated by providing loads to Metro's sites, but not on their sites. He reported that they did their pilot program for two months by dumping it on the floor and picking it up by hand, which was not a good way to do it.

Kearns noted on the noise study, the 80 decibels would be inside the building.

Coun. Soth reported that when he was standing inside the Pride facility, above and adjacent to the conveyer, he was conversing in a normal tone of voice. He said you could hardly hear it at all outside the building.

Coun. Soth asked when they were surveying, whether or not they wanted to do this, had they studied MDC in Portland. He noted the machinery was identical except smaller, and reported that at Pride it was deposited on a concrete floor, but in Miller's it would be deposited directly on the "walking floor" and moved up to the pick line.

Coun. Soth asked if they would need a backhoe.

Miller said they had an articulated loader they would use if they needed to.

Coun. Soth asked if the materials fact sheet he had originated from Miller's.

Miller said it did.

Coun. Soth said tires were another issue, and he understood that they could deal with tires.

Miller explained that in a typical DEQ permit, there was a certain amount of tires permitted, but a limited amount. He said there would be some in a load and they had to dispose of them appropriately.

Coun. Soth asked if they had tires that show up in the facility, how often would they call the appropriate company to come get them. He said he was asking because there had been a concern that allowing tires to accumulate was a fire hazard.

Miller responded that if they come there they had to deal with them, and the current practice was to store them in a metal box until it was full; then they delivered them to the proper location. He said they had never had a tire fire or a mosquito problem. He noted that a load is about 30 tires.

Coun. Soth referred to the gray boxes near their back fence, and asked if those went under the pick line and received waste, or were they

compactor boxes.

Miller said they were compactor boxes. He said they had six of them and four would be in use all the time; if they were in the yard they would be empty.

Coun. Soth asked if the hours were 8 a.m. to 5 p.m., or was the general operating time 7 a.m. to 7 p.m.

Miller said there were no formal hours, but it came down to 7 a.m. to 7 p.m., as required by Code. He noted that as a matter of practicality it would be 8 a.m. to 5 p.m., 95 days out of 100.

Coun. Soth asked what time would they have to cease operation in order to do the cleanup, given the 5 p.m. time frame.

Miller explained that some of it could be done concurrently, and the last load would probably go on the line at about 4 p.m., but they needed to work it for a while to know for sure.

Coun. Soth asked what the time frame was for a truck to arrive back at the facility on its last trip.

Miller said the regular route guys were there from 7 a.m. to 3:30 p.m., so everyone would be back by that time. He said the advantage they had was they control both ends of the process, and juggled lunch breaks to prevent trucks from setting around waiting.

Coun. Soth said there had been concern expressed, about the traffic, and suggested they separated the time frame from when people around the area were preparing for dinner or quiet time.

Miller said they had tried to respect that and he thought neighbors would say they had done that through the years.

Coun. Soth asked where the putrescible waste would go after it was processed through the pick line.

Miller said it would go into a sealed gray box, and from the time the material hit the floor until it was boxed it would not stop moving.

Coun. Soth clarified that waste from restaurants and cafeterias would go directly to Metro, not to the facility.

Miller stated that was correct.

Coun. Soth clarified that there was no truck access between the wash facility, and the processing facility, such as a direct pass-through.

Miller said that was correct.

Coun. Yuen asked how the loss of the permit to process putrescible waste would impact Miller's business.

Miller said it would make it economically impossible, if he could not take any household waste. He said putrescible waste came in as a contaminate with the materials they were trying to get out. He said if they were not able to accept it, it would eliminate enough tonnage to make it not economically viable.

Coun. Yuen said in trying to reconcile the Conditions 6-B and C, in referring to domestic solid waste. He noted that in Section 5, (he read from this section – in record), it said the applicant was allowed to process putrescible waste and its components, except as authorized in Condition 5, you cannot do domestic solid waste as defined by OAR. He asked what they were authorized to do that the OAR would not allow.

Miller said the relationship with Condition 5 authorized him to accept materials processed by only his company, and then read the condition (in record). He explained that Section 6 prohibited the collection of the wholly-putrescible waste loads, or putrescible waste from any other hauler, or putrescible waste in a form that is not as a contaminant. He said it was convoluted, but he thought it was the only way the PC was able to express more clearly their intention, and his understanding, of what he was issued in September 1996.

Coun. Yuen clarified that what Miller was trying to say was the putrescible waste Miller would be bringing in, was the kind of thing people throw away in their garbage.

Miller said that was exactly right. He noted that the junk mail, magazines and other items that get into the household garbage, his company could recycle. He explained that as a necessity to get those recyclable materials, they cannot exclude this (the putrescible waste).

Coun. Yuen said one of his concerns was that there was an uncertainty about what all it really meant. He noted that PC expressed the concern that often people came before them with good intentions, but the permits go with the land, and no one could know what the next owners would do. He said they had to look at what the unintended uses were.

Coun. Brzezinski said she thought she heard Miller say the intent was to operate 7 a.m. to 7 p.m., and asked if the operation was seven days a week.

Miller clarified that it was five days per week, Monday through Friday, but noted that in their normal routine there was a one-half day route for commercial customers who could not make it through the weekend. He noted that those materials would go directly to Metro, and stated that they would not have putrescible waste available for processing on the weekends.

Coun. Brzezinski commented that what he wanted to do was characterized as doing more of what he was already doing. She asked if they currently had putrescible matter coming to the site, and noted that she understood the sorting was new.

Miller said he did have putrescibles coming to the site, but it was relatively limited. He noted that at one point in time under their previous operating permit, when the City had its own Environmental Quality Dept., they were bringing all of their residential waste into the facility, reloading it and taking it out. He said they did that for five to six years, on a continuous basis. He said he did that from about 1985 to 1992 or 1993, roughly.

Coun. Brzezinski clarified that since then, other than when they were doing the testing for the feasibility of this facility, it had been limited.

Miller said that was correct because they had gone to larger trucks so they could go directly to the Metro facilities. He noted they still have one smaller truck that makes two runs a day to the dead-ends, cul-de-sacs, etc.

Coun. Stanton said she had some of the DEQ rules regarding putrescible wastes, and had also looked up solid waste. She noticed in the land use order, under 5-A, fourth paragraph, where it said there was no limitation on the amount of solid waste that could be processed each year at that facility. She noted that solid waste was not defined, (might be in the OAR), some of the things that were allowed in the solid waste, were precluded in Section 6 of the land use order. She expressed her thought that 5 and 6 were in conflict, because according to 5, you could get all the solid waste you wanted, but according to 6, sewage sludge and septic tank and cesspool pumpings were not excluded. She said she would want them excluded.

Coun. Brzezinski noted that where she was reading from OAR, in 32-A, it said that domestic solid waste included but was not limited to residential waste.

Coun. Stanton said she was looking at 83, on page 9, division 3, which talked about solid waste, referenced in bottom paragraph on 205 of the Order. She stated that domestic solid waste was not the same as solid waste.

Coun. Brzezinski reported that she knew she had seen somewhere in the materials, that they were limiting the putrescible waste which they were bringing in to domestic, not commercial.

Coun. Stanton asked Miller if in 5-A, the fourth paragraph, the solid waste mean solid waste as defined under OAR. She said, if so, it made her nervous.

Miller said that was correct unless the City Code defined it differently, and it made him nervous, also, because he did not want to process all of that.

Kearns noted that was a good illustration of the difficulty the PC had in 1996, to make it clear.

Pilliod explained that the emphasis in the paragraph was that there was no limitation in the amount of solid waste processed each year. He said it would have to be read along-side the prohibitions, limitations, in Condition 6, and the expectations mentioned in Condition 5. He noted that in both sentences in the fourth full paragraph of 5-A, it referred to the amount of solid waste, without identifying any particular components. He stated that the definition of solid waste was as broad as it could be. He explained that the components that were listed in 6 that represented the prohibitions, and the exception language, and the lead phrase in the beginning of 6, referring back to 5, specified how those prohibitions could be accepted.

Kearns said the Council would hear many people testify about their concerns, and he did not want them to lose site of a few things. He noted that the permit was issued in 1996, and their efforts and a big investment: the facility, reflected Miller's intentions. He stated that the CUP was very enforceable, and by making the conditions explicit, it would be enforceable. He said if there was a problem they could not fix, the City could close them down and they would be out of business.

