

REGULAR MEETING

January 11, 1999

CALL TO ORDER:

A regular meeting of the Beaverton City Council was called to order by Mayor Rob Drake in the Council Chambers, 4755 SW Griffith Drive, Beaverton, Oregon, on Monday January 11, 1999, at 6:40 p.m.

ROLL CALL:

Present were Mayor Drake, Counc. Wes Yuen, Evelyn Brzezinski, Dennis Doyle, Forrest Soth, and Cathy Stanton. Also present were City Attorney Mark Pilliod, Chief of Staff Linda Adlard, Finance Director Patrick O'Claire, Engineering Director Tom Ramisch, Police Chief David Bishop, Administrative Chief Gary Nees, City Librarian Shirley George, City Utilities Engineer David Winship, Development Services Manager Irish Bunnell, Project Engineer Jim Duggan, City Engineer Terry Waldele, City Transportation Engineer Randy Wooley, Senior Planner John Osterberg, Administrative Analyst Jarred Clark, and City Recorder Darleen Cogburn.

CITIZEN COMMUNICATION:

Henry Kane, 12077 SW Camden Lane, said the press reported the City had given tax abatement in excess of \$3 million to the developers of the *Round at Beaverton Central*. He said he had not had the opportunity to review the file on the subject but it did involve millions of dollars of public money for a City of this size. He commented the press reports did not indicate the reason for the gratuity, and assumed if it was tax abatement it meant that it was a tax benefit for the developers. He noted the tax would be borne by the average homeowner whose property taxes would go up in proportion to the extent the City had already given approximately \$6 million to the developers according to press reports. He said if the project would come to fruition on schedule that would be one matter, but he noticed that it was not happening.

Kane said the representations made by the developers and the press indicated the developers were looking for a new source of funding, however the representations made by the developer and reported by the press indicated they had \$100 million financing in hand. He stated that one key project was the parking garage, which was crucial because without parking the City could not give certificates of occupancy.

Jerry Strom, 6675 SW Pinecrest Ct., said he had something that was not on the agenda.

Mayor Drake explained that the issue of the Greenwood Inn had been resolved and there would not be a public hearing as originally scheduled, since there was nothing to appeal. He noted those in attendance would be allowed to speak but not under a hearing format. He clarified the issue of the Greenwood Inn was resolved because they had come to an agreement with ODOT. He said he wanted the Council to see the preliminary flood plain study and noted that a florescent green flyer had incorrect information he wanted to address.

COUNCIL ITEMS:

Coun. Soth said he had the privilege of hearing the Mayor give the State of the City address and it was presented very well. He noted the questions were to the point, and it was well done.

Coun. Yuen said they were entering the Budget season again, and now it was Coun. Soth's turn as Council President to submit their budget information. He asked when they should submit suggestions on the Council's budget.

Coun. Soth said to get them to him by February 1.

Patrick O'Claire, Finance Director, said the current goal was to have the line item budgets due on February 2, and goals and objectives by February 19, 1999. He agreed that Coun. Soth's plan for February 1 would be good.

Coun. Stanton asked if the Boards and Commissions dinner was January 29, 1999.

Mayor Drake said that was correct and invitations were going out the next day.

STAFF ITEMS:

Linda Adlard, Chief of Staff, said the Legislature was seated that day, and she asked who wanted to be part of the Council's legislative subcommittee. She noted it looked like there would be some very big issues that year and she would be at the legislature at least one day a week (Monday), so Thursdays would be the best day to meet with Council.

Couns. Soth, Stanton and Doyle indicated they wanted to be on the legislative subcommittee.

PRESENTATION:

Photo Radar Update (continued from 12/14/98 & 1/4/99)

Mayor Drake said the Photo Radar Update would be held later in the meeting.

CONSENT AGENDA:

Coun. Soth noted that AB 99-20 would be pulled for separate consideration.

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

Minutes of the regular meetings of August 31, and September 14, 1998

- 99-14 A Resolution Authorizing Issuance of Library General Obligation Bonds and Appointment of Bond Counsel and Financial Advisor
- 99-15 A Resolution Authorizing an Inter-fund Loan From the General Fund to the Capital Development Fund
- 99-16 A Resolution Consenting to the Change of Control of Tele-Communications, Inc. to AT&T, Inc.
- 99-17 A Resolution Approving the Request by the City of Sherwood to Terminate Its Membership in the Metropolitan Area Communications Commission
- 99-18 CPA 98025/RZ 980022 Woodside Triangle Tax Lot Clarification
- 99-19 Consultant Contract Award – Engineering Services for the South Central Beaverton Water System Improvements
- 99-20 Approval of Intergovernmental Agreement with Tualatin Hills Park and Recreation District for Collection of District System Development Charges (Pulled for separate consideration.)

Coun. Yuen abstained from voting on the minutes of August 31, 1998.

Coun. Stanton thanked staff for their responsiveness to her questions.

Coun. Doyle abstained from voting on the minutes of September 14, 1998.

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

Separate Consideration:

- 99-20 Approval of Intergovernmental Agreement with Tualatin Hills Park and Recreation District for Collection of District System Development Charges

Mayor Drake explained that Coun. Yuen requested AB 99-20 be pulled for separate consideration and asked if he wanted to discuss it.

Coun. Yuen said he just wanted to vote against it.

Coun. Soth said he had received the corrections to the Intergovernmental Agreement (IGA), and wanted to make sure they all had received them.

Coun Brzezinski noted that she assumed that if Council passed it, and the Homebuilders appealed the System Development Charges (SDCs) and prevailed, then the City would not be liable.

Mark Pilliod, City Attorney, said assuming the City began collections as expected, the City would receive some funds, and based on the receipt of funds the City was an interested or necessary party to any litigation. He noted the agreement was clear that Tualatin Hills Park and Recreation District (THPRD) was responsible for defending the SDCs and the methodology, but even in so far as the fees that the City would retain, the District was responsible for their reimbursement, if so ordered by the court. He reiterated the City was protected in that event.

