

REGULAR MEETING
March 2, 1998

CALL TO ORDER:

A regular meeting of the Beaverton City Council was called to order by Mayor Rob Drake in the Council Chambers, 4755 SW Griffith Drive, Beaverton, Oregon, on Monday, March 2, 1998 at 5:39 p.m.

ROLL CALL:

Present were Mayor Drake, Couns. Evelyn Brzezinski, Dennis Doyle, Forrest Soth, and Cathy Stanton. Coun. Wes Yuen was excused. Also present were City Attorney Mark Pilliod, Assistant City Attorney Bill Kirby, Chief of Staff Linda Adlard, 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. Brzezinski, Doyle, Soth, and Stanton voting AYE, the motion CARRIED unanimously (4:0)

The executive session convened at 5:40 p.m.

RECESS: The executive session adjourned and a recess was called 6:15 p.m.

The regular meeting reconvened at 6:53 p.m.

Also present for the regular meeting were Finance Director Patrick O'Claire, Human Resources Director Sandra Miller, Operations/Maintenance Director Steve Baker, Police Captain Paul Danko, Administrative Chief Gary Nees, Library Director Shirley George, City Engineer Terry Waldele, Traffic Engineer Randy Wooley, and Development Services Manager Irish Bunnell.

CITIZEN COMMUNICATION:

Ann Crumpton, 15335 SW Peppermill Ct., Beaverton, and Nancy Mathews, 5809 SW Seymour Portland, of the Beaverton Education Association were present to address the Council.

Crumpton noted that it was the birthday of children's author, Dr. Suess, and also *Read Across America* day. She said it was a goal to have *Read Across America* become an annual event. She expressed their hope that, with the continued participation of the citizens and business community, they could keep many adults actively reading to children.

Matthews expressed their appreciation for all the community members who participated in the reading program earlier in the day. She described some of the activities and special events that had taken place. She said even the middle-schoolers brought their favorite Dr. Seuss books from home and read them in class. She said it was a wonderful way for Dr. Seuss' widow to use his image and his birthday as a celebration of reading.

Coun. Brzezinski said she had read to four groups of approximately 100 students at the Raleigh Hills school. She related that her most interesting question was whether she worked for money, or to help people

Mayor Drake commented that he read *Green Eggs and Ham* in four classes, and there wasn't one taker on having that for a meal.

Greg Guthrie, 10470 SW Citation Dr., Beaverton, said he had no specific issues but wanted to comment on a process that would be more and more in the forefront of the community. He said a clearly defined process was the most important component of effective decision making, and he felt Beaverton had a very good process in place. He said it provided individuals, neighborhoods and businesses an opportunity to voice their thoughts and concerns on planning issues. He added that at the same time, it allowed for a reasonable and rational decision-making time frame, which was critical for a developer. He commented that, from a citizen's perspective, input was not always as easy as they'd like it to be. He noted that it took time, effort, and organization, in the same way it took to serve on the Planning Commission (PC). He said he realized that serving on the PC or on the Council required making difficult and sometimes unpopular decisions, and as they continued on the path of planned urban growth with increasing infill densities, there would be conflict between neighborhoods and commercial interests. He said they shouldn't lose sight of the fact that decisions must be driven by logic, reason, and always by the law. He said he hoped that, as a community, they would support and improve on the process it took to make those decisions. He expressed his thanks for all the citizens who took their time to serve on the various commissions and on the Council.

Coun. Soth thanked Guthrie for his comments and said he agreed with his comments. He explained that recently they had expanded the notice requirements from 300 feet to 500 feet, and also now required a developer to meet with the neighbors prior to an application. He said they were very pleased to see many more applicants this year for the Boards and Commissions openings.

Guthrie said he was aware of the changes and had been involved in meetings with a developer in his neighborhood. He said he supported the process and hoped more people would participate.

Mayor Drake also thanked Guthrie for his contribution, and said the time that citizens devoted to service on the Boards and Commissions was invaluable. He commented that it was never possible to please everyone,

but those who served really did their homework before making a decision. He said the volunteers and citizen involvement made Beaverton a very livable community, and noted that there was a 37% increase in attendance at neighborhood meetings, and 180% over the last five years.

Coun. Doyle added his thanks and said he hoped that anyone who had suggestions for improving the process would contact the Council or the Mayor's office.

Tim Brandon, said he resided at 155th and Beard Road, Beaverton, and had recently communicated with the City Development staff. He said they advised him of a policy which basically stated that in the course of the next Comprehensive Plan review, consideration would be given to changing the zoning of commercial properties in areas designated as neighborhoods under Metro's Functional Plan. He said those properties would be considered for a change to residential, and thought that it would be done over the objection of property owners and he would like to know if Beaverton was seriously considering that change.

Mayor Drake asked Irish Bunnell, Development Services Manager, to respond.

