

REGULAR MEETING  
February 22, 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, February 22, 1999 at 6:05 p.m.

ROLL CALL:

Present were Mayor Drake, Couns. Dennis Doyle, Forrest Soth, Wes Yuen, and Cathy Stanton. Coun. Evelyn Brzezinski was excused. Also present were City Attorney Mark Pilliod, Chief of Staff Linda Adlard, and City Recorder Darleen Cogburn.

EXECUTIVE SESSION:

Coun. Soth MOVED, SECONDED by Coun. Doyle, that the Council go 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. Pursuant to ORS 192.660 (3), it is Council's wish that the items to be discussed not be disclosed by media representatives or others. Couns. Soth, Doyle, Yuen voting AYE, motion CARRIED unanimous. (3:0) Coun. Stanton arrived a few minutes later.

The executive session convened at 6:06 p.m.

The executive session adjourned at 6:25 p.m.

RECESS: Mayor Drake called for a brief recess at 6:25 p.m.

RECONVENED:

The regular meeting reconvened at 6:47 p.m.

Also present for the regular meeting were: Finance Director Patrick O'Claire, Human Resources Director Sandra Miller, Community Development Director Joe Grillo, Engineering Director Tom Ramisch, Operations/Maintenance Director Steve Baker, Library Director Shirley George, Police Captain Richard DeHaan, Utility Engineer David Winship,

Senior Planner Barbara Fryer, Assoc. Planner Jeff Salvon and Supervisor of Wastewater Division Leonard Apling.

CITIZEN COMMUNICATION:

There was no one present who wished to speak.

COUNCIL ITEMS:

Coun. Stanton noted that day (2/22/99), at the Washington County Public Affairs Forum, Coun. Soth was not there, and eight different people asked where he was, which was a testimony to his dedication to be informed and participate.

STAFF ITEMS:

Linda Adlard, Chief of Staff, noted that by Wednesday, February 24, 1999, they would have what she hoped was the last legislative work session on the Red Light Photo Radar bill. She told Council that she would give them a list of people to contact, and noted that she expected it to go to a vote on the floor of the House the following week. She explained that if they did not get it out of committee this week, it might be lost. She reported that there were three options: a statewide bill, a Beaverton, Medford, Portland, and Grants Pass bill, and the third was the same with Medford and the others but with a sunset in four years.

CONSENT AGENDA:

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

- 99-42      Liquor License Renewals: Annual Renewals
- 99-43      A Resolution Declaring a Nuisance of a Defective Sidewalk, Abutting Property at 12195 SW Burnett Court Beaverton, OR 97008 (Tax Lot # 1S1 27 CB 1500) and Ordering its Abatement
- 99-44      A Resolution Declaring a Nuisance of a Defective Sidewalk, on Property Abutting 12590 SW Colt Court Beaverton, OR 97008 (Tax Lot # 1S1 28 DA 2500) and Ordering its Abatement
- 99-45      Resolution Supporting The Oregon Comprehensive Emergency Management Act (OCEMA)
- 99-46      TA 980012 Minimum Density Zoning Regulations
- 99-47      Amendments to Draft IGA with Washington County for Urban Planning Services
- 99-48      Bid Award – Traffic Signal and Street Light Re-lamping Project

Contract Review Board:

99-49 Consultant Contract Award – Engineering Services for Water Well Drilling, Groundwater Aquifer Storage and Recovery, and Emergency Generator Replacement

99-50 Contract Award – Software Package for the Wastewater Management and Maintenance System

99-51 Waiver of Sealed Bid – Purchase of 15 Vehicles from an Existing Award through the State of Oregon

Coun. Stanton thanked staff for their answers to her questions. She also thanked Mayor Drake for his comments regarding AB 99-43 and 99-44, and asked him to pass them along to the appropriate parties.

Coun. Doyle asked, regarding AB 99-50, if they were getting “off the shelf” types of software.

Patrick O’Claire, Finance Director, said that was correct, they were getting an “off the shelf” commercial software program, and noted that it was operational in a similar environment.