Coun. Doyle asked Coun. Yuen why he was voting against the approval of the IGA.

Coun. Yuen said he was in support of THPRD but thought the SDCs were not the right way to find support. He said he would prefer a real estate transfer tax.

Coun. Stanton MOVED, SECONDED by Coun. Doyle to approve AB 99-20 with the amended IGA.

Question called on the motion. Couns. Stanton, Doyle, Soth and Brzezinski voting AYE. Coun. Yuen voting NAY. Motion CARRIED. (4:1)

PUBLIC HEARING:

99-21 Appeal of The Greenwood Inn Berm Project Site Development Permit by the Oregon Department of Transportation

Mayor Drake reported that there had been some quick action in the last few days and the two sides had agreed on a settlement.

Gail Curtis, Senior Land Use Planner, Oregon Department of Transportation (ODOT), reported that they had developed a solution. She noted it had been a tremendous amount of effort on the part of the Greenwood Inn, ODOT, Division of State Lands (DSL), the City of Beaverton and ODOT staffs, in sorting out the issues related to the flood storage, flood conveyance, wetland areas, and wetland mitigation. She said it had been quite complicated and now ODOT's concerns had been satisfied through a maintenance agreement with the Greenwood Inn that

allowed ODOT in an emergency situation to go in and do necessary maintenance. She said ODOT anticipated the Greenwood Inn would have regular maintenance and it would not be necessary for ODOT to take that extra measure. She confirmed that a letter withdrawing the appeal had been given to Council.

Mayor Drake emphasized there was no public hearing that evening because ODOT had withdrawn their appeal.

Mike Hagland, Counsel for the Greenwood Inn, commented that the Greenwood Inn wanted to thank ODOT for additional details and efforts during the last two weeks. He explained that those efforts enabled the Greenwood to get to the point where they could sign a Memorandum of Understanding (MOU) with ODOT, which detailed the nature of the maintenance the Greenwood would undertake. He said they anticipated a more comprehensive document would be completed shortly.

Coun. Stanton asked if the maintenance agreement had been signed.

Curtis said the agreement had not been signed, but the MOU had been completed.

Mayor Drake explained that with the MOU they were trying to keep people from waiting indefinitely.

Curtis said they were confident that the Greenwood Inn would follow through.

Haglund said the Memorandum of Understanding had all of the fundamental elements of the formal agreement.

RECESS:

Mayor Drake called for recess at 7:00 p.m.

The meeting reconvened at 7:15 p.m.

Mayor Drake said they would start with a presentation of the Floodplain Study by staff.

Tom Ramisch, Engineering Director, gave a brief overview about the presentation and said staff had worked on a number of elements of the flood restudy and would be available to answer questions.

David Winship, City Utilities Engineer, said he would make a presentation since he represented the City on the Fanno Creek Watershed Management Committee, which was appointed in 1995. He reported that the Committee looked at a number of things in the watershed to create a management plan. He noted the plan was mainly undertaken by Unified Sewerage Agency (USA) and adopted in June of 1997. He noted that

coincidentally, they had the 1996 flood and Kurahashi and Assoc. (the engineering firm that helped with the management plan) was available and made some field observations during the flood. He said those were compared with the actual adopted floodplain study that went into effect February 4, 1987. He said this was the current floodplain study and remained in effect until another could be adopted.

Winship explained that there were two maps known as Flood Insurance Rate Maps, one that indicated the boundaries of the floodplain and the other showed boundaries of the floodway. He reported that during the Fanno Creek Study, the existing floodplain maps were compared to observed creek levels during 1996. He said they saw some differences and found that the flood data indicated the existing Federal Emergency Management Agency (FEMA) mapping did not necessarily accurately predict the actual field conditions. He said that led USA and members of an intergovernmental agreement (IGA) to want to commission a restudy (a flood insurance study) using FEMA standards that would end in a new flood insurance study with the maps, but only after they were adopted by FEMA. He noted he brought an agenda bill before Council in October of 1997, which Council approved and the City, Washington County, USA and the City of Tigard signed the IGA and hired Kurahashi and Associates to begin a restudy.

Winship explained the reason floodplain elevations went up over the years was natural changes in the stream channel or floodplain, and increases in impervious surface area that were not offset by detention. He noted they had not seen a climatic change but a cyclical change in weather, but the impervious area essentially focused and reduced the amount of time for the water to get into the stream and cause Fanno Creek (Creek) to rise and fall more rapidly (flashflooding). He said fill in the floodplain or floodway, and climatic changes were the other reasons. He noted that in October of 1998, Kurahashi and Assoc. had produced some draft floodplain maps which he displayed and explained. He reported that the maps and some overlays on aerial photos were presented at a public open house in October 1998. He said there were many comments about the changes and the fact that the floodplain was shown to rise quite dramatically from two to four feet. He noted those comments were brought back to Kurahashi and Associates and focused on the area between Scholls and Denny Road and there was still some additional detail work that needed to be done.

Mayor Drake asked if Winship was going to provide an additional map for Council.

Winship said he had maps of what he had shown in the presentation and the most dramatic map showed the existing floodplain and floodway and then the proposed changes. He said they asked Kurahashi to do a proposal to add some detail to the study with more cross sections. He noted that the 1987 study had cross sections every 1000 feet of creek length, which was the standard at that time. He pointed out that if they

wanted to have a more precise study they needed to have closer cross-sections. He reported that the City had proposed to survey a number of those in very opportune locations that would pick up details not only at Greenwood but also along the Rollingwood area because changes had been seen in the floodplain between the 1980s and today. He described the study as not complete and the map, shown at the public open house, was not final. He stated that the public comments were the impetus to cause a more detailed further study.

Mayor Drake asked Winship to display overheads of the maps, and said he thought people would be surprised that some of the homes and trailers in the Rollingwood area were actually in the floodplain and trailers in the adjoining trailer park were in the floodway. He said if there was a 100-year flood, much of the area would be consumed by the Creek. He commented that the standards of today were very different from those in the '60s.