#### Testimony in Support:

Bob Lanphere, Jr., 12520 SW Canyon Rd., said he had a business in downtown Beaverton. He said he could see large impacts on both sides of the issue. He noted they were being asked to act on a CUP that was already approved, and the Millers had complied with their commitment. He said the City needed to look at all the issues, including the possible recalls, and the fact that the businessman was being viewed as the bad guy. He stated that Miller had a "maybe yes," and asked the Council to deny the appeal, and let Miller go forward.

Coun. Soth said that what Lanphere had described had more to do with any possibility of a legal action when the issue had been decided. He said he failed to see how that addressed what they were trying to determine that evening, which was whether or not the facility should be allowed to process recyclable material including putrescible waste.

Lanphere stated that had been addressed in 1996. He said that night he thought they were going to make a ruling regarding the land use approval. He clarified that was his understanding of what was happening that night. He said they had a motion for an appeal for the permit. He expressed his thought that they had to decide if they would accept the appeal, and then go forward and require the business person to go through the process again. He stated that he thought the Council would allow the appeal to go through, but asked them to deny the appeal.

Elaine Spalding, representing the Beaverton Area Chamber of Commerce

(Chamber), said the Chamber was asked to take a position so they met with the NAC groups and Miller Sanitary. She reported that the Chamber's decision was to uphold the PC and noted the Sanitary business was a long-time business, with 28 employees, who had operated on Alger Ave. since 1978, and a business in the area since 1904. She read her letter (in the record).

Coun. Brzezinski asked Spalding to clarify how close the Chamber was to the facility.

Spalding said it was on Griffith Drive.

Coun. Soth asked if they had discussed the issue of the effect on the Taste of Beaverton.

Spalding said the issue of a local business would not have a negative impact.

Charles Pritchard stated that he believed in recycling and trying to improve the environment. He said the majority of the voters would like to see this facility

RECESS: Mayor Drake called for a brief recess at 10:10 p.m.

RECONVENED:  
The meeting reconvened at 10:25 p.m.

Testimony in Opposition:

David Bennett, 1300 SW 5<sup>th</sup> Ave. Ste. 3500, Portland, 97201, said he represented the 132 Sequoia Park Condo Association members. He stated that he would not go over the history, but gave a brief review. He said the application came to the City in 1996, and it did not say putrescible waste. He noted that staff report also did not mention putrescible waste, and neither did the order, except to prohibit it. He recalled there was discussion in the record, but it was their position that the residents and citizens had a right to rely on what the order said. He said the PC might have felt they knew what they were saying, but the DEQ did not know what it was saying. He stated that the language said that "if otherwise required by law, no other waste shall be accepted unless specifically authorized in writing by the DEQ and/or Metro." He reported that DEQ looked at the permit and asked Miller what he was going to have at the site; if he was going to have putrescible waste, the permit did not allow it. He noted that a CUP was required for that zone, and none of the outright permitted uses would allow the kind of use Miller had requested.

Bennett stated that Miller had been there for many years and the application was for a recycling center, zoned light industrial which did not permit putrescible waste. He reported that it had not been a recycling center in the past so the CUP was required by City ordinance. He stated

that the 1996 PC order did not permit putrescible waste, and also conceded that the Council had the power under their ordinance to permit putrescible waste. He said when it went before the PC for the second time, they made matters worse for his client (Sequoia Park Condo Assoc.), than if they had said putrescible waste in the first place. He said they also took away a lot of things, not the least of which was the language which said "the applicant is authorized to accept and process domestic solid waste," which he said included all kinds of stuff. He recalled Miller saying that putrescible was a nasty word for nasty stuff. He reported that Miller had suggested that only waste collected from Miller Sanitary, would be acceptable on the site. He called their attention to the language added by the PC, which read, "the applicant was authorized to accept and process domestic solid waste and its putrescible components," which he noted did not limit it to waste collected by Miller.

Bennett said this was an expanded and new use, which would have adverse impacts on 132 homes, including homes across the street. He stated there had been no attempt by staff or the PC to protect the area from the impacts on the neighborhood. He noted that Kearns wanted them to believe that the burden was on the neighbors who object, but he said he believed the burden was on the applicant, to demonstrate why there would be no adverse impacts.

Bennett declared his clients did not want putrescible waste; they did not think putrescible waste was a use in the area; they probably would permit a recycling facility if it did not have putrescible waste, and said there were other places putrescible waste could go. He said it was a balancing test the Council needed to look at: how were they going to protect their businesses and neighborhoods. He stated that he thought Miller was "hoisted on his own petard," if he was saying that he came into the City, got the CUP, and built the facility on that basis. He reiterated that Miller did not say anything about permitting putrescible waste at the facility, and Mr. Sullivan, who was one of the most pre-imminent land use lawyers in the State, also did not mention putrescible waste. He stated that later on they came back and said, "oops," when they had this incomprehensible sentence.

Bennett continued that he did not think that in the first instance it was apparent to those who lived there, that there would be putrescible waste. He also noted that people (including himself) did not understand what putrescible waste was. He expressed his belief that the PC may not have known what it meant earlier, but they did now, as did everyone involved.

Bennett declared this was not the place for putrescible waste; there were other zoned places which were more appropriate. He said Miller had been making use of the property, and was not forbidden from using it as a recycling center. He noted that was a statement about 15% being putrescible waste, but Miller had stated earlier that it was 25%, but it was hard to tell what it was. He said the neighborhood needed to be protected, and suggested Council put conditions on the permit because it was currently overly broad. He asked for an 85 ton maximum, and with

respect to the putrescible waste, there should be monitoring devices. He recalled that Kearns suggested some restrictions, which he viewed as overly-broad.

Bennett read Condition 10, (in the record), suggesting there be closed drop boxes, and discussed additional screening, of which trees should be a condition. He suggested that odors should be controlled by a "bag house;" and that there should be restrictions on where trucks should be parked. He stated that often people apply for a permit and say how they intend to operate but those intentions were not written into the permit, and asked that those intentions be written in. He agreed with others that Conditions 5 and 6 were confusing. He acknowledged someone could throw in a tire or paint can and Miller's would have to deal with that, but those things listed in 6 should be precluded.

Bennett said the Pride facility was in a completely industrial zone, but Miller's was within a housing community. He stated that it appeared that the chief planner for the City did not know the definition of putrescible waste.

Bennett noted that his clients were not opposed to a recycling facility but did not want putrescible waste. He said the impacts on the neighborhood would be sizable if putrescible waste was allowed. He stated that he did not think they should be able to just use a facility because it was there. He noted there were 14 conditions, and they had moderated and added to them with such things as: a negative-pressure facility to control odor, something to control the dust, equipment cannot be parked in certain areas, that putrescible waste not be stored on the site overnight, that the hours be weekdays only, and operated not longer than 8 a.m. to 5 p.m., somewhere between 80 and 100 tons was a reasonable amount as long as it did not contain putrescible (if they decide to allow putrescible, there should be a substantial restriction on the amount of putrescible), all drop-boxes have to be closed, some kind of monitoring devices, some kind of reporting requirement, and some trees added for screening. He said those were the primary conditions they wanted to make.

Bennett summarized by saying the permit allowed a recycling center, not putrescible waste. He suggested there be consideration for the neighborhood: 132 condo homes.

Coun. Brzezinski asked about monitoring devices.

Bennett explained that light, noise, and odors could be monitored. He said there should be some reporting procedures for operation outside of the specified hours, and such things as vectors, rodents, bugs and seagulls.

Coun. Brzezinski recalled that she had heard a maximum tonnage for the total, and asked what his recommended maximum tonnage was.

Bennett recognized that Miller had been estimating the tonnage, and said

he was not sure about saying that if Miller did a good job, they would allow more tons.

Coun. Brzezinski noted that Bennett was not associated with the Condo owners between 1985-1993, but wondered how he responded to the fact that there was putrescible waste onsite at that time.

Bennett said they thought it was a transfer facility. He recalled Miller had said he brought putrescible waste there when he used smaller trucks and compacted it.

Coun. Yuen said the original land use order should have been modified to omit a paragraph or use alternative language.

Bennett reiterated that the Planning staff did not know what putrescible meant. He stated that he thought the PC, looking at statutes and the OAR's, should have to look at all the interpretations.

Bennett stated that his suggested language was to be "no putrescible waste." He said Miller's was a recycling facility.

Coun. Soth referred to Section 99 of the Code which did not say "would not have any adverse affect;" it did say "can be made reasonably compatible," which was a vast difference.

Bennett agreed with Coun. Soth and said it was a balancing test.