Question called on motion. Couns. Soth, Doyle, Stanton and Yuen voting AYE, the motion CARRIED unanimously. (4:0)

PUBLIC HEARINGS:

99-52 Williams/173<sup>rd</sup> Annexation (ANX 98009) (cont. from 1/4/99)

Mayor Drake read the requirements for the public hearings regarding annexations, and reviewed the hearing format (for both annexation hearings).

Mayor Drake explained that it was a quasi judicial hearing, outlined the appeals process, and noted there was a limit of five (5) minutes per speaker.

Mayor Drake asked if any Councilor had ex parte contact they wanted to report, or had any reason they should abstain from hearing these matters. No one did.

Mayor Drake noted that the Mayor would only vote in case of a tie. He said he had contact with several people from Murray Hill, and that he lived in Murray Hill, but not where he would be influenced or affected by the decision. He reported that he had been involved in discussions and the pre-annexation agreement, but none of that involvement would prejudice him in any way.

Mayor Drake asked if there was anyone present who wanted to challenge the Council's jurisdiction in these issues or any Councilor's right to vote on these matters. No one responded

Mayor Drake opened the public hearing.

Alwin Turiel, Policy Manager, noted that there were two annexations that evening, and they would take the Williams annexation first. She said these were the first of several annexations under SB 122, where previously annexations had been done under the Boundary Commission. She reported that the owners of the property petitioned for annexation in 1998, and wanted to sell their property for development, which would require the City's storm drainage service. She explained that the City required annexation in order for the property to receive the benefit of City services. She reported that no issues had been raised by the special districts or the County, all who had been notified of the hearing. She explained that since they did not get any comments from the interested parties, there would not be an opportunity for this case to be discussed as a contested case at Metro, but an appeal of the Council's action would go to the Land Use Board of Appeals (LUBA). She said the property was subject to specific standards, and she said the area was currently served by Washington County services, and upon annexation it would be served by the City of Beaverton.

Turiel pointed out that as part of the annexation, they would be annexing roadways. She noted that usually the roads must be brought up to City standards before they are transferred to the jurisdiction of the City and this does not prevent the City from taking care of utilities in the roadway before the transfer. She said staff recommended approval of the annexation and the associated ROW, and that it be effective following the second reading of the ordinance. She pointed out that the property was currently underdeveloped with a single family home on it, and would be developed later, so this would not be a tremendous increase of service needs for the City.

Coun. Soth asked if no design of the infrastructure would be done until the annexation went through.

Turiel said that was correct and explained that it was an extension of an existing subdivision that was developed initially with a County approval and annexed into the City more than a year ago, because they found out they needed City sewer service. She noted they learned from that lesson and realized it would be better to do it this way.

Coun. Stanton asked if they had the subdivision approval from the County.

Turiel said it was already approved, and the developer and the County did not know that they needed City sewer.

Coun. Stanton asked if there were any permits issued.

Turiel said there were not.

Coun. Doyle asked, on exhibit A, (in record) what the area above it was; was it empty property.

Turiel said she thought it was a large drainage swale, and she thought it could be developed.

Coun. Doyle said if it could be, he thought it would be smart to have it all done at once, so it would not be necessary to go through the process again.

Turiel explained they hoped that when the property to the north and the small parcel to the south developed they would use this process.

There was no one present who wished to testify.

Mayor Drake closed the public hearing.

Coun. Doyle MOVED, SECONDED by Coun. Yuen to approve the annexation contained in AB 99-52 – Williams/173<sup>rd</sup> Annexation (ANX98009).

Question called on the motion. Couns. Doyle, Yuen, Stanton and Soth voting AYE, the motion CARRIED unanimously. (4:0)

99-53 Murray Ridge Annexation (ANX 98008) (cont. from 1/4/99)

Mayor asked if it was understood that he had called for abstentions for both hearings when he outlined the process earlier.

All agreed that it was understood.