Bunnell said he had discussed the matter with the Brandons in relation to the proposal in their neighborhood brought forward by Haggen's Grocery Store as applicants. He explained that, independent of that application, he wanted the Brandons to know that the City was undergoing a Periodic Review process in which they would be examining zoning throughout the City. He added that specifically, the City's Zoning and Comprehensive Plans had to come into compliance with Metro's 2040 Growth Functional Plan, and that had to be accomplished by February 1999. He said within one year, they had to be looking at various properties around the City and making a judgment, and also a recommendation to the PC and the Council regarding compliance.

Mayor Drake commented that the Functional Plan did not exist in the last state-mandated Periodic Review, but this process was similar or identical to the one they had followed before

Bunnell said the Periodic Review process and the Functional Plan compliance were occurring at the same time and dovetailed together. He agreed that the Periodic Review process was exactly the same as before, and note it was mandated about every five to seven years.

Coun. Doyle asked Bunnell to briefly expand on the process for input from citizens and affected property owners.

Bunnell said he was not the person who had developed the work plan, so he was unable to supply all the details. He stated that all neighborhoods would be consulted, along with meetings of all the NACs, and any affected property owners would have ample opportunity for input. He suggested that Brandon contact Ali Turiel, Principal Planner, for

information on his particular area.

Mayor Drake suggested that Brandon also contact the Mayor's office if he was unable to obtain the needed information.

Coun. Soth emphasized that no decision would be final in this type of situation until after public hearings had been held at both the PC and Council levels. He said they would look at the facts compiled by staff as they went through the processes in accordance with Oregon Land Use laws and subject to full public hearings

Coun. Stanton commented that she had been through the Periodic Review process, and was certain they had not rezoned any property without the knowledge of the property owners.

Coun. Soth agreed with Coun. Stanton, and said to use a term promulgated by one of the County Commissioners, it was never done without "passive neutrality."

Brandon thanked the Council, and said he thought he had received the answers to his questions.

Henry Kane, 12077 SW Camden Lane, Beaverton, referred to AB 98-57 (Miller Sanitary). He said apparently the Planning staff did not know that under state law, the Comprehensive Plan provisions that were relevant must be listed under criteria. He said that alone was sufficient for the Land Use Board of Appeals (LUBA) to reverse and remand. He noted that nothing would be gained by the Council passing it that night, and suggested they wait a week to find if they needed to include the relevant provisions of the Comprehensive Plan in the notice. He commented that allowing that atrocity to exist two blocks from City Hall was evil, and he was prepared run for Council on a platform of "Save Beaverton."

COUNCIL ITEMS:

Coun. Brzezinski reminded everyone that on Saturday, March 7, there would be a fundraising dinner and auction sponsored by the Sister Cities Foundation. She explained that the fundraising part was to raise dollars for a scholarship fund to allow more Beaverton students to participate in some of the exchange visits to Beaverton's Sister Cities. She said the dinner would be at the Greenwood Inn, and anyone who was interested in attending, or wished to contribute to the auction, should contact Rosemary Egan at 526-2499.

Coun. Doyle said he would be out of town on that date, but his wife would attend. He also commented that there had been a silent auction for the Rite Center the past week and it went well.

STAFF ITEMS:

There were none.

CONSENT AGENDA:

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

- 98-55 Liquor Licenses – Annual Renewals
- 98-56 Liquor License – Han Kook Market (Change of Ownership)
- 98-57 CUP 96006/981, (Modification) Order Affirming the Planning Commission Order and Approving the Request with Conditions (Miller Sanitary) (Pulled for Separate Consideration)
- 98-58 TCB Issues 345, 367,368, 369

Coun. Soth referred to AB 98-58, Issue 345, regarding the request to use Photo Radar. He said he understood that under the bill passed by the legislature, Photo Radar was restricted to a residential zone which usually had a 25 mph limit rather than a posted speed.

Coun. Stanton said there was no nexus between the 25 mph limit and a residential street, in the bill. She said it did state that in residential areas, which meant collectors, it would apply, and Teal met that criteria. She noted that in its final form, the bill also allowed the City to set up a process to put the Photo Radar where ever they wanted.

Coun. Soth said on Issue 369, pertaining to detection devices for bikes, he was curious how the device could distinguish between a bike and a stroller, for example.

Randy Wooley, Traffic Engineer, explained that the devices were put in the bike lanes on the street, so it would be unlikely to pick up strollers.

Coun. Doyle referred to Issue 368 regarding traffic fines doubled in school zones, and asked how that was enforced, what the success rate was, and how often it was monitored. He said he would appreciate receiving that information at a later date.

Coun. Soth commented that in Portland, they had a light in those zones, and asked if that might be a consideration.

Wooley said the Traffic Commission (TC) had recommended lights in two locations, and they were in the process of installing them. He said a sign would indicate that the speed limit was 20 mph when lights were flashing instead of “when children are present.”

Linda Adlard, Chief of Staff, reported that Portland had introduced those lights because they had some difficulty with people not understanding when children were present. She noted that Portland’s City Attorney’s interpretation was that it was anytime children might be in the area, even

if it was midnight, and the motorist must slow to 20 mph. She said because so many people had challenged that with Photo Radar, Beaverton had installed the blinking lights. She explained that part of the problem with putting lights at only a couple of schools, was that it confused people as to what was meant by "when children are present." She said that issue would have to be revisited to discuss putting in the lights at all schools. She noted that it was a relatively expensive project, and did not protect children at sports activities, etc., which had not been programmed.