Coun. Soth noted that he wanted to correct something, and reported that Pride did separate household putrescible waste in their facility. He noted that was one of the reasons he went there because they were one of the few places in the metropolitan area which do that. He also noted that Bennett had said that the PC did not mention putrescible waste. He read from the partial transcript (in the record) of the September 18, 1996, meeting, (on page 141, of Book 1 of the exhibits), where Steve Donovan (PC Chair) was asking Miller questions. He read the portion where Donovan clearly asked if Miller would process putrescible waste, and Miller responded that it would be residential but not commercial. He also said that in the case of Pride, as explained to him when he was there, the procedure was much the same as Miller had described in his proposed operation. He explained that the material which was not picked out to be recycled, was put into a container and sent to the landfill. He said Bennett had mentioned that noise could be heard on the video, and reported that he was standing approximately where the video was located, and he had no trouble conversing in normal tones.

Bennett responded that he had understood from his client that Pride was not processing putrescibles. He said with respect to the materials from the PC, he believed what he had said was that neither the application nor the order said anything about putrescible waste. He expressed his belief that part of the problem was PC had a discussion about it, but wrote an order which did not permit it. He stated that he felt his clients had the

right to expect to be able to rely on the order. He noted that was why they were appealing, and the Council had the authority to decide now.

Coun. Soth stated that as to the proximity of the facility to Bennett's clients' homes, he had paced off the distances and at the end of the building, it was 75 feet from the property line. He noted that from there to the nearest building, there was a 20 feet landscape area, 50 feet of pavement, and another 15-20 feet of grass. He noted that from the end of the wash area to the nearest neighbor was approximately 150 to 160 feet.

Coun. Stanton said she was looking at page 5 of the PC minutes from September 18, and thought she had heard Bennett say something so she was going to ask. She reviewed what the minutes said regarding the materials Miller said he would bring in to the facility and that the waste that could be recycled would not remain on the site overnight. She noted that the word putrescible was not mentioned in that section. She asked Bennett if he had said that was not discussed at PC.

Bennett said he did not say that; he had said it was discussed, but it was not in the order, and that was what remained. He reiterated that Miller got a CUP that did not allow putrescible waste, unless you could "parse" that sentence.

Mayor Drake clarified that he had suggested that if the Council authorized putrescible waste, there should be testing to see how it would work, which Miller characterized as being "a good boy." He said Bennett suggested that Council impose the tonnage and go forward, and if there was reason to revoke it, do so, but otherwise don't have a trial period, and asked if that was correct.

Bennett replied that what he was concerned about was the tonnage, and explained that he understood Mayor Drake to suggest that they should have it at 85 tons now, see how it operated and if everything was copacetic, then give them 110. He said it seemed that procedurally, they ought to approve a tonnage limitation now, and that would be the CUP, and then they could come back and ask to expand it later.

Mayor Drake recalled that over the years, the Council had granted licenses on various things, with the idea to see how they really do. He reminded them of a billiard parlor which adjoined a neighborhood only by a bikepath, and the neighbors thought bad things would happen. He said that nothing bad happened and there were no complaints a year later. He explained that he was not set on 90 tons, but whatever the tonnage was, they could have a period of time to see how it worked. He said the reason he was sticking to the present tonnage, was why should they subject neighbors to 150 tons over a year or two, if there were problems. He asked if Bennett was also suggesting 8 a.m. to 5 p.m. only for putrescible waste, or for all activities.

Bennett said he understood that the trucks would leave at 7 a.m. to start

their routes which they could do now. He suggested that with respect to the recycling facility, they could have a condition to not do putrescible waste and if they did allow it, the putrescible hours should be 8 a.m. to 5 p.m., five days a week.

Mayor Drake noted that vector control and the boxes were good ideas that would deal with some issues up front, which he would be comfortable requiring.

Henry Shafer, 5470 SW Alger, #A-1, Beaverton, remarked that he was surprised that no one had commented that there were no houses in sight of the Pride site, which sat on 11 acres, next to a chemical plant in an industrial area. He said Bennett covered most everything. He recalled that the comment had been made that no one appealed at the earlier meeting, but stated that none of the other owners, except for two, got notices that there would be a hearing. He said when it came up in the summer of 1997, it was the first he had heard about it, and he began asking questions of the neighbors.

Shafer said that as for the clarification that DEQ asked for, Miller's lawyers in the letter to PC, inserted words or sentences that indicated that Miller did intend to process the prohibited items in Conditions 5 and 6 of the CUP. He stated that the PC modified the application to accommodate the request, and did a 180 degree turnaround; voted approval of all prohibited items. He commented that the Council was being asked to approve a totally different business, with no restrictions on any type of solid waste garbage. He said it was a new land use proposal than was originally submitted. He declared that if the Council approved this, the owners of Sequoia Park would be directly negatively impacted and suffer loss of the their property values, as well as degrade the neighborhood. He asked the Council to reject the contrived order and approve the order as originally written. He said the possible sale of Miller's company was of concern; there would be no control of what he had asked for.

Coun. Stanton noted they received correspondence from residents Roe and Bauer, who attended the meetings, so people obviously got notices.

Shafer said only two or three got notices, out of 132 notices.

Coun. Stanton noted that the notices were sent to the owner listed on the last year's tax statement, which she knew could be a problem.

Shafer said they had 43 resident owners.

Coun. Stanton noted that the other 90 would go to the owners, not the renters.

#### Additional Testimony in Support

Lynne Storz, Solid Waste Management Coordinator for Washington County, and in that capacity was responsible for recycling and solid waste

program planning, solid waste rate setting, the regulation of landfills and 26 franchise solid waste collectors, of which Miller Sanitary was one. She explained what re-load facilities meant to the solid waste system, and said there were three transfer stations. She noted that the problem for many was they were not conveniently located to the transfer stations, so when they look at collection rates, they look at the costs of collecting from homes and businesses, and also transporting the material to transfer stations. She explained that reload facilities help with costs by smaller trucks dumping into larger trucks, and since there were no plans for new transfer stations to be located in Washington County, a reload facility such as Millers' s was a cost savings. She stated that the County's position was to support such facilities.

Coun. Soth asked if the County had any suggestions in terms of limitations on these things.

Storz noted they had their Solid Waste Ordinance and the Metro franchise agreements, as well as the County land use requirements, were what would be used to determine locations. She could not recall anything that pertained to the operational aspects of reload.

Coun. Soth asked if they found vector arriving in drop boxes at the facility.

Storz said she had never seen any vector of any kind at that facility.

Coun. Brzezinski said she thought Storz said that the County supported them because they have cost containment for all rate payers. She noted that she could understand that if they accepted waste from other companies, such as an Eager Beaver customer, she would not see a rate increase.

Storz explained that the cost would be shared across them all, and it should stabilize the costs.

#### Additional Testimony in Opposition:

Megan Laidlaw, 5478 SW Alger #D-4, said she had some points she wanted to make as follows: 1) it was a new facility use, a separate operation and there would be a great deal of truck noise. She noted that the noise at Pride was much greater, as compared to the existing noise at Sequoia. She reported that she visited the Pride facility and spoke with a manager there. She said he told her he was mostly processing dry materials on his sort line. She stated that the primary function of wet-load sorting was reloads, and he said he had chosen to not process domestic solid waste. She noted that Pride was in a large industrial area, with a larger facility, but the machinery was virtually the same.

Laidlaw stated that in a perfect world there would be no processing of putrescible or solid waste at Miller's, but that was probably not going to be the case, so she felt there should be some strict conditions. She noted that it was not common for these facilities to locate in densely populated

areas or near homes. She said there should be no on-site storage of materials sorted from domestic and/or putrescible waste streams. She stated that it was her understanding that initially 55 tons of domestic solid waste would be processed on a daily basis. She reported that Miller had said that 40% of solid waste was putrescible waste, which was not her opinion; it was a fact. She said they would significantly reduce the impact on the neighborhood if they limited the incoming daily tonnage. She declared that if Miller initially said 40 tons, it would increase, and no matter how well he ran the facility, it would be noisy, smell, and attract vector. She expressed her hope that the Council would give careful consideration as far as restrictions.

Coun. Brzezinski expressed her surprise that people were talking about limiting the amount of tonnage, as opposed to the amount of trucks, and asked if the issue was really the tonnage processed.

Laidlaw explained that it was the tonnage, because the facility could grow through the purchase of additional franchises. She said if they did not have a reasonable limit, it would be attractive for a Waste Management Corporation to come in and buy them out.