Winship said he knew the overhead (copy in record) was difficult to see, but he wanted to explain to Council where certain lines were indicated.

Mayor Drake said he understood *floodplain* to mean the outer reaches of where the creek would go if it had a 100-year flood and rainfall and the *floodway* meant that (at least on a temporary basis) the expanded creek became the main flow. He explained he was surprised at the number of homes in the floodway under the proposed mapping. He noted that floodway was within the red dots and the floodplain was within the blue dots.

Winship displayed a diagram and explained that the floodway was the area to be able to carry the 100-year base flood. He said the outer area was the flood fringe which if one were to fill in the flood fringe completely, the floodplain elevation would not raise by more than one (1) foot. He noted that the red dots were indicating the 1987 adopted floodway, then with it were the outer bounds of the floodplain, so that it was the floodway, plus the flood fringe equaled the floodplain boundary.

Winship noted the Greenwood Inn was in the floodplain, and a portion of the Rollingwood trailer park was in the floodplain. He said parts of the Greenwood Inn and a number of homes were included in the floodway. He explained it was one thing to be in the floodplain physically and it was another to be higher in elevation than that. He said what the City did was go into the neighborhood (after the comments at the open house) and check elevation. He emphasized the circled elevations (on the map) were homes that would be within the floodplain under the proposed changes that were not there currently. He said in general, large differences could be found in the floodplain boundary between the purple on the maps. He explained different aspects of the map in terms of elevation.

Coun. Soth asked who owned the land in the Creek bed regardless of whether it was floodplain or floodway, and if the properties on each side of

the creek extended to the center of the nominal channel as delineated on the map.

Winship replied that the adjacent property owner owned the land and in almost all of the cases the property lines went to the center of the Creek. He said the property rights extended to the center of the Creek and the water itself was owned by the State of Oregon, but the submerged land would belong to the property owners.

Coun. Soth asked if the channel changed, did the property line change with it.

Winship replied the property line did not change. He pointed out an "oxbow" on the map, where the Creek made a large bend and showed an old map where the channel swung into another side and the main stream channel got very close to some of the lots that fronted the Creek. He explained that since then there had been a change and the Creek had straightened out, but the property lines remained the same.

Coun. Soth asked what USA's jurisdiction was over those types of streams.

Winship replied USA was an umbrella agency to the City and had adopted some resolutions and orders that applied an overlay onto the City which the City complied with. He noted that the permits for site development, fill and cut were issued by the City.

Coun. Soth said it was his understanding that USA was responsible for the maintenance of creeks as water flow channels for the conveyance of storm waters as well as the natural flows. He noted that he thought it was a case of divided authority and if USA had the responsibility along with the Corps of Engineers then a lot of the increases in the elevation of the floodplain levels were due to sedimentation. He asked who would then be accountable and responsible for dredging and removing sedimentation. He commented that flooding might be caused by sedimentation.

Winship explained that some of the changes in elevation were due to sedimentation, and it was difficult to say that any one agency was responsible for maintaining dredging and removing sedimentation. He said theoretically it was a wild creek or river and it took care of itself and in urbanized areas that could be a real problem. He explained that the City, by IGA for both closed storm drain systems and the open channels, was generally responsible for maintenance and issuance of permits. He remarked that USA had a lot of jurisdiction over water quality and some on water quantity and they took a lead role where spills were concerned.

Mayor Drake reported he had talked with USA's General Manager in December and felt they were all in agreement that the whole system needed to be dealt with if the creeks were going to be cleaned out and the sedimentation issue addressed. He clarified that the problem was (for

example) if the City took care of the Creek from Scholls Ferry over to Hwy. 217 there would be no jurisdiction east of there because the Creek was coming out of Washington County and out of Portland. He said just beyond Hwy. 217, by Greenway Park it dumped into Tigard, and if they were to dredge the Creek it would fill up quickly, because the dirt would come from above. He said he agreed with USA's General Manager that the Creek would have to be looked at as a system problem rather than one tiny area.

Coun. Soth said he agreed with Mayor Drake's statement. He commented he had been involved with the Storm Water Management Task Force in 1989, and noted that a lot of this had to do with Phase II which would be implemented shortly by FEMA. He noted that he served on a DEQ Task Force that would also be addressing Phase II issues. He pointed out that the Corps of Engineers and even USA (if they were to do anything), would have to secure some sort of access, or permits in order to do any work.

Winship said that was correct and went on to explain what a "404 requirement" was. He explained that it was a Federal Permit that had to be acquired and as the land use agency, the City made sure that permit was acquired. He said where there were changes that could affect the navigable stream, the Corps of Engineers and other permitting agencies commented and added conditions to the permit. He noted that in general the City had inspectors who inspected both site development permits and the 404 permit. He said if there was a violation of a state or federal permit, then those agencies could come into it.

Mayor Drake pointed out that there was one more variable issue and that was the Federal Government taking issues related to Salmon off the list. He noted that could impact what one could or could not do in the creek beds and would also mean more related restrictions since those were the natural spawning beds for salmon. He commented that he thought the neighbors would think it seemed like a lot of restrictions and that too many agencies had their hand in it. He explained that idea led partly to the Greenwood Inn's reluctance to be involved and try to be a good partner, because of the various agencies they would have to get permission from just to clean out the Creek. He said it was not just a matter of pulling a backhoe up to the Creek and scooping it out.

Winship said it was a difficult process to get permits to dredge a creek and the Endangered Species Act would make it more difficult.

Tom Ramisch noted that Winship had touched on the change in the path of the Creek near Dori Court, and related an example of a possible manmade cause of the change. He said a homeowner on that street had actually built a concrete retaining wall in their backyard and had essentially filled the backyard to that point. He also gave an example of a fence that protruded out to the original property line into the creek creating another manmade barrier under various flow conditions. He concluded by saying

those were examples of obstructions built since 1965 when homes in that area were constructed and it continued to be the situation that existed currently.

Coun. Soth asked if he was interpreting it correctly that in Ramisch's view, the fence and the retaining wall had diverted the stream so it eroded the opposite stream bank.