Question called on the motion. Couns. Brzezinski, Doyle, Soth, and Stanton voting AYE, the motion CARRIED unanimously (4:0) (with AB 98-57 pulled for separate consideration).

98-57 CUP 96006/981, (Modification) Order Affirming the Planning Commission Order and Approving the Request with Conditions (Miller Sanitary)

Mark Pilliod, City Attorney, said after he had sent out the agenda bill with the proposed order, he had received comments from the Council. He said for the sake of expediency, he would summarize those comments and offer them as suggested amendments.

Pilliod began with the first page of the proposed order and said it was noted that in the first paragraph, after the reference to the PC, the comma should be omitted to avoid confusion. He said on page 2, Condition #3 regarding the height of the wall, it was suggested that rather than change the 6 feet to 9 feet, that the 6 feet be left in place to clarify that the Council was not requiring that the extension of additional material be masonry. He clarified that the sentence would then read "the applicant shall install an additional 3 feet of sight-obscuring material on top of the existing wall." He said in the next sentence, they would insert the words "and additional material" after, "The final design of the wall... ."

Coun. Stanton stated that in the second sentence where it stated "matching the CMU wall," she thought it meant matching in materials and height.

Pilliod said the language, other than the change from 6 feet to 9 feet, was originally placed in the conditions of the PC in 1996. He said he understood that the masonry wall was constructed and satisfied that condition. He noted that Council decided, after its hearing, that additional site obscuring material should be placed on top of the existing wall, and the additional material be subject to review by the BDR.

Pilliod noted that on page 4, Conditions 11 and 12 used the word "demonstrate," and it was suggested that the word be changed to "indicate."

Continuing to page 5, Pilliod said, under Condition 24, there was reference to Kearns's (attorney for Miller Sanitary) memo of 2/37/98 which should be 2/17/98. He said the parenthetical notes would be removed

from the final order but he wanted to note that the error had been caught.

Pilliod said also on page 5, under the new Condition 14, it was suggested that the second sentence be removed so it would be required that the outside storage containers be fitted with, and use covers or lids.

Pilliod continued with page 6, Condition 23, the first paragraph which stated in part, "monthly reports of any complaints and their resolution..." and said they would insert the word "status" after "resolution" in order to require that reports of complaints be submitted even if they had not been completely resolved. He said in the third paragraph of that condition, the word "occupancy" would be deleted, and the words "operation of the facility" would be inserted. He explained that occupancy of the site could occur immediately, but operation of the Material Recovery Facility (MRF) could occur only after DEQ issued a permit.

Pilliod noted that Exhibit A was a verbatim copy of the PC order and required only minor changes. He said on page 7, paragraph C, a comma should be inserted between the words "rats" and "flies." He also said on page 10, in the second paragraph, the word "odors" would be substituted for the word "smell."

Pilliod moved to Exhibit B, page 4, the second paragraph, and said it was suggested to insert the words "per person" immediately following the words "...opponents received only five minutes..." He said they would also insert the sentence, "Furthermore, there was no limit placed on the number of opponents who could each speak for five minutes."

Pilliod said on page 6, the last paragraph prior to Section III, which began, "The City staff was unable to decide prior to the PC proceedings..." it was suggested to insert "January 14, 1998," to clarify which PC proceeding they were dealing with.

Proceeding to page 9, Pilliod referred to the third paragraph under Conditional Use Criteria. He said prior to the last sentence in that paragraph, they would add the words, "and the storage on site of empty drop boxes and collection vehicles," to the preceding sentence.

Pilliod said on page 10, at the end of the second paragraph, they would add, "Operation of this facility will also aid in Metro and state objectives to achieve a 50% recovery of recyclable materials by the year 2000." He also said, on the same page, under Compliance With Zoning Ordinance, Section 56.11 (A), it was proposed that the last sentence be deleted because the containers would be equipped with lids.

Pilliod referred to page 11, Section 99.3 (C), and said at the end of the first paragraph, it stated in part ".a brick wall at least 8 feet tall..." He said the words "at least 8 feet tall" would be deleted.

Pilliod said on page 12, under Access, in the fourth line the last word "delivery" would be deleted, so as not to limit it to just delivery trucks.

Pilliod concluded with page 13, the fifth sentence of the first paragraph which began with, "Miller Sanitary can operate its hauling activity..." and said the word "continue" would be inserted before the word "operate," and the sentence would be followed with the words "as it does now."

Coun. Brzezinski referred to the material submitted earlier by Kane, and asked Pilliod if the Comprehensive Plan needed to be included in the document.

Pilliod said in his opinion, the proposed findings attached to the order addressed Comprehensive Plan criteria. He explained that he had not seen any document submitted by Kane to the Council or the City on this date, but he would submit that if it contained any arguments that were not part of the Council's hearing record, they would not be considered on review.