Coun. Yuen asked if Laidlaw had any other concerns or conditions she wanted to mention.

Laidlaw said better hours of operation would be 9 a.m. to 4 p.m., which would be restrictive, but they needed to keep in mind that it was not a normal site.

Steve Nagel, PO Box 1818, Beaverton, said was a business owner and owned two properties there. He expressed his concern about pest control, it was not elimination, they would be driving the pests to the neighbors. He said he had not heard any offers of pest control for the neighbors. He expressed his concern about property values being negatively impacted. He noted that in the video, he saw putrescible garbage on the floor at the Pride facility and the loud noises from the machinery were like the noise of building a house, except those noises would not go away. He commented that he did not see how Pride was comparable since it was one-half mile from any residence, but Miller's was 75 feet. He said there would be hazardous waste because you could not control what people put in their garbage. He noted that when he purchased the property he saw it as a neighborhood on the way up, and he saw this as a negative impact on his investment.

Nagel said the original permit was for construction-type garbage to be processed, and without any further notification to the neighbors, it was changed behind closed doors, to putrescible waste, without due process. He stated that Miller knew that the putrescible garbage was not included when he built his facility, so why should the permit be changed now. He declared that if the Council was not going to stick with their Goals, maybe they should remove them (from the walls). He said no one present at that meeting would want to live by the facility, or knowingly purchase property

next to such a facility. He stated that the ordinances and the Comprehensive Plan were supposed to protect the citizens, but the protections had been violated. He said they should do what was right for the community; it would be an impact on 10,000 people, 10,000 votes, for one business.

David Branch, PO Box 98, St. Helens, OR, suggested they picture the metal facility, with the doors closed and people up in the air working on the machinery of the pick line. He thought it would be too hot, and asked for a response from Miller.

Mayor Drake explained that under rebuttal Miller could answer questions.

Branch said he was concerned. He recalled that in the original CUP it stated that unless DEQ authorized certain conditions, Miller was prohibited from processing domestic solid waste. He noted that Miller applied for a building permit and did not have a DEQ permit at that time. He suggested the Council should deny permission to process domestic solid waste. He noted they had heard that he was going to reload, and that Metro was going to lower their tip fees. He recalled that Miller and his attorney said they would fix any problems, but wondered what the guarantees were that he would be able to fix anything. He asked Council to ask Metro if this facility was allowed, would it (Metro) allow other such facilities to be sited in other neighborhoods.

Coun. Brzezinski asked if he was a property owner.

Branch said he was just an interested participant.

Cathy Wilson, 5476 SW Alger Ave. #3-C, said she was an owner, and that they could hear the sound and could see what was going on at the Miller site. She reported that she also, looked at the Pride facility and stated that it was very loud and with that much noise they would not be able to keep their windows open. She reminded Council that she lived here, was a taxpayer and part of the community. She expressed her concern that they were thinking about allowing such a facility that would be so offensive right next to her home. She said this was their (the Sequoia neighbors) community, they used the businesses, made this their home. She called their attention to the fact that Miller was not taking Beaverton trash and working to make their community better; Miller was taking trash from the Portland community. She stated that the facility will smell, with the smell just hanging over the neighborhood, and expressed her concern that this would be setting a precedent; if so, it was not just their problem.

Carol Hendricks, 11650 SW 13<sup>th</sup> St., registered her "No," with the sign-up card, but did not speak.

Fendall Winston, Box 112, Corbett, said he had a investment with some of the condos, and had some tenants who bought houses there. He stated that he had watched what was happening, and could not argue

about the trucks and traffic, but would like to see Alger blocked off. He suggested a tree in the middle of the street, which would reduce traffic, and said he wanted no heavy truck traffic down the street.

Andrew Boone, Manager of Griffith Park Athletic Club, stated that their membership base represented a large body of citizens, and they were concerned about the negative impact on the neighborhood. He suggested they should focus on pages 6 and 7, and read from the second paragraph of page 7, which indicated the amount of putrescible waste would be small. He agreed with Bennett that it should not be the burden of the citizens to prove there would be no problems from Miller Sanitary. He likened it to giving candy to a child and asking them to behave. He said he supported Mayor Drake's idea of a trial period. He stated that if there were going to be permanent impacts on the community, the Council should deny the CUP. He noted there was nothing, which said that a resulting capital improvement would be taken care of by Miller. He said it was difficult a situation, and requested on behalf of Griffith Park Athletic membership that if they could not deny the permit, that they could move ahead and mitigate problems proactively. He suggested they set up conditions, specifically Conditions 8, 9, and 10 so there was a monitoring system, and a policy "set in stone."

Gene Rhoades, 5484 SW Alger #5, stated that they had a big problem which would cause them to all be losers in the end. He referred to a letter from 1/30/98 (in record), exhibit A, top of page 6, and noted that a point was raised that it was the first time Sequoia Park and other neighbors had raised the issue despite several previous meetings. He stated that the reason why no one had addressed the issues was simple. He told Coun. Stanton that he was not notified by the City of anything going on with reference to the CUP and Miller Sanitary. He stated that he became aware of it when he was walking, from a sign the City had posted. He declared that the City had notified him or 132 other people living there. He said they might have notified the owners of record for a few, and noted that he had been an owner of record since 1993.

Rhoades stated that the reason it was not appealed before, was because the Order clearly said no putrescible waste would be allowed. He said he was not the only one who felt that clarification was necessary; Miller's attorneys and the DEQ both asked for clarification. He said the zoning was light industrial, the most intense in Beaverton, so what? He stated that it did not clearly allow the processing of putrescible garbage; if it did they would not have the CUP process. He said he did not know why people were stuck on the zoning issue; it was a non-issue.

Rhoades said someone stated there were no complaints on the facility, but Miller himself, said he gets complaints and always says they are the fault of the other business. He noted that smell and sound do not respect property lines, they go where the wind blows. He said the facility did not belong in any residential neighborhood or situated next to commercial properties, and it would be a stigma on the neighborhood and City. He stated that he had been in the business of property valuations for 20

years, and if this went through he would have to find another place to live.

Mayor Drake noted that Rhoades had sent seven letters to PC about two months prior to the PC hearing in September 1996. He commented that he did not see Rhoades listed as anyone who attended the hearing of the PC.

Rhoades explained that he had asked to be on the notification list, but had never received any correspondence other than the letter saying putrescible garbage was not allowed.

Ralph Kellenbarger, Alger St., Beaverton, said he was a renter who lived as close to the south door as anyone there. He said someone had said it was about 75 feet to the fence, and that would make him 58 yards to the south door, since to his fence was 33 yards. He noted that they had added three rows of bricks to the wall, and he was six feet tall and could see over the top. He reported that the new building had cut off his view; he used to be able to see up to the West Hills from two windows and a deck, but it was now not very livable. He reported that the noise from Hwy. 217 was a dull roar, not a bother, but the noise from next door was a bother. He related that one of the girls he tutored said they used odor scrubber systems from the sewage plant. He expressed his appreciation for the Council holding the hearing and listening to the neighbors.

Coun. Soth noted that their distances almost coincided.

Rosalie Randall, 4758 SW Tucker Ave., stated that they would be trying to monitor a lot of things that could not be monitored; such as pesticides that travel for miles. She recalled that about 10 years ago, a dry cleaners bought tanks for their chemicals, but they leaked, and said she did not think Miller's containment tank had been tested out. She declared these things were too expensive to fix. She also related the problems of various chemicals reacting when they were allowed to mix, and gave some examples. She expressed her concerns about people putting hazardous waste into their garbage which would end up being sorted at Miller's. She asked if she became ill, how she would know what caused her illness; how would she prove that spray from Miller's was affecting her. She said it was not in the best interest of Beaverton and asked the Council to deny it.

Henry Kane, 12077 SW Camden Lane, commended the Council for individual investigation, industry, diligence and precise questions. He stated that among the points established was that there had never been any garbage processing at the Miller facility. He requested the record be kept open for seven days after the hearing was closed. He suggested that outside counsel would be helpful to the Council because this was primarily a legal question. He stated his belief that during the executive session Pilliod may have told the Council that under state law the City could not allow a land use unless that use was allowed by the Comprehensive Plan, and development code. He reported that Pilliod's memo said in substance that a MRF was not mentioned.