Turiel explained that this annexation was approved a couple of years ago, as an extraterritorial service delivery extension, which had been approved by the Boundary Commission. She noted that the owners petitioned in conjunction with the previous owners' pre-annexation agreement. She explained that the agreement was a result of negotiations for City water and sewer service that occurred in 1994-95. She noted that the planned unit development (PUD) was approved previously.

Turiel pointed out that an annexation was not a land use decision, it would not allow or deny development, and noted that there was an existing development approval on this property with City water. She clarified that the decision would not approve or prevent the use of the property, since they had already made the decision to provide water and sewer service.

Turiel reiterated that their decision was not a land use decision. She said the Oregon Supreme Court had held that these types of decisions could

not be separated, and that was what the City was proceeding to do. She reported that they used the usual land use process to notify the appropriate persons, the same as on the previous annexation. She reported that they had received a few phone calls in response to the notice. She said the annexation decision was subject to issues in the Comprehensive Plan related to service delivery issues.

Turiel said staff recommended approval, effective June 30, 1999, and hoped the development of the property would occur in a manner that the tax revenues that come to the City would help support the infrastructure that is needed on the public side as the property develops over the next year. She said in the event there was an appeal of the decision, it could be that the annexation effective date could be delayed if it would be beneficial, but at that point they did not see the need.

Mayor Drake said Joe Grillo, Community Development Director, had noted there was an issue of the annexation date.

Grillo clarified that the June 30 date was fine, but he had some conversations with the City Attorney, and to the extent there were some outstanding appeals being held at the County, there was some value in having those played out. He explained that delaying the annexation to January 1, 2000, would give all parties an opportunity to hear the case in front of the current jurisdiction.

Coun. Soth asked if the property was within the Urban Growth Boundary (UGB) for the City as well as Metro's UGB.

Turiel said it was.

Coun. Soth asked if these agreements were in concert with the planning agreements the City had with the County over the past few years.

Turiel said they were consistent, and noted that was addressed in the staff report.

Coun. Stanton noted that regardless of what they did they would have to change the date of annexation from March 31. She asked if she had heard Turiel say she hoped the tax money would cover the infrastructure cost.

Turiel clarified that at another time they had discussion about the City's annexation policy and talked about the cost benefit of having properties that receive City services pay taxes to receive those services. She explained that the way the revenue system worked, properties that were annexed into the City by March 31 have enough time to get on the tax rolls for the next year. She said that was why they customarily use June 30 when there is no need to hurry something up, because it allows the tax revenue stream to coincide with the service provision.

Turiel explained that the annexation would be final when it was through the appeal period, even if it had a delayed effective date.

Coun. Stanton asked if the City would not get any System Development Charges (SDCs) on this.

Turiel said she thought they would not, if the development began before the annexation was effective.

Coun. Stanton stated that she believed development would begin before the annexation was effective because it had a Writ of Mandamus for the subdivision. She asked if the developer had not submitted plans to the County, because they were still in potential litigation.

Grillo clarified that he would not share that observation that there would be any development until the current appeals, and noted that it did have a Writ of Mandamus, and an order attached to it, to begin development within two years. He reported that the current property owner had filed for an extension with the County and there was a Director's decision to grant that extension, and that decision had been appealed the hearings officer. He said that hearing was scheduled for March 12, 1999, with a decision not likely to happen until a month later. He noted that with the long history, it was likely that decision would also be appealed to LUBA. He said it was likely that there would not be that much construction done in this next fiscal year.

Coun. Stanton noted that the Historical Perspective did not give her a date as far as the Writ of Mandamus, and asked when the two year expiration would be if there had not been an appeal to the hearings officer.

Grillo explained that the two-year period and determination was at the discretion of the County Counsel's office, as to when the two-year period began and ended. He said it did not necessarily fall with the Writ dates.

Coun. Stanton asked when the date was.

Grillo said he did not know, and had not worried about it since it was in the jurisdiction of Washington County.

Coun. Stanton said she thought she heard him say that he did not think there would be much construction in the next fiscal year.

Grillo said that was correct, given the track record of LUBA, they were not very speedy.