Coun. Brzezinski noted that it sounded more like a procedural issue than a substantive one.

Pilliod stated he believed he had addressed the procedural issues that were submitted to the Council as part of the record, and could not speak to those that were not.

RECESS:

Mayor Drake called for a recess at 7:43 p.m.

RECONVENE:

The meeting reconvened at 8:04 p.m.

Mayor Drake thanked them for their indulgence and noted they were getting some questions answered.

Pilliod said regarding Exhibit B page 13, "proposed additional material, and storage of empty drop boxes, delete the word "empty."

Coun. Brzezinski said that was simply to say what the current situation was, it was not a change.

Pilliod referred to condition #22, on page 5 of 6, and said after reviewing the draft transcript, it was felt the last sentence was inconsistent with Council discussion and should be deleted.

Mayor Drake noted that on page 5 of 6, #21 was listed as #23.

Pilliod said those were the only changes which were brought to his attention. He said the question was if they thought the proposal met the intent of their motion, to authorize the Mayor to issue a clean version with the changes.

Kearns said he had a procedural issue, and stated that deletion of the

sentence in Condition #22, was not correct. He said he thought it reflected the discussion of the Council and it was a substantial issue for his client.

Coun. Soth said as he recalled that particular issue, the intent was to restrict the activity from 8 to 5, based upon the testimony that the last load to unload within the building would probably arrive about 3:30 p.m. He noted that Miller said in unusual circumstances there might not be time to completely clean the facility by that time, and asked if the Council would set a 6 p.m. deadline. He recalled that the Council was unwilling to go along with that. He said that was the basis for the quote in #22, "due to extenuating circumstances."

Coun. Stanton said that was not what she remembered of the discussion, she remembered it was inclement weather and ice, which might cause a delay.

Mayor Drake recalled that another issue that could cause delay was a breakdown, but normally the deadline was 5 p.m. He clarified that the conveyor belt was to be stopped by then, but clean up and hosing down could occur. He stated that the operation of the mechanical part had to be shut down by 5 p.m., and clean up could be done after that.

Couns. Soth and Stanton agreed.

Coun. Soth said the important thing was all cleanup should be completed before the daily activities stopped. He said the floor should be cleaned and all materials removed from the facility before anyone left for the day.

Pilliod said perhaps it would help if Council kept in mind the underlying compatibility issues they were trying to address, and to their best recollection of the process, understand that there was a mechanical component, a non-mechanical or picking component, and a cleaning component. He said for example, if the concern about the operation and its effects in terms of compatibility on the neighbors was one of noise, that would focus on the mechanical aspect, but not necessarily on the non-mechanical and cleaning aspects. He said they had to identify what would stop at 5 p.m. and what would be permitted to continue, i.e., the cleaning.

Mayor Drake asked if it was Council's intent for the trucks to stop delivering, and the conveyor belt to stop at 5 p.m., which was referenced as home time for the neighbors. He said that would allow Miller to operate his facility until 5 p.m., stop any noise even though he may have noise beyond that time with his current normal usage, clean up the yard, and anything else external. He said that would solve two problems; 1) keep the noise down after 5 p.m. for the neighbors and, 2) allow Miller operation of the facility between 8 a.m. and 5 p.m., without violating the noise restrictions.

Coun. Brzezinski noted that there was an intermediate step between

turning off the line and hosing it down, and that was the dumping of collected materials. She said the intent was that the conveyor belts should stop at 5 p.m., and the doors should stop going up and down, as well as the trucks backing in. She clarified that she was concerned about the materials that had been picked from the line and stored; she wondered if that had to be finished by 5 p.m.

Mayor Drake explained that as he understood the process, the materials were run down the conveyor belt, sorted and dropped through designated slots into containers, and by the time it got to the end, the process was complete, other than cleaning. He noted that the issue was noise after 5 p.m., and he didn't think a reasonable person would consider hosing down the facility as undue noise.

Coun. Brzezinski noted that in the last sentence they deleted, if it had said "this shall not prevent the operator from cleaning the facility properly after 5 p.m.," she wouldn't have been as concerned. She said the term "clearing the process line" implied to her that it was still in operation.

Pilliod asked if it would be more accurate to say "This shall not prevent the operator from clearing the process line other than by operation of the machine."

Coun Brzezinski asked why they couldn't just say it wouldn't prevent the operator from cleaning the facility.

Pilliod said he didn't know what all was involved in the cleaning process, so he couldn't answer.

Coun. Stanton stated that when she read the second sentence, she thought it only had meaning with the first sentence, which talked about extenuating circumstances. She said the second sentence said that regardless of whether or not everything went accordingly, in terms of time frames, they would clean up every day by 5 p.m.

Coun. Brzezinski commented that she read the sentence as meaning that although they've said there could be extenuating circumstances that would allow clearing to go on after 5 p.m., that limitation would not prevent the operator from clearing the process line and cleaning the facility promptly after 5 p.m.

Coun. Brzezinski added that she thought the second sentence applied all the time, and felt it was too broad for her to be comfortable. She requested it be deleted, because, after going back to the minutes, she couldn't find the basis for granting that kind of extension after 5 p.m.