Kane stated that the fact that an area was industrial did not mean that anything could go into it. He claimed that it raised what he called a "class warfare issue." He said the area was working class, middle class, some were rentals, and the question he raised was "What consideration would be given to any proposal to put this type of facility in Murrayhill, Highland Hills, or any other upper income area?" He declared all they had was misinformation, and the record on appeal contained the flyer Miller sent out. He stated that a public body did not have to give notice, but if it did, it had to be accurate, and the mail notice did not say anything about putrescible garbage. He suggested that if Miller spent \$2.5 million, maybe the City should look to see if Miller's permit should have cost him more. He said he thought the limit for tort law, against a public body was \$300,000. He remarked that they were talking about costs and cautioned them to remember the heavy costs if the Taste of Beaverton vendors closed down. He declared that at the least, the street dedication should be taken care of. He noted that Lynne Storz did not live there and would not be adversely affected. He stated that this issue would be litigated.

Scott Andrew, 5275 SW Lombard, said he had just received the notice (the past week) and thought it should be extended to 1000 feet. He reported that he went to the City and got a packet of information regarding the issue, and the City employees were great and very helpful. He said he was concerned about noise from the on-site operations, and felt the higher decibel noises would be for longer times. He expressed his concerns about rodents, odor and traffic, and suggested they designate traffic routes and hours of operations. He also suggested they build a sound barrier along Alger Street, set a limit to tonnage, and put it in writing that they would not take restaurant or cafeteria waste.

Andrew commented that Miller had seemed to be a responsible owner who was concerned with the needs of the neighbors. He suggested a one-year trial operation, with three, six, and 12 month reviews to allow addressing of issues. He stated that he came to the meeting to violently oppose it, but did not think that was necessary. He said he thought things could be worked out, but noted he did not want to live next to Camas.

Rodger Cutler, 14660 SW Walton Ct., said he did not want to speak, but expressed his opposition.

Patrick Brunett, 4600 SW 75<sup>th</sup> Ave., said he was representing the Raleigh Park Neighborhood Association, which was officially opposed to the development, and specifically the processing of putrescible waste. He stated that in recent months the PC had turned in a disappointing performance, and turned a deaf ear to the dozens of people who spoke. He said processing putrescible waste was a bad idea, and would still be wrong 10 years from now; it was not a visionary use for the neighborhood. He stated that Tom Miller was a reasonable fellow, and they were not trying to put breaks on his business. He commented that in comparison with the investment of the homes in the area, it was outweighed by at least ten-fold. He said the Council might feel that some

neighborhoods were more valuable than others. He declared this would decrease property values in the area, across the street and for several miles, and also reduce the desirability for businesses to move to the area. He stated that he wanted to echo all the previous speakers in opposition to putrescible waste in the area.

C.J. Bennett, 11320 SW 13<sup>th</sup> St., said she was a home owner and current VOSE NAC Chair. She stated that they felt very deceived and thought it was going to be a recycling center like the one at Denney and 217. She said West Beaverton Sanitary already had many trucks going through there and the area would not accommodate the traffic. She referred to the goals and said "Preserve our sense of Community," did not include garbage.

Sandra Bertrand, 11775 SW 12<sup>th</sup>, Vose NAC board member, said in response to the statement of no concern of negative impact on The Taste of Beaverton, she disagreed. She expressed her belief that the Taste's main value was not a fund raiser for the Chamber, but an event to encourage community involvement and unite people. She stated that she did not want her statement to be negative or a personal attack, but felt she must point out that she was very disturbed that her opinion had become that many City staff members were showing her that they were pitifully uninformed and unprofessional. She said the decision to be made would have long-term impacts on the City. She said she appreciated some of the City staff's questions and signs acknowledging the importance of the rules affecting the City. She disagreed with the PC decision that the CUP complied with the Comprehensive Plan. She said it was her opinion that processing raw garbage went against the livability goals of the Comprehensive Plan. She said as far as THPRD having no statement, it was not a statement that the facility would have no negative impact. She remarked that as to the noise in the area, Miller's sounds were loud and disturbing, compared with Hwy. 217 which was to her like the ocean, and in a bizarre way, soothing background noise. She said as far as the site being light industrial since 1981, that was a relatively short time in the scope of Beaverton.

Bertrand pointed out that the planning process had already begun to rewrite the zone codes, specifically to expand the size of the central Beaverton district, referred to as a regional center. She said if the site became a garbage sorting facility, it would be a regrettable negative on the City's future. She stated that if they must approve it, she suggested they should stick with the regulations, stated in the CUP, not what the PC changed. She reiterated that in her opinion it did not belong there; no household putrid waste did.

Steve Aschenbrenner, 5425 SW Lombard, said he had lived there since the early 1970s, and was concerned about the operation. He reported that when they met with Miller, he indicated that if an alternative site was available, he would relocate. He declared that this clearly was not a proper site for Miller's business. He expressed his concern about the affect on property values, which could be reduced by up to 50%. He

explained that based upon comparison of condo values today, with Section 8 apartment values. He stated that if this happened because of the Council failing to obey their goals, Sequoia Park should be able to look to the City and Miller for some kind of financial compensation. He said he was concerned with truck trips and beeper sounds (backup alarms), and noted there would be 40 beeping sounds every day with 20 trucks backing up twice each. He remarked that if the number of trucks increased 60%, that would be a truck beeping every 7.5 minutes! He said there was no reason that other sites could not process Miller's waste.

Paul Schnackenberg, 5486 SW Alger, H-8, said he was concerned about wastes which were odorless because of microbial action. He stated that he had heard that odors could be controlled, but he had not heard what chemicals would be used or that they would be controlled. He said that was a concern for him because he had a respiratory condition where if he were 200 feet from the south door, and putrescible wastes were going to be processed, he would move. He explained that microbes which do not affect people who have normal healthy lungs, do affect him, and also children would be affected. He said he would not want to have a child exposed to this kind of intentional airborne pollution, or the elderly who are more susceptible to disease. He said he would like the issue addressed, and would like some expert opinion to answer the question of what the hazards were of the airborne pathogens. He asked for some type of monitoring.

Coun. Brzezinski asked about the agencies they go to for the Facilities Review process; would they be looking at the issues of any microbes involved.

Mayor Drake said he did not know of any such review at Facilities Review.

Coun. Stanton said she thought in cases like that they could call in OSHA.

Mayor Drake noted that OSHA was for workers' safety and he did not know if they would look at this situation.

Osterberg said the only agency he thought would apply would be the Washington County Health Department.

Bruce Warner, Director of Regional Environmental Management Metro, 600 NE Grand, Portland, thanked them for reminding him of why he is not in local government land use anymore. He stated that he wanted to remind them in terms of Metro's position, and their role in regulation of these types of facilities. He noted that this was a contentious issue, but went on the record that he did support the activities proposed by Miller in his CUP application. He said those activities would help them get to their state mandated goals of 50% materials recovery by the year 2000. He noted that the region had established a 52% goal and the last count they had from DEQ, the region was at 42%. He reported that in their

discussions with Miller, he had always said he wanted to get into mixed and putrescible waste. He said Lynne Storz had said earlier that Miller was continuing to expand his business with larger trucks which was important because commercial vehicles could be there in the middle of the night. He stated that he supported the activities proposed by Miller, but the City had to determine if it was appropriate for the site. He said Metro would continue to work with Miller so that he will stay in compliance with Metro's code. He reported that their permits look at dust, odors, noise, etc. He stated that it was his desire that his staff work closely with the City staff, and any specific conditions the City imposed, they would put in their franchise. He noted they would work with DEQ and make sure they were not overlapping, and were being complimentary with the conditions they imposed. He stated that this discussion should have happened a year and a half ago when Miller applied for the CUP.

Coun. Yuen asked about their enforcement mechanism.

Warner stated that it was based on complaints, and in their franchises it was a progressive discipline approach. He explained that they would tell the operators the types of things they needed to do, and for example, if they had odor problems, they could come up with standards they would monitor.

Coun. Yuen said the City had some problems with a certain state agency to try and get something in compliance. He expressed his concern that if their enforcement took years and ended up being a multi-year process, it would not be serving the citizens.

Coun. Soth asked how soon after they received a complaint did they act on it.

Warner responded that it depended on the type of complaint; if it was a health related hazard or violation of law, then they were very prompt. He explained that if it was something like an odor complaint, they would talk with the complainant to see when the best time would be to investigate, and usually they got out within a couple week period.

Coun. Soth asked if there were other facilities in the Metro area besides Metro and Pride who were either performing the function or talking about it.

Warner noted there was a lot of interest in doing the same kind of recovery, and Pride had been the leader. He stated that Miller was on the cutting edge, and Willamette Resources would like to get into it also, as well as Waste Management of Oregon and others.