Coun. Stanton pointed out that if the application went to Washington County, then the City would have no control over the way the construction was done, other than to City street, water and sewer standards.

Grillo agreed that was correct, and clarified that if the applicant chose to use the City's storm drain system, they would have to follow the City's standards, Codes, etc. He said she was correct that it did not have to meet City sidewalk, landscape, etc., standards. He clarified that with the pre-annexation agreement, and what the City agreed to provide for service, vs. what is in the jurisdiction of the County was clear cut.

Coun. Stanton said this was a dilemma, because even though annexation was not a land use decision, it was tied together in the public's mind, because nothing was annexed without current citizens knowing what was coming in. She noted that this was very difficult for her, because she never appreciated a piece of property coming into the City when the City could not have any say in how it would look and how it would fit in with the rest of the City. She said that was a personal problem for her, and she wished the developer would submit their plan to the County before the annexation.

Mayor Drake pointed out that he thought that was the intent; it was a public hearing and staff was recommending approval. He noted that the pre-annexation agreement was approved in 1995, and it was because of appeals it had taken so long. He explained that staff believed the criteria had been met and it was time to act on it. He said he did not think he understood from staff that there was any likelihood of not acting on it that night.

Coun. Stanton said it was fine that staff did not have any idea of that, she, however, had that idea! She explained that rather than doing the annexation for March 31, they were going to do it for January 1, 2000, because there was some potential litigation that might not be completed by that date. She said she was concerned and wondered if they were going to do the annexation that night.

Mayor Drake said they approved the pre-annexation agreement in 1995, and the intent was to approve the annexation that night, if that was staff's recommendation, because staff felt the requirements had been met.

Mayor Drake pointed out that either way the property was entitled to sewer and water from the City. He explained that if she was concerned about the City overseeing it, there was more potential of the City overseeing the development process if it was annexed than if not. He explained that he thought Grillo's advice was to go ahead and annex it, so the City would have some say in how it was done.

Coun. Stanton interjected that the City would only have control if the application came in after the annexation.

Mayor Drake agreed and asked staff, if they went back to the June 30<sup>th</sup> date, how that would affect appeals. He said he thought Coun. Stanton wanted it to come in earlier rather than later.

Mark Pilliod, City Attorney, clarified that the order of Mandamus was dated June 28, 1996, and the effect of that order was to direct the County to issue a land use order, and the Board issued that order on July 2, 1996. He explained that under County Code the developer had two years to complete the process by filing a final plat and making substantial improvements to the property. He noted that in doing so, the developer would run the risk that it could be for nothing because the land use decision by the County (7/2/96), the City's decision on the pre-annexation agreement and extension, and the Boundary Commission's determination on extraterritorial extension of City services, were all appealed. He pointed out that for the past two years it had a cloud over it, and the developer had only recently learned that his extension was appealed. He said he thought the developer also thought it needed to move head. He said the developer seemed to feel that they needed to conclude the appeals and then know where they stood, rather than having it uncertain, and possibly annexed in the interim.

Pilliod explained that there were two options for the City, and said assuming the City wanted to annex the property, then the next question was when did they want it to be effective. He noted that it was easier to insert a calendar date into an ordinance, because then it would be clear. He noted that the alternative was to have a decision of when it would be effective, such as "when all appeals have been exhausted," and they could add, "but no later than " some certain date, which would give some certainty to the developer and the City. He pointed out that it would also keep from having this pending decision, "up in the air" and then the annexation becoming effective.

Coun. Stanton said she thought the developer had a land use approval from the County, which she thought expired on July 2, 1998. She wondered if there was case law that said the clock did not start until the appeals were concluded.

Pilliod said the developer had submitted a timely request for an extension, and the County treated that as continuing the matter until the decision on the extension was concluded. He clarified that it was not as if the developer had lost the development approval he got two years ago. He said as to the expiration of a time frame, it related to which code they were reviewing. He explained that the County took the position, and had so advised the developer, that despite the filing of the appeals, the developer needed to file a request for extension no later than July 2, 1998, which he did.