Mayor Drake recalled they wanted to frame it in because of noise, and the operation just drifting beyond a certain hour. He said he didn't see cleaning up as a main component. He noted that if that sentence was deleted, Miller could operate everything up until 5 p.m., shut the machine down, and then proceed with the cleaning phase.

Coun. Soth said during the testimony, he had asked specifically what a reasonable hour was for the last truck to arrive and the answer was, about 3:30 p.m. He said further discussion indicated that between that time and 5 p.m., barring some unusual condition, there would be ample time for processing the materials and cleaning the building.

Pilliod asked if the language "clearing the process line" was deleted, how that was to be distinguished from the activity of "cleaning." He asked if the intent of the condition (the 5 p.m. shut-down), was to stop the mechanical component of the process because of the noise impact on surrounding properties.

Mayor Drake read from the draft minutes (in record), in which Miller stated that the 3:30 p.m. to 5 p.m. period was an estimated time frame in which to clean the facility. He clarified that the only resistance he had was that if it was set as an absolute restriction, he felt there was a chance of failure. He noted that according to the draft minutes, Miller had stated if they were occasionally a little late, he did not want to be in violation, nor did he want a truck standing around with materials that needed to be disposed of. He also noted that the draft minutes included his (Mayor Drake's) suggestion that Council craft a statement that included the words "extenuating circumstances."

Coun. Brzezinski said she did not understand Pilliod's concern about removing the words "clearing the process line," when it also stated that the operator would not be prevented from cleaning the facility promptly after 5 p.m.

Pilliod explained that he could envision the action of cleaning as part of the "clearing" activity, because they would be removing any contaminant from the process line.

Mayor Drake said that was part of the cleaning process but not part of processing garbage. He said the materials ran down the conveyor belt and dropped into containers, and the residual would be cleaned up without additional noise or extending the operation.

Pilliod noted that the actions they were discussing which would occur after 5 p.m., would not be limited to only extenuating circumstances, but could be more frequent. He said he understood that the consensus of the Council was to remove the words "clearing the process line" from Condition #22, so the sentence would read "This shall not prevent the operator from cleaning promptly after 5 p.m."

Coun. Stanton suggested inserting the words "in all cases," preceding "The operator... ."

Megan Laidlaw, a Sequoia Condominium Association member, asked if Miller could move containers after 5 p.m. as part of the cleanup.

Mayor Drake noted that under Miller's current authority, nothing prohibited him from moving his containers around.

Coun. Soth stated that he would agree to deleting those words provided that Council understood that cleaning the facility not only included the wash down process, but also removing anything on the line that had not be removed prior to 5 p.m. He said that would not be operating the mechanics.

Coun. Brzezinski explained that what she was trying to accomplish was to recognize Miller's needs to occasionally go beyond 5 p.m., without impacting the neighbors. She said she was worried there was a loophole preventing that, and she was not ready to vote on the issue.

Coun. Stanton said she was satisfied because all the changes she had suggested had been mentioned, and she was comfortable with the revised amended order.

Coun. Soth commented that Pilliod had done a remarkable job of including the issues Council had discussed. He said, to ease Coun. Brzezinski's concerns, they did have conditions regarding complaints by the neighbors relating to noise, dust, odors, etc., so if those things should occur beyond 5 p.m., they were covered. He added that he was satisfied that the conditions would take care of any bugs that might occur.

Mayor Drake said he assumed that any issues could be addressed within a six-month or one-year interval, and asked Pilliod what the enforcement would be.

Pilliod said they would first look at the nature of a complaint and try to identify the source. He explained they would then attempt to determine what operational changes could be made, if any. He referred to the second paragraph of Condition #23, which addressed responding to complaints of adverse impacts, and said Council had considerable flexibility to determine an appropriate remedy.

Mayor Drake noted that it could include a reasonable modification of the operation.

Coun. Brzezinski said that eased her concerns. She asked if, after receiving the monthly reports and any complaints passed on by Miller, they were still seeing those complaints at the six-month meeting, could they change a condition.

Pilliod said he thought they could add a condition to address a problem.

Mayor Drake said he thought Coun. Brzezinski was looking for a framework, so that if at six months there was a huge amount of noise after 5 p.m. related to the MRF, the situation could be remedied, or the neighbors could petition the City.

Coun. Brzezinski noted that the only way the City would know was if the neighbors complained several months in a row.

Pilliod said, hypothetically speaking, if some sort of activity was resulting in noise complaints, the Council could address it in terms of nuisance as unnecessary noise, which was currently defined in the Code, and respond with a citation. He noted that the defense could be that it was "cleaning activity," so it would be necessary to ferret out what was causing the noise.

Mayor Drake said it didn't matter what the noise was, it had been determined it was from the MRF, so what would the remedy be.

Coun. Brzezinski stated that she believed Miller would operate the facility in a good-neighbor way, but wanted to know that if there was a problem, were they prevented from doing something about it.