Coun. Stanton said Warner said they had talked to Miller about a franchise agreement, and she wondered what that was for.

Warner said it would be for this operation.

Coun. Stanton said, regarding a reload facility, obviously currently in the trucks he was using, Miller could spend most of his time reloading his own equipment. She wondered if, once he was franchised as a reload facility, could he reload for West Beaverton or some of the other smaller sanitary services in the area.

Warner said they would have to authorize him to take other haulers into the facility, which was one of the biggest reasons the City should think about tonnage limits.

Coun. Stanton said this could be a "slippery slope" if it was not monitored.

Warner said Metro had the same concerns that Coun. Stanton had, which was one of the reasons they were looking at all of the other facilities he had described. He said they were making sure they had limitations on them, to make sure they did not become de-facto transfer stations.

Coun. Brzezinski asked if any of the other companies who were either doing it or thinking about it, were located like this.

Warner said he did not believe any of them had residential development as close.

Tim Spencer, Environmental Engineer with DEQ, said he would answer questions they might have.

Coun. Soth asked where DEQ sat in terms of overseeing proper operation of such facilities.

Spencer said those were issues addressed in the draft permit, and received numerous comments at their public hearing. He reported that they anticipated making numerous changes if this whole thing went forward. He stated that a facility like that could not encourage vectors, they had to be eliminated and controlled. He said they could enforce the permit.

Coun. Soth said one of the questions was when DEQ was checking on this type of thing, did they call the concerned facility and tell them they would be out or would they drop in unannounced.

Spencer said they might conduct an inspection either way, and noted they do not do inspections on this type of facility very often. He said DEQ was responsible for all landfills and waste facilities in the state.

Mayor Drake said to stretch resources, it seemed like they should team up with Metro and have periodic inspections. He expressed his concern that they (DEQ) did not have time to do it all, and he hoped the agencies would work together and combine resources.

Spencer reported that was occurring in the Metro area. He noted that they would get a periodic inspection, but it could be as infrequent as

every two years.

Coun. Brzezinski asked if she heard him correctly, when he said they would be looking at substantial modification, if it went through.

Spencer said that was correct. He explained that they would look at dust and odor control, and even more specific, what would have to be accomplished and when. He stated they were contemplating more concrete and specific conditions.

Coun. Brzezinski noted that it would be some time before they could do that. She thanked Spencer for waiting that late to testify.

#### Neutral Testimony

Nell Langeluttig, 12470 SW 1<sup>st</sup>, Suite 201, stated that their (Central Beaverton NAC's) position had been misquoted and that neither Sequoia Park nor Henry Kane were authorized to represent Central Beaverton. She stated that Central Beaverton NAC did not support or opposed Miller Sanitary. She noted that they all knew that curb-side recycling was insufficient to protect the environment. She read from her letter (in the record). She noted the many errors they saw in the process. She said they questioned whether Miller was wise to build before he had a permit from DEQ.

Coun. Yuen thanked her for the comments, and said it was sometimes the perception that politicians don't want to be told when they were wrong. He said he appreciated her courage to come in and speak her thoughts to the Council.

RECESS: Mayor Drake called a brief recess at 1:18 a.m.

RECONVENED:

The meeting reconvened at 1:25 a.m.

#### Rebuttal

Kearns said he did not mean to anticipate any decision, but many comments regarding conditions had been made. He said he would start with the suggestions on limitation of hours of operation, which he said were currently 7 a.m. to 7 p.m. He declared that limiting it to 8 a.m. to 5 p.m., would set the operation up to fail, so that was an unwise limit. He stated that they would operate on a tight schedule, but they were not sure how the operation was going to work; it was difficult to be precise with it until they had done it for a while. He remarked that in regard to the tonnage limitation, the new scales would monitor the tons that came in.

Miller said the tonnage would be reported to all necessary jurisdictions.

Mayor Drake noted that if there were restrictions imposed by the City, he would also have to submit to the City, whatever was required.

Kearns stated that in terms of other monitoring devices that would be for noise violations, they were difficult to deal with, and had many requirements. He said he was not aware of any constant monitoring devices. He remarked that there had been many common sense comments about noise, odor, etc., and he felt that human beings were the best monitors. He noted that Condition 11, would make Miller establish and maintain a system to record complaints, and suggested that Miller do it even if it was not required. He said in terms of the bag-house system, ventilation systems, they were being put into a position of being in the negative and trying to prove things when they had not done it yet.

Kearns noted that some of the conditions were very expensive to retrofit, such as the dust collecting system which was hugely expensive. He suggested they have a review and if these things were needed, proceed at that point. He reported that as for vector control, rat traps/boxes would be standard procedures, and in terms of flies and maggots, those occurred when things (garbage) was left sitting around, but every day the facility would be cleaned. He said as for the basic notion of "no putrescible waste," it had been always been part of the application, it was a huge component of waste, and it had to be part of the permit.

Miller said there were several references to "what ifs," and reasonable people would do reasonable things, and said he would not subject his workers to unsafe conditions. He pointed out that like any part of life, it was not normal 100% of the time, and they had the ability to empty the facility and clean it in 90 minutes. He stated that with respect to the pest issue, he did not think he had seen a half-dozen rats in 20 years. He said in terms of mounting an extermination campaign, he did not think it was necessary. He declared that they had been condemned before they had the opportunity to try it out. He said they had been asked who did this and Pride was the closest example, but Pride's operation was permitted for 50,000 tons per year, and currently they were processing 35,000 tons. He reported that his operation (Miller Sanitary) did 20,000 tons of all waste per year.

Coun. Brzezinski remarked that people had proposed the idea of having the conditional use, with check points, and she knew Miller had invested money in the facility. She wondered how much more money needed to be put into the facility before they could start operating.

Miller said very little more; the equipment was mostly paid for, and what was needed was in the area of less than \$100,000.

Coun. Brzezinski asked if he had a feeling about the "conditional" conditional use.

Miller said his banker had one; he could not "conditionally" pay his debts. He stated that if he had seen this much activity in September 1996, he would not have built the facility. He said he was in a position with very few options, and the best one for him was to open the doors, go to work

and demonstrate that they could comply with the conditions. He said if he could not live up to his end of the agreement, he would be out of there in six months. He said the City's liability was less than if they said he could not even try to prove he could do it.

Kearns said Metro operated the facility in Oregon City, and they reviewed it and it was an opportunity see how it was working; not an opportunity to suddenly deny the facility.

Mayor Drake noted that if Miller could not comply, the onus was on him, not the neighbors. He said he thought that Miller would make every effort to make it work, and there would be many people watching to see how he was performing. He noted that his comment was could he or could he not perform up to the standards which were set, and that he did not look at it as Miller did in saying "if he was being a 'good boy'."

Linda Adlard, Chief of Staff, said under the ordinance regulating solid waste and recycling, which Miller was one of the franchisees, on page 16, it indicted the Council could suspend, modify or revoke a license or permit after written notice and a hearing, upon finding that the licensee had willfully violated the agreements they made. She commented that it was one of the more simple processes which were available.

Miller pointed out that that franchise had to do with collection, in relationship to the hauling.

Adlard said it would be modified to cover this.

Miller said he could agree to the standards, he could agree to those, which could be monitored. He said the subjective ones such as smell, needed baselines because they did not have a device other than the nose which measured smell. He noted that in terms of dust, they needed to know how much was from Hwy. 217, then they could know what the increase was from their operation.

Mayor Drake suggested they could do it up front and have a 90 day period to evaluate the complaints.

Miller said he was willing to deal with anything he created, but he could not control what was outside his control.

Sandra Bertrand asked if it was approved and up and running, when did he think he could recoup the costs.

Miller stated that he wished it was possible to know for sure, but they had started with seven to eight years amortization but now they were looking at 10 to 12 years.

Coun. Yuen recalled that someone had testified that Miller had said he might be willing to relocate.

Miller responded he would be if they were able to achieve the same objectives this site would give them, without it being cost prohibitive.

Mayor Drake said he did not see any new information that had been presented.

Pilliod concurred.

Bennett argued that there were conditions and they did not get to address them.

Mayor Drake explained that the Code allowed the Chair to determine if there was anything new, and the attorney agreed with him that there was no new information.

Coun. Brzezinski asked if they had any knowledge of the cost of going in and taking a measurement of things such as noise level.

Osterberg said he did not know anything of cost, but reported that the Code Enforcement Officer had gone in and taken noise levels, and then went back afterwards to compare.