Ramisch said that was the natural conclusion, but there was no year-by-year mapping that showed those changes.

Ramisch said he wanted Jim Duggan, Project Engineer, to touch on some of the errors in the flyer (in record). He said there were two general issues that he would like addressed; one was the potential for an increase in the stream elevation upstream of the Greenwood berm and the other issues related to City issuance of permits for construction within the floodplain.

Jim Duggan, Project Engineer, spoke in regard to the neighborhood flyer. He addressed the first question about water rising in the neighborhood because of the Greenwood Berm. He said the statement could have been inferred from Board of Design Review (BDR) hearings in response to questions asked. He noted there was concern on the existing condition of the site at Greenwood Inn to what effect that had. He explained they did not have a study on the conditions that existed currently (with the berm in place and no compensating storage). He said when they looked at the definition of floodway and floodplain, when the floodplain was constricted by encroachment (such as fill) or other items that blocked flow and displaced water, the effect would be to raise the elevation within the floodway itself. He explained that by basic definitions the floodplain could be filled up to the floodway limit and only have the effect of raising the water elevation one foot. He said if they considered the situation that existed at Fanno Creek with the Greenwood Inn berm in place, and the proposed project not being constructed, (the effect of having the berm in place and not having the other compensating work done) was theoretically causing up to a one foot rise. He reported that based on having one side bermed, it was going to be a rise of approximately 6 inches based on what would normally be expected from the 1987 flood study.

Duggan referred to item #8 (letter from Mayor Drake to NAC chair), and said the City historically had issues with construction in the floodplain. He described the City as a known leader with ordinances that generally protected the public to a greater extent than was found in other parts of Oregon and even in the Metro area. He noted that had been true since the middle '70s. He said one instance was the detention requirement that had been uniformly applied. He specified that developers were asked to look at the pre- and post-flow coming from a site and have the flow reduced to the predevelopment levels. He said in addition, the City had other standards that were not typically found in other development codes until recently. He noted that they City had issued permits for development in the floodplain such as the *Round* and had stricter requirements than even

FEMA required. He remarked that development in the floodplain was well regulated in terms of existing ordinances. He noted that in regard to Metro Title III the City's flood plain management did not have to change anything in Code as it related to floodplain or floodway management. He point out that the floodplain modification process (such as the Greenwood Inn was proposing) was very lengthy.

Coun. Stanton asked if it was a fact that the City continued to issue permits for construction in the floodplain provided those permits met all Federal, State, Metro, and County ordinances and rules.

Duggan said that was correct.

Ramisch suggested that it was time to let the neighbors address Council.

Frank Oulman, 9775 SW Denny Road, said he was a property owner along the Creek. He referred to Winship's presentation and said he thought it was a mistake to raise the floodplain numbers because it changed the property and the value of the land. He commented that the City should look at mitigating the rising water problem.

Oulman noted they had a channel called Fanno Creek, and there were only a few ways for it to rise: by constricting it, or covering the ground so the ground couldn't absorb any moisture thereby increasing the run off into the Creek. He reported that a number of storm drains had been constructed to go right into the Creek, which increased the amount of water. He recalled that 15 years ago there had been a flood where the water came quite high, and in the last four years they had seen similar things. He declared that something was causing this to happen and pleaded with Council to take care of the water problem. He suggested that more water was being put in the Creek while restrictions were being put on the flow. He commented that dredging was not the answer, but cleaning might be a possible solution. He said there was a conclusion by the watershed planning of Fanno Creek from March 1997 and there were possible solutions that would help in reducing the water in Fanno Creek during high periods of rain. He briefly described some possible solutions as: Fanno Creek Floodplain enhancement at Denny Rd. to increase the floodplain storage; a wetland corridor planted at Fanno Creek/Greenway Knowles Center; and in the Fanno Creek/Allen Road area a small storm water treatment system installed to treat runoff of the commercial area.

Coun. Stanton stated that all that did was dedicate more land to absorb more water and did not do anything to deal with capacity.

Oulman said he thought the possible solution by Hwy. 217 actually described taking out more land and dedicating more space for water flow.

Mayor Drake said across from Mercer Industries there was an old sewer plant, and that area was targeted for work this year. He explained it would be dug out to provide for more capacity. He said the City was looking at

more potential areas such as the area behind the City Operations Center. He commented the real issue was system wide and long term. and the City of Portland, Washington County and the City of Tigard added to jamming up the water and keeping it tight in the system. He said when more urbanism was added, more problems would occur.

Oulman said the Tualatin River was only so low and if you made it lower than the Tualatin it would work in reverse.

Mayor Drake related a story that Patty Russell had told about when she moved into the area several years ago. He said Russell had been carrying her daughter when she fell into floodwater and fortunately neither one was hurt. He said his point was that this had been an ongoing problem for a long time.

Oulman said it had not been an ongoing problem every year as much as it was now.

Mayor Drake commented that last year Portland got 62 inches of rain when the average rainfall was 37 inches per year and that contributed to the problem.

Oulman said the Creek used to dry up in the summertime but didn't anymore.

Gary Anderson, 9975 SW Maplecrest Court, said when they started talking about an unsigned Memorandum of Understanding he became concerned. He said he understood that ODOT would take emergency measures if the Greenwood Inn did not do the maintenance properly. He commented he did not know what precluded the emergency measure and wondered what the Greenwood Inn's maintenance program was for the "dig outs" they were going to do around the berms to increase the floodplain. He asked if that would solve the flooding problem. He stated that the Creek was more than a pipeline, it was a watershed that provided habitat for wildlife, and one did not dig something out and then expect it to recoup back to a natural source.