Coun. Stanton asked if they decided to do the annexation effective on June 30, 1999, (as opposed to some time in the future), and there were appeals going on, the City would not become party to those issues at all. She said they would become party only to issues after it came into the City.

Pilliod explained that they could have the situation where the County made a decision, which was appealed, and in the course of that appeal, the

property became annexed into the City. He said in that case it seemed proper for the City to be substituted for the County in that process because the City would in effect, buy off. He suggested that the City should arrange for the County to continue in the appeals.

Coun. Stanton recalled that there was an application for the PUD subdivision, which was in the process of being appealed, so whether the developer succeeded in his case, the City was stuck with whatever the PUD looked like.

Turiel said that was correct as long as the application was valid.

Coun. Stanton asked if any run-off issues, etc., would be the responsibility of the City once it was annexed. She wondered at what point the City engineers could say they had to do additional work, for such things as slope stabilization.

Grillo noted that the issue that had been raised by someone in the audience was introduced to the County in 1996, and was part of the record. He said there were two ways to answer the questions. He explained that to the extent that the developer carried out its approval from the County in a consistent fashion, then the applicant who was using an engineer or someone with a professional degree to do the grading, would bear the responsibility as to the validity and capability of the grading plan. He said when they reached the point of building on the individual lots, (on the assumption that the property was in the City), if the building official determined that a change needed to be made, they had the authority to make that request. He said it did not necessarily mean that all water that used to stable on someone's property could not cross the property lines. He pointed out that the builder shared in the responsibility in terms of who built the house.

Coun. Stanton stated that was fine, but it did not answer the questions. She said she was thinking of the "Capes" development and was concerned.

Grillo said he did not particularly agree with what had been submitted by the person in the audience who had not yet spoken. He stated that he did not agree with all the statements in the gentleman's statement. He said he did not want to disagree when the gentleman had not been before the Council yet.

Coun. Stanton said that was her concern, and said an example was where *The Round* was located used to not be in the City, and they were living with the decisions that were made for that property.

Grillo pointed out that the City owned the property at *The Round* and in this case the City did not own it. He said the City regularly relied on professional expertise in terms of engineering and advising regarding

requirements, as well as the City retained several engineers to review it and pose questions.

Coun. Stanton interrupted and asked if the City would be doing that if the application went to the County.

Grillo said the City's jurisdiction based on the prior agreement the City agreed to, extended only to the infrastructure.

Coun. Stanton said she understood that, but wanted to know if City staff would take the longer view and look it over, too.

Grillo said he thought that went without saying, but from his perspective as the department head, they would look at the development as far as final grading plan, most particularly if it was going to be suing any of the City's storm drainage infrastructure. He stated they would also be relying on a professional engineer to tell them how the property would be graded. He explained that if the developer was grading it in substantial compliance with the prior land use decision, the City would not have the right to tell then to do it different.

Coun. Stanton asked if they could ask County staff to look at this additionally because the City thought there might be something that should be looked at. She asked if they could get the County staff to impose changes and conditions that would make it meet more of the City standards.

Grillo said he would make every effort but wanted to clarify that the item that was up for appeal was not the whole subdivision, it was only the request for an extension.

Mayor Drake said he would respond on the drainage issues for Coun. Stanton.

Coun. Stanton said he did not need to do that, since she had not looked at it in terms of the specifics.

Mayor Drake opened the public hearing.

Speaking in Support of Annexation:

Mark Vukanovich, 6932 SW Macadam Ave., Portland 97219, stated that he worked for R and V Properties, the owners, developers and future home builders for Murray Ridge Development. He said he was in support of the annexation to the City according to the pre-annexation agreement with the City. He said he would answer questions they might have.

Coun. Soth noted that he recently served on a committee for DEQ concerned with erosion control, and reported that from that would come recommendations for regulations. He noted this had to do with the

implementation of the measures rather than change in current requirements, and asked if Vukanovich saw anything that would cause him to revise what he had already done.