Mayor Drake noted that if they were going to have the applicant do that, there would probably be a service that could measure and monitor that sort of thing.

Adlard noted that under Code Enforcement, they were charged to measure noise levels all over the City. She said generally speaking, they were usually easy to correct.

Coun. Brzezinski said she was thinking of other things besides noise.

Mayor Drake closed the public hearing.

Coun. Soth said before he made a motion, he wanted to state that in nearly 21 years of dealing with such things, this had been one of the most frustrating that he had ever come across. He said when he looked at the PC granting of the CUP, and Sections 5 and 6, he had no problem determining it was the intent to allow putrescible waste. He explained that when the two were read in combination, they said what he thought they did.

Coun. Soth MOVED, that the Planning Commission modification be upheld and the CUP to Miller be allowed to go forward. He noted that if it was seconded, he had a "flock" of additional conditions or modifications to conditions for some of the things Council had heard (in testimony).

Coun. Brzezinski SECONDED the motion, so they could discuss it, but would not guarantee how she would vote.

Coun. Soth said he would suggest that after the last sentence in 5 A, the

second paragraph, add the sentence: tonnage per day shall be limited to 100 tons maximum, and submission of monthly reports by Millers be required. He suggested the tonnage reports should go to CDD or Code Enforcement.

Discussion resulted in agreement that the reports should go to Code Enforcement.

Coun. Soth continued with his suggestions; after the first complete sentence in the first paragraph of 5 A, add the sentence (a new second sentence): no materials from any other company shall be allowed for processing at this facility. He explained that even if Miller's Sanitary was purchased by a franchise, it would limit it for the foreseeable future, and noted that the franchise Miller had with the City would govern it anyway, and it could not be extended outside the franchise authority.

Coun. Stanton expressed her agreement with the concept, but thought maybe the word should be source rather than company. She explained that she was concerned that in the future it might not be a company, but could be Metro, or some co-op.

Mayor Drake suggested they re-word it to say: any other source or company.

Coun. Soth continued and suggested they add condition #20: hours of operation of the Materials Recover Facility (MRF) building be from 8 a.m. to 5 p.m., five days a week. He explained this would allow them 1.5 hours to clean up, etc. of the equipment. He continued that because of the concerns regarding the view of the buildings by the neighbors added condition #21: added height to the masonry wall. He suggested they install a chain link fence on the top of the wall, with sight-obscuring slats.

Coun. Stanton asked how much higher he wanted it to be, and was the masonry wall in front or behind, in relation to the condominiums.

Mayor Drake said it was on the Miller side.

Coun. Soth said it was currently nine feet at the short end, and they should add two foot.

There was discussion about the type and height of the addition to the wall.

Irish Bunnell, Development Services Manager, suggested the condition require something sight obscuring, and then let it go through Design Review process for a Type 1 hearing.

Mayor Drake commented that if this received Council approval, they should meet with the neighbors and Miller to discuss the material and how it would be done.

Consensus was that condition #21 should be a sight obscuring addition to the fence.

Coun. Soth said next should be condition #22 Miller Sanitary shall designate a person to whom the neighbors can voice complaints and complaints could also go through the Code Enforcement process.

Coun. Stanton called their attention to #11 on the list received that day (2/17/98) from Dan Kearns, Miller's attorney. (The Operation shall establish and maintain a system for receiving, recording and responding to all neighborhood complaints about operations of the facility and shall submit an annual report of any such complaints and their resolution to the City.) She suggested they change it to require Millers to submit a monthly report to Code Enforcement. She explained that she thought the memorandum from the attorney stated it in a comfortable manner, as long as it was changed to monthly reporting to Code Enforcement. The rest agreed.

Coun. Soth gave condition #23 - "Truck routes in and out of Miller Sanitary should be north one block on Alger and east on 5<sup>th</sup>, which was #6 in Miller's memorandum.

Coun. Soth stated condition # 24 language which would require a meeting with Miller, and neighbors at six month and one year intervals for discussion about how well it was working.

Mayor Drake suggested they would use the current 500 foot notice, and include both NACs, and the current mailing list used for the hearing process.

Coun. Stanton said someone from the City should be there, not to organize or facilitate it, but to answer questions, and verify information.

Coun. Soth suggested someone from the Neighborhood office or CDD.

Mark Pilliod noted that there would be costs for mailing and other operational concerns.

Coun. Stanton said it could come out of Council budget.

Mayor Drake clarified that it would be budgeted.

Coun. Soth suggested that conditions #8 and #9 and #10, from the memorandum from Kearns (Miller's attorney) should be new conditions #25, #26, #27 (8. If documented complaints demonstrate that the applicant's vector control measures are not effective, the operator shall design and implement a vector control program and shall contract with a professional pest control company. 9. If documented complaints demonstrate that the applicant's odor or dust control measures are not effective, the operator shall design and construct an odor/dust suppression system, such as misting system over the pick-line, a

negative pressure ventilation and filtration system for the processing portion of the building or some similarly effective measure. 10 All on site storage of recovered recyclable materials shall either be in closed compactors or drop boxes. If documented complaints demonstrate that outside storage containers are the source of offensive odors, the operator shall install covers or lids on the open containers.)

Mayor Drake asked for clarification on the modified motion by Coun. Soth, and read item #13, from the Kearns memo: Any alteration of these conditions shall require a modification of this permit, including notice to adjoining property owners and an opportunity to comment on the proposal. He wondered if they should look at that and the other conditions the applicant had volunteered.

Coun. Stanton responded that those would have been her motions.

Mayor Drake asked for direction from Council on the rest of the conditions offered by the applicant.

Coun. Stanton stated that as they were adding on to Coun. Soth's motion, she would add (from the Kearns memo), #1, #2, #3, (#4 had already been added), #7, #12, #13, #14, which was everything. She noted she had some comments on #12 and #13.

Mayor Drake clarified that the final order would come back with whatever they included in the motion.

Coun. Stanton explained that on #12, she was uncomfortable with the word *legitimate* and suggested deleting it.

Discussion followed and resulted in a change from *legitimate* to signed, written complaint.

Mayor Drake commented that he assumed that anyone who wrote a letter, would send it to the City, also.

Linda Adlard, Chief of Staff commented that this would exclude anonymous letters.

Coun. Stanton noted Coun. Soth had talked about limiting the hours of the operation of the MRF building to 8 a.m. to 5 p.m., and said she was concerned about truck stacking while they wait to dump.

Mayor Drake noted that they would be Miller's trucks and he did have a large lot.

Kearns explained that they need two more hours for operation if possible, because they were trying to spread it out over the day. He said they did not want trucks stacked and waiting.

There was discussion on the operating times.

Coun. Soth explained that he was going by what already Miller had said in his materials recovery fact sheet, which said it was expected to run from 8 to 5, and noted it did not apply to the rest of the operation. He commented that normally trucks would go out at 7:00 a.m., and not be back by 8a.m. to deposit their load. He said they also indicated the last truck would be there about 3:30 p.m., and they would need the rest of the time to clean the facility.

Miller said when he prepared that document for the Planning Department, it was an estimated operating time. He stated that the only resistance he had was that if they set it as an absolute restriction, he felt they would have an opportunity to fail. He said they would not be back early, but they might be late. He explained that he would rather be done every day by 5 p.m., (what they expected), and be occasionally late without being in violation. He said he did not want to have a loaded truck that they did not know what to do with.

Coun. Brzezinski stated that it seemed reasonable to say 90% of the days within a quarter, they should be able to make it. She explained that she understood that in an ice storm, reasonable people would agree that the schedule would not work.

Mayor Drake suggested they craft a statement that said that except under extenuating circumstances, those were the hours.

Coun. Brzezinski said that would work for her.

General discussion was occurring in the audience, with voices being raised.

Tom Marsal asked to speak.

Mayor Drake said he was not re-opening the hearing.

Marsal said he was not trying to re-open the hearing. He stated he was looking at the most bureaucratic mess being put together, and people ten years in the future would wonder what was wrong with everyone. He commented that the City was going to require Tom Miller to keep voluminous books, there would have to be people on staff to deal with it, and it would cost lots of "bucks" on both sides. He claimed they were not considering the costs in what they (the Council) were doing, and they were bankrupting both Miller and the City. He pleaded for them to start saving money.

Coun. Brzezinski clarified that everything they had talked about was from a memo from Miller's attorney saying they would be willing to do these things.