Jerry Strom, 6675 SW Pinecrest Court, said he lived outside the floodplain, and presented colored maps of the current and projected floodplain studies. He explained that he met with ODOT at the break and they had clarified the agreement with the Greenwood Inn and explained what the process was going to be. He said that issue was behind them, but his concern was that residents of the Rollingwood Neighborhood were still in harms way. He said he thought the permits would legalize an illegal berm and explained that a water storage area to compensate for water that would have gone into the parking lot would now be in the storage area. He said if the Creek rose six inches or one foot higher it would still be higher than in the normal floodplain setting. He noted the City had made statements that if the work was not done by September 1, 1998, they would remove the berm, and he wondered if the City would still do that.

He referred to extraordinary flooding and noted a statement by the Supreme Court, about how the law of the jungle would prevail in those times, and that meant the one with the biggest bulldozer would win. He asked if the Greenwood Inn got to protect their land while jeopardizing the property owner's land.

Mayor Drake commented to Strom and said the issue with the Greenwood Inn had been resolved. He noted the Greenwood could not legally go into the wetland area and construct the ponds until June 1. He asked the City Attorney to comment.

Pilliod said since the appeal was withdrawn, and the agenda bill explained that additional processing would become necessary in as much as the conditions originally placed on the permit were crafted as appropriate at the time it was issued, which was before or coincident with the proper construction season. He explained that now the construction season had ended it would be necessary to refine the dates to enable construction to occur during the dry season beginning in June. He said the City was committed both in terms of its ordinance and the actual permit issued. He explained that to issue the permit the conditions of approval that were attached to it would need to be satisfied, but they could not meet the timeframe because of the appeal.

Pilliod said he could not comment on the Supreme Court quotation, and assumed Strom was commenting on a principle of self-help protecting ones property from being inundated by floodwaters in the event of an emergency. He said while that principle was not included in a City ordinance it would not be surprising if the Oregon Courts would accept that as a principle of law. He noted that it would not go without consequences however, and a person who took such measures and whose actions caused injury to others would probably be liable to the injured party for damages. He explained that was a different circumstance than the issuance of the permit and the principles on which the City's regulations were based.

Mayor Drake said no one wanted it completed in the fall more than he did, and they were caught off guard by ODOT's appeal. He said this was highly unusual, and it might not help them that night, but the City had done everything they could to get the two sides together to try and work it out. He noted they had worked for a solid solution that would be good for everyone.

Jerry Strom said he understood that, and asked if the berm could be removed at that time. He noted that he did not think it had anything to do with the ODOT appeal and the appeal was about keeping the waterways clean, and wasn't about removing the berm at a certain date, if indeed the work wasn't done.

Pilliod responded that he understood that earth movement at that time of year was more risky in terms of clogging the Creek and noted he was not

the expert on the practical results, but felt that was certainly a consequence they needed to be concerned about.

Mayor Drake asked staff to respond.

Duggan said the permit had not been issued at that time, and there were final fees and other legal documents that needed to be executed before the final permit could be issued. He clarified that what was under appeal was the decision that the applicant had provided the technical information necessary for staff to determine to issue the permit. He explained that in regard to removing the berm as it sat right then, the effect would be theoretically having water going into the Greenwood Inn property as it did before the berm. He said it would reduce the flood elevation by "X" amount, and if they removed the fill material at that time, they would expose a lot of ground that was covered by vegetation. He noted that would cause erosion in a major flood event that could cause a buildup of sedimentation and problems further downstream. He said it was an unfortunate situation at that time.

Mayor Drake said the Greenwood Inn was protecting their property, and one solution would create a great deal of sedimentation and run off and secondly they would probably put the berm right back up. He said by the time the City could proceed with any enforcement process, the construction season would have arrived.

Coun. Soth commented that erosion and erosion control had been a big subject of the DEQ task force he had been serving on. He explained one of the things that had occurred there under the proposed regulations for erosion control was generally when five acres or more were involved. He said the new regulation had gone down to as low as 5,000 square feet, depending on where and how it was. He noted that in his view it was becoming more complicated to address what should have been a simple matter. He said with the regulations in place the permits had been talked about and it was a matter of code enforcement to ensure that those conditions were in place and enforced. He stated that because of the loss of the construction "window" everything was a year behind.

Strom agreed that if the Greenwood Inn was forced to take the berm down, they could put it right back up. He said as he was surveying the stream the past fall, he noticed additional fill about 20-feet wide, 6-feet high and 90 feet long that was brought in the past year and placed on the north side of the berm. He commented he would conjecture it was an illegal landfill brought in to support the current berm. He reiterated that the first berm was illegally put in along 217, as was the second berm, and now there was a third one.

Patty Russell, 6790 SW Rollingwood, said most of her questions had been answered but she wondered who to address the lawsuit to when their homes were flooded. She pointed out that the Greenwood Inn was protecting their property and the Peppertree;s property, but the

Greenwood Inn was not picking up the for the cost of the damage that was being done to the neighborhood. She noted that flood insurance only covered the structure so anything in the yard or basement was not covered.

Mayor Drake responded by saying he could not give legal advice and could not answer her question.

Russell asked if a lawsuit should be addressed to the City, the Greenwood Inn and ODOT.

Mayor Drake reiterated that he could not give legal advice and it would have to be between Russell and her attorney.

Russell said City Code number 9.05.085 said that it required notice of those in the vicinity and she wondered why no one in their neighborhood had been notified. She commented the decision that would have been made at Council that night would definitely have impacted their neighborhood. She explained she knew she lived outside the 500-foot limit.

Mayor Drake addressed the issue and said Russell had talked to Darleen Cogburn, City Recorder, the past week about not being noticed. He said that the 500-foot notice area did not cover her area and she was in fact out of range. He reminded the audience that the state required 100-foot notice and the City had traditionally done 300 feet and about one and a half years ago they increased that to 500 feet. He said they had many comments from people who wanted to know, and Council decided to increase it to 500 feet to give more people notice. He said he thought they had talked thoroughly about it on December 9 and he felt confident that she would take the lead that her neighborhood would be well mobilized. He said candidly, he felt they should have formally notified her street, but the City was within the law. He commented that he had worked closely on the issue and had communicated to ODOT when they appealed, to get them to withdraw the appeal. He did not want her to imply that they did not get notice.