Vukanovich said as far as the development itself, they had thought about revisions, and pointed out that the application started earlier and they purchased it in 1998. He stated that their request for the extension had been appealed and so they felt it was not wise to open up a "can of worms" when they had an approved plan. He explained they did not want to open it up for more appeals.

Mayor Drake asked who appealed the extension.

Vukanovich explained that he understood the attorney for the Murray Hill Homeowners Association filed the letter of appeal. He reported that Washington County was in favor of the project as a whole, and they had letters of support from various agencies.

Coun. Stanton asked, regarding the amendment to the pre-annexation agreement of 2/97, (in record), if he still expected the frame in the amendment to happen.

Vukanovich said that was correct.

Coun. Doyle noted that Vukanovich said his firm had bought into the project in 1998, and because of the appeals, they were hesitant to modify the plan, even if was to make it better and/or address some of the concerns because of that opening it up for further appeals.

Vukanovich reiterated that they had an approved set of plans, and what Coun. Doyle said was correct. He noted that he had lived in the Murray Hill area in the past and enjoyed it. He expressed his desire for the best development there as was possible, and said that often citizen involvement was crucial, but at times a person had to pick and choose their battles.

Coun. Stanton asked Pilliod what would happen to the pre-annexation agreement if the City annexed before such things as the plat being recorded, construction permits issued by the County, etc.

Pilliod said he believed paragraph four, offered Aspen Group the opportunity to delay their petition for annexation considerably until all appeals, and construction plans had been submitted, and the date was March 31, 1999. He noted that was why they were having the hearing. He pointed out that looking at it as a whole, there was nothing magic about that date, and explained that the paragraph was designed to allow the developer to conclude all of those issues though Washington County before annexation. He said if they came in and annexed earlier than they would be allowed to annex under paragraph four, the pre-annexation agreement was fulfilled. He noted that as far as the development itself

was concerned, other provisions in the agreement set out how the subdivision plan and other issues would be obtained.

Coun. Stanton asked if there was no way the Planning Commission (PC) would get to look at the PUD.

Pilliod said not as it was, and asked why they should not stick with what they had once the appeals were exhausted.

Coun. Stanton clarified that all they were doing was determining when to annex it.

Speaking in Opposition to the Annexation:

Derek Balbag, 15860 SW Cardinal Loop, Beaverton 97007 said his property bordered the property in the proposed development and said he was there to oppose the annexation. He said he had not realized that the City had no choice but to provide them with water and sewer regardless of the annexation. He asked if there was any way to rescind the pre-annexation agreement.

Mayor Drake explained that it was a binding agreement

Balbag declared that it adversely affected his property, he was a City resident, and the City did not take into account the adverse affect. He asked again if they could rescind the pre-annexation agreement.

Mayor Drake said they could not, there was a binding agreement with them and the Boundary Commission approved it, it was done. He explained that the developer had the services if they wanted him to or not, today.

Balbag asked Pilliod if he agreed.

Mayor Drake clarified that he was running the meeting and he was giving him the answer.

Balbag apologized for asking Pilliod the question, and went on to read his letter into the record (in the record).

Coun. Soth stated that he did not understand how Balbag perceived damage to his property, through the provision of water and sewer to the larger parcel.

Balbag stated that the water, sanitary sewer and storm sewer extended to the property, and the development was dense which did not match the terrain. He explained that the damage occurred with the tree grove, when the developer asked to remove trees, and said there was no way to save those trees. He noted that when he built his house he saved the trees, as the City required it and as the NAC asked in their bylaws. He expressed

his concern that when the trees are removed from the hill above him (on the new development), and the hill becomes saturated, it will make the trees fall on his house.

Coun. Soth asked if his concern was not with the extension of water and sewer services, but with the erosion control issues, etc. He said it sounded like the concern was the extension into the property rather than to the property.

Balbag said that was correct. He said the development would effect the whole slope and that was what they were worried about.

Coun. Soth said he could not address it since it was not part of the hearing.