Coun. Brzezinski said there were a couple of things in the wrong location in the motion, and asked to clarify them. She explained that by putting

the tonnage per day in the second paragraph, to her that paragraph related only to the domestic solid waste. She clarified that the total waste was 100 tons, and she did not think that was the correct location on the motion. She called attention to the lack of wording to prohibit over-night storage of putrescible waste, and said it definitely needed to be in there.

Coun. Brzezinski expressed her concern that as they were moving things around in the document, they might not end up in the most appropriate place.

Mayor Drake clarified that they were not wordsmithing, they were just trying to give general direction to the City Attorney and the City Recorder, so they could appropriately write the land use order and include everything the Council wanted.

An audience member brought up issues related to inclement weather, and indicated that Miller had said he would by-pass the MRF if it was icy.

Mayor Drake said that occasionally there is some inclement weather which would keep them from operating normally.

Coun. Brzezinski stated that on condition #20, the proposed hours of operation, rather than saying five days per week, she would say Monday through Friday.

Mayor Drake clarified that anything Miller had said on the record would not be binding. He stated that anything the Council put in which Miller could live with, would be binding. He explained that if it was not a condition of the Conditional Use Permit, and Miller sold the business, it would not be binding on the new owner.

Mayor Drake clarified that except under extenuating circumstances would cover that.

Coun. Soth said they should add to #20, except under extenuating circumstances. He stated that also, if for some reason the MRF was not operating, they should haul the loads directly to the transfer stations.

Mayor Drake asked if he meant accessible, or operable.

Coun. Soth clarified: in the event access to the MRF was not available, the loads would be required to go to the transfer station.

Coun. Stanton asked if they had included no overnight storage.

Mayor Drake said that was condition #28.

Coun. Yuen asked if the motion would limit to 100 tons per day, the total waste.

Mayor Drake said that was correct.

Coun. Yuen noted that the first sentence in the fourth paragraph, in section 5 A, said "there is no limitation on the amount of solid waste which can be processed.

Coun. Brzezinski clarified that was an example of what she meant by between now and when the land use order came back, staff would go through and take out the things that were no longer relevant, given what the Council had said.

Coun. Soth said if they were talking about the paragraph at the bottom of the page, that concerned a year's time of operation.

Mayor Drake suggested they cut off the discussion and asked if they still had a second on the motion.

Coun. Brzezinski said she would still SECOND the motion.

Mayor Drake asked Pilliod to draft the order and bring it back for the agenda of March 2.

Coun. Yuen noted that he would not be at the meeting on March 2.

Mayor Drake read the motion back as follows: direct staff to bring back a modified order, upholding the Planning Commission modification and the CUP for Miller be upheld with these changes:

5A of the modified order, second paragraph, the tonnage per day, (Coun. Brzezinski interrupted for clarification, with her next statement)

Coun. Brzezinski clarified that was what she had been talking about when she said they should construct the order so things were in the appropriate places, and this was not the appropriate place for the tonnage issue. She said they wanted to say total, so it needed to be at the end as a new condition.

Mayor Drake said it could be condition #29: maximum of 100 tons per day total, with monthly reports sent to Code Enforcement. He said #5A new second sentence, all others remain, no material from another company or source be allowed for processing at the Miller facility, #20- of the condition in Kearns memo, hours of operation for MRF building be 8 to 5, the other hours remain 7 to 7, and the 8 to 5 hours would be except under extenuating circumstances, with the 8 to 5 being Monday through Friday; new #21 - add three (3) feet to masonry block wall of sight obscuring material and require a Type 1 permit; #22 (#11 from Kearns memo) changing from yearly to monthly reports to Code Enforcement; #23 (#6 from Kearns memo)- Truck route description; #24 a required meeting between Miller, City and neighbors at six months and one year after operations commence, using the 500 foot notice area, and the expanded mailing list from the list which had been assembled in the process (such as Steve Nagle and Steve Aschenbrenner who were

outside the notice area); #25 (#8 from Kearns memo); #26 (#9 from Kearns memo); #27 (#10 from Kearns memo); #28 - no overnight storage of putrescible waste on the site; #29 - tonnage per day maximum is 100 total.

Councilors discussed what would happen to the others in Kearns memo, which had not been listed.

Coun. Yuen clarified that #28 – would be no overnight storage of putrescible waste on the site; #29 – would be the 100 tons maximum.

Mayor Drake clarified that #30 -(#1 – Kearns memo), #31 (#2 of Kearns memo); #32 (#3 Kearns) #33 (#7 Kearns memo) #34 (#12 Kearns memo), #35 (#13 – Kearns memo); and #36 (#14 - Kearns memo).

Mayor Drake said someone had asked what would happen if Miller merged with another sanitary outfit, it would not matter.

Coun. Soth said he had listened and tried to address most of the things people had voiced, but realized there were some things over which they did not have a good grasp, such as pesticide issues. He stated that his intent in making the motion and the amendments, was to incorporate as many as possible to address those concerns. He explained that he would much rather err on the side of too restrictive since this was new and they have no good experience either in Beaverton or the Metro area. He noted that if Miller wanted more tonnage, he could apply for a modification.

Coun. Brzezinski said she would not go so far as to say it was a lose/lose solution, but would agree it was not a win/win solution. She stated that it was honestly the best she could do to follow what she thought was a very important direction from a citizen, Nell Langeluttig, Chair of the Central Beaverton NAC, about looking at the whole picture, considering the needs of all the citizens of Beaverton, the impact on the environment as a whole. She said they needed these kinds of facilities, she wished it was not where it was, but that is where it was and where they had to at least give it a try. She expressed her hope that the Council had put in the conditions, that she kept hearing people say needed to be done. She noted that she had kept a list of what people said needed to be done if it had to be there. She commented that it was not a happy vote by any means.

Coun. Yuen said it was one of the most difficult decisions he had ever made on Council or Planning Commission. He stated that he would not support the motion. He explained that it was not because he did not think the use should or should not be permitted; it was because he felt if they were going to allow the business to operate the small increase in tonnage was too small. He said he did not think they were giving Miller enough room to have a viable business; and it would be the case that either his business would be a good neighbor or not a good neighbor. He said if that was the case, he hoped the City would shut him down. He reported

that Henry Kane stated in a letter that the City of Portland would not have it within two blocks of city hall, but he thought government often pushed things away from itself. He explained that he had tried to encourage the City to take more ownership of its decisions, and he felt that if the City was going to allow this business, it was appropriate that it be located within a couple of blocks of City Hall. He stated that if it was successful then the limit of 100 tons was setting it up for failure. He stated that if anyone was mad at the Council for the decision it looked like they were going to make, they needed to, "hang me too even if I vote 'no' on this."

Coun. Brzezinski said it seemed to her that it should be up to Miller to return to Council and show that he had been a good neighbor, and ask for an increase in tonnage. She said she did not feel this was a reason to vote against this, if for all other reasons Coun. Yuen was in favor of it.

Mayor Drake clarified that Miller would have to go through the application process to amend the CUP.

Coun. Yuen asked who would pay for that process, because he did not think it was appropriate for Miller to go through that if he was going to be a good neighbor.

Consensus was that Miller would pay.

Coun. Brzezinski said she thought it would be appropriate to discuss a waiver should that happen in the future. She stated again that she did not think that was a reason to not vote for this motion, if in all other respects he favored it.

Coun. Stanton said she would support the motion.

Question called on the motion, including amendments made by Councilors. Couns. Soth, Brzezinski and Stanton voting AYE, Coun. Yuen voting NAY, motion CARRIED. (3:1)

#### ORDINANCE:

##### Second Reading and Passage:

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

98-45 An Ordinance Amending Ordinance No. 2050, the Development Code, Reorganizing the Existing Format; TA 970003

Coun. Soth MOVED, SECONDED by Coun. Brzezinski, that the ordinance embodied in AB 98-45 now pass. Roll Call Vote. Couns. Soth, Yuen, Brzezinski, Stanton and Doyle voting AYE, motion CARRIED unanimously. (5:0)

RECESS: Mayor Drake recessed to go back into the executive session at 2:48 a.m.

Executive Session continued from the beginning of the meeting.

The executive session reconvened at 2:50 a.m.

The executive session adjourned at 2:52 a.m.

ADJOURNMENT:

There being no further business to come before the Council at this time,  
the meeting was adjourned at 2:53 a.m.

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Darleen Cogburn, City Recorder

APPROVAL:

Approved this 27th day of April, 1998

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Rob Drake, Mayor