Russell said she was not implying the neighborhood did not get legal notice, but the decision that was made was going to effect her neighborhood even though they were outside the 500-foot notice radius. She asked how they could change the Code since they would be effected.

Mayor Drake said it would be difficult to know on a given issue how one neighborhood was effected and another wasn't.

Russell explained that the issue had been going on for two years and they had always been notified in the past.

Coun. Stanton noted that the flyer was from the Denny Whitford NAC and she assumed that the chair got the notice.

Russell said the chair did not receive the notice but instead got the information from her. She said the notice had gone to the old NAC chair.

Coun. Stanton said whatever name was on the list in the Community Development Office would be the person who received the notice. She apologized on behalf of staff if it was a procedural problem. She said the City had systems in place to do the best job they could based on the names and addresses they got.

Mayor Drake said it was sent to Sheryl Youngers and noted that the other files outside of Engineering all had Jerry Strom as NAC chair. He said he did not know how far out they should go to notice people and sometimes people were really interested and sometimes they weren't. He said if they went 1000 feet there would be someone who would say they were out 1200 feet and didn't get notified.

Russell commented she wanted to bring it to Council's attention because she felt it was a very "hot" subject and had been going on for two years. She said if she would not have known the information, her neighborhood would not have known about it and most of the people in attendance would not be there that night.

Coun. Doyle said he shared her concern, but thought the Mayor had a good point about where to stop the notice range. He said if she had suggestions that the City could do legally or if she could come up with an idea to make it better, the City would appreciate it greatly. He commented that he was one of the proponents to increase the radius to 500 feet and it cost the City approximately \$8000 more per year. He added that he understood how frustrating it was for people come in and say they did not know about an issue.

Kathy Steward, 6645 SW Pinecrest Court, said most of her issues had been resolved that evening. She remarked she was responsible for the front side of the flyer, and had been prepared to distribute it prior to the December 14 meeting, but that meeting had been postponed to the Council meeting that night. She commented she was frustrated that the City postponed the December 14 meeting because they needed more time to notify area residents and yet that notice did not come. She said, in response to Coun. Doyle, if they wanted a legal issue dealing with water and watershed in Fanno Creek, the Rollingwood neighborhood, was tightly connected to the Creek and its flow. She said if the City had notified those east of 217 and north of Denny, it would have covered those who were effected and those represented that night.

Mayor Drake said the floodplain study was still in process and encouraged the neighbors to stay involved so they could see how it would be resolved. He referred to a comment he had heard earlier and said the City did not doctor the numbers. He emphasized they needed to be factual to deal

system-wide with USA and other agencies to keep Fanno Creek from being the monster it could be.

Oulman said rather than accept higher numbers they should try to find a way to mitigate.

Mayor Drake said he agreed completely and Oulman's point was well taken.

Cathy Strom, 6675 SW Pinecrest Ct., said she was the other "half" of Jerry Strom. She thanked Council and the Mayor for taking the time to listen and thanked them for the sandbags sent to the neighbors. She also thanked the Greenwood Inn for their beneficial input during the break. She said she lived at the beginning of the floodplain and if it flooded, they could not get in or out of their house. She shared with Council that she took the flyer and maps to the trailer court (Hidden Village) and talked to 15 residents there. She noted that at least five people had no clue that they were in the floodplain and none of them knew about the meeting.

Mayor Drake said he had a list of those who were notified and the owner of the property got the notice.

Cathy Strom said the owners must not have showed it to the residents and it was those people who were effected when the flood hit. She suggested that informational flyers be sent with billings. She said none of the residents along the creek knew anything about the meeting that night. She reported that recently the streets had been resurfaced and the storm drains in the trailer court had been taken out. She recounted that one of the residents of Hidden Village told her there was an open pipe at the beginning of the trailer court, and a sign used to be posted there that said "raw sewage" and when there was heavy rain that sewage drained down to Fanno Creek.

Mayor Drake said he would have Code Enforcement look at the situation. He recalled that several years ago there had been a water problem in that area and the City could not go onto the private property to solve the problem. He noted that even though the water system was private the City did help them with cleaning out the new pipes, etc. because the residents were mostly elderly people and the City did not want them to get sick. He reiterated it was private property and he did not know at that point what they could or could not do.

Cathy Strom said she was appreciative of what the City tried to do. She described a "mountain" by the mitigation pond, and when there was heavy rain, the "mountain" oozed thick mud that went in the RV section of the trailer park and asked if eliminating that problem would help some of the flooding in Fanno Creek. She said they discussed it with some engineers at a previous meeting held at Whitford School.

Mayor Drake asked if someone could answer what the status of the berm was at that time. He asked if it could be seeded in the spring so it could contain the dirt, even if it was on private property.

Gary Bliss, Senior Engineer at Alpha Engineering, Inc., 9600 SW Oak, Portland, said Cathy Strom was referring to a mound that was put there many years ago as excavation from some prior flood alteration excavation. He noted it was brought to their attention that there had been some erosion occurring in winter months. He reported the plan they were developing would address that with a swale at the base of it as well as additional erosion control and vegetation. He said he believed with those measures it could be improved.

Coun. Soth asked if they had looked into a possibility of putting in an erosion fence as a temporary measure to alleviate the problem until dry weather permitted a more permanent solution.

Bliss said he was not sure that had been addressed, and that would not be a problem. He stated he would discuss the issue with the management group the next morning.

Coun. Soth suggested talking to the folks in the trailer park to get a better idea of the extent of the problem.

Cathy Strom said she would be willing to walk around with someone and talk to residents to help the situation.

Cathy Strom referred to the west side of the pond, next to Hwy. 217 and said she had lived there since 1977 and it seemed that it used to drain, but it did not drain anymore. She asked if it used to have a drainage hole.

Bliss said the pond was on Peppertree property and was constructed in the late 1970s for the purpose of detention. He said the firm he used to be with designed it more than 20 years ago and the City have might better records.

Mayor Drake asked Duggan if he could answer the Strom's question.