Pilliod replied if "doing something about it" had the effect of preventing Miller from operating, then they would have a problem. He said if, for example, they required an added layer of activity to muffle the sound, that was within their authority. He said it would not be consistent with the CUP to impose a condition that effectively said they didn't have a conditional use any more. He said the language in Condition #23 gave them leeway to impose reasonable conditions.

Coun. Soth stated that they already had a partial remedy in place through the Code Enforcement process. He said part of that process was to enforce the conditions of whatever action was needed.

Coun. Soth MOVED, SECONDED by Coun. Brzezinski that AB 98-57 be approved with the changes as enumerated by the City Attorney, including the language in Condition #22 regarding the time extension for cleanup, and deleting the reference to cleaning the process line, and also authorize the Mayor to sign a final order upon completion by the City Attorney

Mayor Drake noted that Coun. Doyle was not present at the original hearing process and therefore would abstain from the vote.

Question called on the motion. Couns. Soth, Brzezinski, and Stanton voting AYE, the motion CARRIED (3:0) with Coun. Doyle abstaining.

PUBLIC HEARING:

98-59 TCB Issue 361 (Parking Restrictions on SW Nutcracker Court)

Mayor Drake said there would be a brief staff report.

Randy Wooley, Traffic Engineer, directed Council's attention to a diagram of the area under consideration. He explained that the issue concerned traffic from the recreation center parking on Nutcracker during busy times.

He said the original proposal from the neighborhood was to prohibit parking on Nutcracker during certain hours on summer weekends, with the exception of the traffic circle, which already had a "No Parking" stipulation. He said the modified proposal was to prohibit parking at all times on one side of the street, and the Traffic Commission's (TC) recommendation was that there be no additional restrictions. He said the neighborhood argued that there should be parking restrictions because it was difficult for emergency vehicles to access the area. He explained that the TC was concerned about setting a precedent for other residential neighborhoods near public facilities, and also the enforcement aspect.

Coun. Soth referred to page 2 of the staff report dated December 17, which stated in part that under the Development Code, parking was allowed on both sides of residential streets when the street width was 28 feet or more. He asked of that applied to the pavement section or to the right-of-way (ROW).

Wooley replied that it referred to the pavement.

Mayor Drake noted that there was no process in place for the appeal and asked the applicants to come forward.

Gary Frayn, 10925 SW Nutcracker Ct., and Amir Karimzadeh, 10827 SW Nutcracker Ct., addressed the Council.

Frayn stated that their concern was centered on how service vehicles could access the street when both sides were occupied. He explained that there probably was 28 feet of pavement, but when vehicles were parked on both sides, he doubted that a fire truck could get through. He said there were some current parking restrictions which were not being adhered to, and the "No Parking" in the traffic circle was rarely enforced. He noted that the "No Parking" signs, with arrows pointing toward the recreation center where people should be encouraged to park, were confusing and also not enforced.

Coun. Soth asked if the residents utilized the spaces for parking, as well as their driveways.

Frayn said they did not, as their driveways provided adequate parking.

Mayor Drake said he understood that staff had recommended "No Parking" restrictions on one side but the TC felt otherwise, (other than the ones that currently existed).

Coun. Stanton asked for clarification regarding the Murrayhill Owners Association (MOA) and Murrayhill Recreation Association (MRA) recommendations of "No Parking" restrictions.

Coun. Doyle noted that they subsequently urged consideration of parking prohibition on one side of the street.

Coun. Stanton asked if that was a decision of the MOA, or just the Board of Directors.

Frayn said he did not know, but for the record, they have had excellent cooperation from the MRA, advising the neighbors of upcoming activities.

Mayor Drake stated that he was a Murrayhill resident, but had no feelings one way or another on the issue. He explained that the MRA managed the facility, and the MOA was a separate Board that tended the common areas and ran the affairs of the Association.

Coun. Doyle asked if they were aware of any other street in the proximity of the Center having a similar problem.

Karimzadeh said they did not know of any.

Jack Young, Traffic Commission Chair, said he was testifying on behalf of the TC regarding the proceedings which led to their support of the staff recommendation. He read from the December 17 memo (in record) which stated, "I recommend that the request for special parking restrictions on Nutcracker Court be rejected." He said the two most compelling reasons for support of the recommendation were: 1) the difficulty of enforcement and therefore, effectiveness, and: 2) setting a precedent for other similar situations throughout the City. He also read from the same memo regarding enforcement, which stated: "Sgt. Wilson reports that the difficulty of enforcement is having the time to prioritize these types of calls. Parking enforcement usually is given a low priority." He said the question of precedent-setting in similar circumstances stemmed from the consideration that there were many public uses throughout the City where occasional events might bring about an out-of-the-ordinary parking impact in the adjacent neighborhood. He noted that the situation with the recreation center adjacent to Nutcracker Court generated extra parking demands during events throughout the year. He mentioned that the Nancy Ryles School, also located within the MOA, was cited as another location where some of the larger events might cause neighbors to seek parking restrictions in their respective neighborhoods. He said another issue which influenced their decision was concern for the likelihood of parking on Teal Blvd. during special events. He noted that the spill-over parking would affect those who lived in the nearby hills and constitute a hazard especially during icy weather conditions.