Duggan said in regard to the Peppertree pond, the as-built drawings from that era were not complete and other than doing an extensive search of the microfiche, it did not seem worth the effort after looking through the City map files. He said the water elevation in the pond was dependent on the local water table and did not rise or fall substantially unless there was a change in the local water table. He said as a result of the hydrology and what had happened in the last two years, the water level had stayed relatively high in that pond because the ground water and the situation there had been conducive for that water to stay where it was.

Mayor Drake said what Cathy Strom was worried about was it not draining anymore.

Cathy Strom said she wondered if it was clogged, and if there was a way to clean it out.

Coun. Soth said he was on the Planning Commission when the Peppertree was built, and the pond was designed as a detention pond. He said at that time a drain or a pipe was not required and the pond was designed just for water detention to allow the natural percolation and flow to occur.

Cathy Strom referred to a statement Mayor Drake said about it being unknown what could or could not be done because of the salmon issue. She asked if that meant if the maintenance was tentative until agencies agreed.

Mayor Drake responded by saying that was different because that was not part of the main Creek. He explained what he was talking about was the fact there might be limitations about what could be done to the actual stream beds and the stream itself in disrupting natural vegetation and habitat in the Creek and on the Creek banks. He noted there had been a lot of rain in the last two to three years, and parts of the City had been well planned, but the fact was there had been just too much water. He explained the City did not know as much about engineering 20 years ago as they did now. He commented that Beaverton was a leader in requiring the things that were necessary. He said there were other entities that would take dollars in lieu of actual detention ponds with the notion that they would bank the money until a regional detention pond could be built or they did something collectively. He explained the detention ponds held the water and the water then dispersed slowly and went into the creeks at a slower rate.

Henry Kane, 12077 SW Camden Lane, said he had spent time reading records of the issue and suggested staff should give Council maps of the underground creeks. He said not many years ago, the Beaverton Hillsdale Highway flooded so deeply that he ran the risk of flooding the engine of his car. He said he had been trying for two years to find where Fanno Creek was north of Allen Blvd., between Allen and the Beaverton Hillsdale Highway and no one seemed to know. He said Beaver Creek also ran through the area. He commented he had driven over the Creek at Denny Rd. and quite often during heavy rains the water had been one to two feet from the bottom of the overpass. He said during the 1996 flood he had walked on Hall Blvd. where the Tri-met station was and the overpass carrying the tracks across the Creek was flooded. He commented the whole area was a floodplain, and City Hall was also in a floodplain. He said he paid \$4 for the maps that were referred to and was told that they did not mean a thing because they were aerial maps taken by the Army Corp. of Engineers and they did not take the photographs until the floods had receded. He explained he went to USA and no one would give him any information indicating they had any intention of doing something about the flooding problems in the area. He remarked that all he read or heard

was that there was a problem, but had not heard the City tell him what they were doing to cope with the problem. He said someone was going to have to increase the carrying capacity of both Fanno and Beaver Creeks.

Coun. Soth asked Kane how much increase in his property tax would he be willing to pay in order to pay for all the problems they were having.

Kane said the studies had been made.

Coun. Soth said he had made his point about the problems and what was his solution.

Kane suggested a flood control district law so all of the agencies would not have veto power. He also suggested forming a flood control district and finding out what was required. He specified if the City said it would take care of the flooding problem and it would cost each resident \$50 to \$100 per year for the next 30 years, he would probably work for the passage of that bond issue.

Coun. Soth said Kane had answered his own question.

Ken Stuhmer, 6650 SW Pinecrest Court, addressed Council and said he had questions about the Memorandum of Agreement. He asked how would the sediment level be monitored in the two ponds they were proposing.

Pilliod clarified that it was an agreement between ODOT and the Greenwood Inn, not the City. He said the details of the agreement needed to be put into final form. He explained that the concept was that the Greenwood Inn would agree to maintain an area of concern (marked on a specified map) by removing the material that became deposited in that area that exceeded a threshold level of 200 cubic yards in an excess of the elevations. He explained their idea would be to install posts that would enable them to measure when 200 cubic yards of excess deposit was met. He said that would be the triggering mechanism requiring maintenance activity by the Greenwood Inn.

Stuhmer asked if the initial dredging would allow 400 cubic feet.

Pilliod said that might be part of the permit but he did not see that reflected in the discussion in the Memorandum of Understanding. He said Stuhmer was talking about where "ground zero" was.

Stuhmer said he understood that the Greenwood Inn wanted to dredge out approximately an equivalent area to what their berm had eliminated in the water coming up.

Mayor Drake compared the berm to putting a bar of soap in water and in essence they were proposing allowing more room in the glass to offset it.

Pilliod said that he thought that was part of the permit.

Stuhmer asked if at some point they would have to re-dredge.

Duggan said the agreement talked about the 200 cubic yard threshold, but it did not say how the maintenance work would be done or through what method. He explained that ODOT had the right to see that the work would be done and to bill the Greenwood Inn for the costs to do such work. He did not see anywhere in the Agreement where it talked about sign offs from the DSL and the Army Corp. of Engineers as well as the City, that would be required to do such work under the existing ordinances and rules by those agencies. He said he assumed that under emergency authority ODOT would be acting on behalf of the State of Oregon and in that capacity represent DSL. He said the City's concerns would be reduced at that point to making sure that erosion control issues were addressed in an emergency. He noted the agreement was silent to exactly how that would be accomplished, it just set the threshold when a problem was identified.

Stuhmer wondered if the City of Beaverton would be doing the monitoring.

Coun. Stanton asked where was zero level and how they would know when they hit 200 feet

Duggan said it would have to be worked out based on the volumes and measurements that would calibrate how much sediment came in to the size. He reiterated that according to the Memorandum of Agreement the City would not do the monitoring. He said if the State was concerned about that issue they would have their highway inspectors monitor the sedimentation in Fanno Creek and if they were alerted to large amounts of sediment accumulating there or debris then they would exercise the terms of the agreement.

Stuhmer commented the state always implied they were well undermanned. He asked when the Greenwood Inn built the two ponds and who was going to monitor it.

Mayor Drake said the Greenwood Inn had a vested interest because they were the ones concerned about water dumping out on to the highway. He said no one else appealed it and the City was satisfied and had several mechanisms in place to force the Greenwood Inn to take care of their pond and do what they needed to do. He reported that staff said ODOT would monitor it because they had a vested interest in the highway. He noted the City crews had gone out in the flood of 1996 and cleaned out the storm drain and the flooding on the Highway 217 quickly subsided. He explained the City called ODOT on that specific issue and informed them to clean up their pond, but they had more problems at the coast at that point and could not get to it, so the City's crews took care of the problem. He said his initial irritation with ODOT on the appeal was the local regional manager wasn't even working in state when the flooding happened and the City knew what happened. He said the flooding on Hwy. 217 had

nothing to do with the Greenwood Inn or anyone else, and the problem turned out to be the drain was not properly functioning.

Stuhmer said since they were not sure how and when ODOT was going to monitor the new ponds, would the general public be able to monitor them and would the measuring sticks be available to the public.

Mayor Drake said he did not know and that was not for the City of Beaverton to enforce. He referred to what Duggan had said about ODOT's responsibility to enforce and monitor and their requirement of the Inn to take care of it per their agreement.

Stuhmer asked if the general public could go on to the land and look at the pond. He said his property was where the old floodplain was and described that area as the 100-year floodplain. He said with the new floodplain he was told that the 1996 flood would have been considered a 25-year flood.

Duggan explained that the way one defined the flood elevation was based on statistics and a computer model of how the water would run through the neighborhood in the event of a large storm event. He said for Fanno and Beaverton Creeks the type of storm event classified as a 100-year event could happen in a period of five hours from the start of the rainfall to the point where homes were flooded to the 100-year level. He noted that would occur in a scenario where the ground was either saturated or frozen and we received approximately 1 inch per hour for 5 hours straight. He said if there was a let up in the precipitation or if it were less than that in the entire period of time, there would not be a 100-year flood level. He explained what they were seeing in the re-studies was a more precise level of computer model in that the ground sections were better mapped and there was better information on the hydrology of the whole basin. He reported that from that information they saw a rise in the 100-year floodplain, so while the risk to a homeowner being flooded was exactly the same in a reality basis, in a study basis it was just a more refined approach. He said whether it was a 25-year or 100-year event was just per the maps and the physical situation was the same.

Mayor Drake said Duggan was as sharp and as communicative as they came.

Coun. Brzezinski interpreted what Duggan said as they had better methods to measure it now, and it was not that the floodplain had changed it was that they knew more than they used to and had a more accurate mapping of it.

Duggan said it was both the floodplain had changed and they had better methods to measure it.

Winship said the floodplain was a statistical estimate, calculation only, because they did not have hundreds of years to look at. He said they

looked at the 1996 flows and based on the precipitation that occurred the estimate was about a 25-year event based on Fanno Creek. He said the Columbia River showed a 100-year flood but on Fanno Creek the precipitation was about 25-year.

Mayor Drake thanked the participants for their patience. He complimented Russell and Jerry Strom and said they were good communicators and he appreciated them working with the City on the issue. He commented that he hoped they would have the issue of the berm mitigated in the spring. He thanked the Greenwood Inn for being available at the meeting to answer people's questions.

RECESS:

Mayor Drake called for recess at 9:15 p.m.

RECONVENED:

The meeting reconvened at 9:25 p.m.

Mayor Drake said the Photo Radar Update Presentation would be rescheduled for sometime in February when there was a more available calendar.

ORDINANCES:

Suspend Rules:

Coun. Soth MOVED, SECONDED by Coun. Doyle that the rules be suspended, and that the ordinance embodied in AB 98-22 be read for the first time by title only at this meeting, and for the second time by title only at the next regular meeting of the Council. Couns. Yuen, Brzezinski, Doyle, Soth, and Stanton voting AYE, the motion CARRIED unanimously (5:0)

First Reading:

99-22 An Ordinance Granting A Renewal of A Non-Exclusive Cable Television Franchise Agreement to TCI of Oregon, Inc., And Declaring an Emergency

Mark Pilliod, City Attorney, read the following ordinances for the second time by title only:

Second Reading and Passage:

99-12 An Ordinance Amending Ordinance No. 2050, the Zoning Map, From Light Industrial to Town Center – Sub Regional District (TC-SR) for Property

Within the Murray Scholls Town Center Planning Area; RZ 980016
(Gramor Map Amendment)

- 99-13 An Ordinance Amending Ordinance No. 1800, the Comprehensive Plan Map, From Light Industrial Designation to Town Center – Sub Regional Designation for Property Within the Murray Scholls Town Center Planning Area; CPA 98016 (Gramor Map Amendment)

Coun. Soth MOVED, SECONDED, by Coun. Yuen that the ordinances embodied in AB 99-12 and AB 99-13 now pass. Roll call vote. Couns. Yuen, Brzezinski, Doyle, Soth and Stanton voting AYE. The motion CARRIED unanimously. (5:0)

Coun. Stanton noted that the sign on Hall had been changed to 40 miles per hour and she assumed that it went all the way to Allen. She said that once one crossed Allen there was no sign indicating reduced speed ahead on Hall to 30 miles per hour.

Ramisch said the correct speed south of Allen had been 40-miles per hour for some time and he understood that the 30-mile per hour sign was incorrect. He reported they had discussed it with staff over the past few months and when Coun. Soth asked about putting a "Reduced Speed Ahead" sign in the area, it had already been implemented.

Coun. Stanton said she would have liked to have that information in advance and thought they were getting a reduced speed zone and was somewhat surprised that a higher mile per hour sign appeared.

ADJOURNMENT:

There being no further business to come before the Council at this time, the meeting was adjourned at 9:30 p.m.

Darleen Cogburn, City Recorder

APPROVAL:

Approved this 24th day of May, 1999

Rob Drake, Mayor