Young asked Council to consider two things which would be helpful to the TC. He noted that their first consideration in deliberating on an issue was the overall City policy, and the second related to the response to spill-over into neighborhoods from churches, schools, and other public facilities. He said inasmuch as citizens from other areas with similar circumstances would be bringing requests to the TC, Council's decision and insight would give them some direction for those cases. He noted that while the TC had heard few requests up to the present, the allocation of police resources and the pressure on land use would make parking a

growing question in the future.

Coun. Doyle asked Young if he recalled from the testimony, whether or not this was a daily problem.

Young replied that he thought it was event-driven. He said it had been previously mentioned that the MRA had been cooperative with the neighbors, and noted that for some events, cones were put across the street. He said the problem arose when the events were not MRA sponsored.

Coun. Doyle commented that when he served on the Park District Board, they asked the groups who used a particular park to police the area, and that usually solved the problem.

Coun. Brzezinski said presumably, the only reason people parked on Nutcracker was because the Center's lot was full.

Young said they could park on Teal Blvd.

Coun. Doyle asked how many cars could park on Nutcracker at present.

Frayn said about 16 to 20, and then they go to Teal.

Coun. Stanton asked how many spots were in the Center's parking lot for the square footage of the building.

Young reported that the number was inadequate.

Coun. Doyle said concern had been expressed about enforcement, but he felt that if the police were notified of the problem, they would be there.

Young recalled that when the TC dealt with 144th, the police testified about the allocation of resources and priorities, and that they might or might not be able to provide enforcement, so the TC turned that down. He said he was interested in having Council provide the TC with instructions on how to proceed in future cases.

Mayor Drake commented that a call to the police during a function would probably elicit a response, and they would issue citations.

Coun. Stanton said she thought it was a good idea to provide the police with a list of scheduled events so they would know ahead of time.

Mayor Drake asked Frayn to come forward again to answer Council's questions.

Coun. Soth said in looking at the diagram, it appeared that the three properties at the top had driveways that came off the cul-de-sac, while the two nearest 155th had driveways that came off Nutcracker.

Frayn said actually two came off the cul-de-sac and three came off Nutcracker.

Coun. Soth asked if the driveways were obstructed by vehicles owned by people using the Center.

Frayn said it was not consistent, but that could be the case.

Frayn commented that they had called the police on occasion but they wanted to be good neighbors and not call them every time. He said they had asked in a friendly manner for people to move their cars, but without enforcement, it wouldn't happen.

Coun. Soth said it appeared that the signs at the entrance to the cul-de-sac were a little confusing as to where parking was allowed. He asked Wooley if those signs had been looked at.

Wooley explained that the signs were put up to enforce the state requirement of no parking within so many feet of an intersection.

Coun. Brzezinski said since staff recommended "No Parking" on one side of the street, she interpreted that to mean they were more concerned about the emergency vehicle traffic than setting a potential precedent. She noted that generally on a street where parking was allowed on both sides, it wasn't so consistent that emergency vehicles couldn't maneuver around them if needed, but that didn't seem to apply in this case.

Wooley said parking occurred frequently on both sides, and also the lots were larger than normal and the frontage, especially near 155th, did not have driveways.

Coun. Brzezinski asked what made this case unique so that it didn't set a precedent and open the door for others near a public facility.

Wooley said from an engineering standpoint, he saw the frequency and the configuration as the two most relevant issues.

Coun. Doyle asked if there was a way for staff to define what made this case so unique in order to minimize the number of people who might make a similar request.

Mayor Drake said Council could make a decision now, and then ask staff and the TC to look into that.

Coun. Stanton recalled that when she served on the TC, they looked into permit parking for Duncan Lane because US Bank was still operating there. She noted that whatever decision the Council arrived at for Nutcracker would be based on an appeal to a TC decision. She said they would be getting more of this type of thing because there were fewer options available, and she thought it was an excellent idea to give it back to the TC and have them come up with some criteria.

Mayor Drake closed the public hearing.

Coun. Brzezinski, MOVED, SECONDED by Coun. Doyle, to grant the appeal to allow one side of Nutcracker Court to be posted for "No Parking," and allow the Traffic Division to choose the proper side.

Coun. Stanton said she would not support the motion because of her concern that there would be no enforcement of the "No Parking" signs.

Coun. Doyle stated that he supported the motion, but recognized Young's concern that the issue needed to be addressed as quickly as possible so staff and the TC could look at other situations. He said the lack of enforcement was not a major issue to him, and if people ignored the signs, the City had the means to handle it. He added that when everybody did their part, obstacles could be overcome.

Coun. Soth said he would support the motion and did not see it as setting a precedent. He explained that in looking at the configuration of the cul-de-sac, he noted the large curve and said an emergency vehicle needed more than 12 feet to negotiate it. He acknowledged the TC's concern, but thought each case had to be looked at on an individual basis. He said regarding enforcement, if people chose to ignore the signs, they did so at their own risk.

Question called on the motion. Couns. Brzezinski, Doyle and Soth voting AYE, and Coun. Stanton voting NAY, the motion CARRIED (3:1)

Coun. Stanton was excused at this time.

ACTION:

98-60 Authorize The Mayor to Execute an Intergovernmental Agreement with Tri-Met for Extension of Rose Biggi Avenue Across Westside Light Rail Trackway and Appropriate Funds

Terry Waldele, City Engineer, and Greg Kurahashi, Consultant with Kurahashi and Associates, were present to answer questions.

Coun. Soth referred to the letter from Tri-Met (in the record), and said it appeared that they would have to reconfigure the track elevations, or the street would either have to rise or fall depending on where the track elevations were. He asked how that would affect the operation of the line.

Waldele said the present elevations of the track created a washboard effect and they needed to be straightened out into a constant plane to make the crossing work. He said ODOT had indicated that would be a requirement, which meant adjusting one of the track heights. He said it would affect the operation if they did not meet the window, and cost an additional \$300,000 if they had to do it later.

Coun. Brzezinski said it looked to her like the \$140,000 of federal funds plus the City match for track enhancements was in there twice. She said she had previously asked Patrick O'Claire, Finance Director, about it, and asked him to clarify that at this time.

O'Claire said what Coun. Brzezinski was referring to was in the second paragraph, under Historical Perspective in the agenda bill. He explained that those numbers were included in the \$3 million + figure for all four projects related to the Beaverton Central area. He said on page 2, was the figure, \$3,916,000 which was an estimate for Projects #3217 and #3218, and did not include the track enhancements. He said they had to add to that the \$252,000 for the enhancements to get the new total amount of \$4,168,000.

Coun. Brzezinski noted they had received a letter from the Central Beaverton NAC expressing their concern about the number of crossings. She said they had asked the City to do three things in relation to the crossings, and asked if any of them could be accomplished.

Mayor Drake said he would address their requests. He explained that in 1993, Tri-Met had agreed to limit the speed of the trains through downtown Beaverton to 25 mph. He noted that 25 mph was reasonable for an urban area, and said the train would slow when coming into the terminal at Hall and Watson. He said he was not familiar with the Urban Center designation for the downtown area and had not discussed it with Tri-Met. He referred to the elimination of the crossing gates, and the control access, and commented that he was not certain he could agree with that. He explained that there was evidence that indicated, regardless of speed, crossings did prevent accidents and saved lives. He said he did not think that removing the crossings was in the best interests of the citizens. He added that before Council would agree to eliminate that safety issue, he thought they would want to gather evidence with the help of ODOT and Tri-Met.

Coun. Brzezinski noted that eliminating the crossing gates would only happen if they received the Urban Center designation. She explained that the designation would enable the trains to activate the stop lights, and she thought the issue was that the north/south traffic would be stopped because of the crossing gates. She said if they had the lights instead, the stoppage wouldn't be as long.

Mayor Drake said he thought the proposed signals might come as an additional financial burden, and he didn't believe Tri-Met had factored that into the cost of the line.

Coun. Brzezinski requested that staff investigate this issue.

Adlard reported that in San Diego they had taken out all the lights and installed guards, because people were running the red lights resulting in many fatalities. She said they had photo cameras in the areas, and were able to cite those who went around the gate, which greatly reduced

accidents. She suggested that Beaverton should do some research before making a decision. She also said she had heard that the PUC was not very enthusiastic about the lights, and thought that they couldn't have a crossing without putting in arms.

Kurahashi said there was no actual request to remove the arms, but he thought the PUC would oppose it because of the safety factor.

Coun. Doyle asked if they would be responding to the Central Beaverton NAC.

Mayor Drake said they would, and Wooley would assemble some material.

Kurahashi mentioned that another reason for requesting the removal was the noise. He said that was not necessarily a good reason for removing a safety factor, but it was a concern.

Coun. Soth commented that from his standpoint, the crossing gates were the most effective thing they had, and if someone was foolish enough to go around them, they deserved what they got. He noted that they had the same concerns when they put the crossing on Lombard, and for a period of six months, they were required to install TV cameras and monitor the situation.

Coun. Doyle MOVED, SECONDED by Coun. Soth to approve AB 98-60, Authorize The Mayor to Execute an Intergovernmental Agreement with Tri-Met for Extension of Rose Biggi Avenue Across Westside Light Rail Trackway and Appropriate Funds, including the recommended action.

Question called on the motion. Couns. Brzezinski, Doyle, and Soth voting AYE, the motion CARRIED unanimously (3:0)

Coun. Doyle MOVED, SECONDED by Coun. Soth to direct the City Attorney and staff to move forward as directed to the resolutions as discussed in the executive session. Couns. Brzezinski, Doyle, and Soth voting AYE, the motion CARRIED unanimously (3:0)

ADJOURNMENT:

There being no further business to come before the Council at this time, the meeting was adjourned at 9:44 p.m.

Darleen Cogburn, City Recorder

APPROVAL:

Approved this 20th day of April, 1998

Rob Drake, Mayor