Balbag said his issue was that the City did not consider existing residents, and they should have done a study to see what the effect would be on the City residents. He said more consideration should have gone in to the pre-annexation agreement. He stated that the City should have said they would give the developers the water and sewer services but only if they did not negatively effect the residents. He said it would become a liability to the City.

Coun. Stanton noted that she had asked quite a few questions earlier, and what she did not particularly like was that the development would be built there whether or not it came into the City. She said the City was required by law to provide those services because they were the urban service providers in that area. She explained that the pre-annexation agreement would give the City the authorization to collect taxes on the property to defray infrastructure costs in the future. She stated that was the only reason they did the pre-annexation agreement. She clarified that this was not about the subdivision development that would take place there, it was strictly with the County. She explained that the subdivision would not go to the PC, or Council, it was in the hands of the County. She said if the applicant was successful in surviving the appeals, they would build. She reiterated that when anyone that evening wanted to talk about what the development was going to look like, they needed to understand that the City did not have anything to say about that.

Coun. Doyle complimented Balbag on his letter and said he wished they had a better answer, but Coun. Stanton made it clear that they had no options. He said he was glad to see, from Balbag's letter, that he understood that if it was built to City standards, they would have more of a voice in the issue. He pointed out that as it began to develop, the Council and staff would want to know about any problems that materialized.

Mayor Drake noted that there was information in the letter about the Rikerts who had suffered water damage because of a dam that had been incorrectly built. He noted that this was a case of the Rikerts who were inside the City and the dam was outside the City and it gave way one rainy

evening, and they had considerable water damage. He recalled that the dam was not built according to the original approval. He asked Grillo what the City would look at in terms of engineering.

Grillo said they would look at the water, sewer, street and storm drain construction plans, as they related to tying into the City's system, and if they were given the opportunity to look at the broader grading plan, they would do so. He explained that the storm drainage rules and erosion control rules that applied within the City also apply outside the City.

Balbag asked what control they really had; did they have an example of influence. He wondered what the City could do about a flood.

Grillo explained that Jim Duggan, Project Engineer, looked at these plans on a regular basis. He noted that if one of the City's recommendations was to do something very expensive, it was less likely the developer would follow the request, but hopefully they could come up with more than one recommendation, some that were less expensive than others. He said if the County granted the approval, then the next chance the City would have was when the individual building permit and lot plan was permitted. He explained that they could look at the specific plans for the storm drains, sewers, etc., and attempt to get mitigation on a lot-by-lot basis.

Mayor Drake suggested Balbag and the neighbors get acquainted with Mr. Vukanovich and see if they could open a dialog and address those issues with him.

Balbag noted they had a neighborhood meeting that week, and clarified that that they respected the owners right to develop. He asked if the City had the responsibility if there was a problem.

Mayor Drake said he had control of the meeting, not Balbag, and that Balbag was not going to extract a commitment from the Council they could not make. He also suggested that Balbag develop a relationship with the County and work within the confines of the land use laws. He noted that with the case where the dam broke, it was a case of a neighbor building a dam without authorization.

Pilliod clarified that the City did not accept responsibility for any downstream or down-slope property damage, by virtue of having annexed the property; that was absolutely false. He said as to the City's involvement with the plan approval process that flows from the County's PUD approval. He suggested Balbag might be well served to get a copy of the pre-annexation agreement and the amendment, which stated, in part (read from it in the record) that they agreed to construct the utilities to the satisfaction of the City Engineer. He suggested Balbag should look at the terms of the Mandamus, and the original terms of the pre-annexation agreement. He pointed out that it said that deviations from exhibit D (the site plan approved by the County) which comply with Beaverton Development Code shall not be grounds for disapproval.

Pilliod stated that in his opinion, if a modified plan went to the County, which complied with the Development Code, the City would approve that, but the developer would be disinclined to do that if there would be a potential of an appeal. He said if the neighbors could assure the developer that if they made changes, no appeal would follow, they might get the developer to make changes. He reiterated that the City had no choice but to provide sewer and water.

Balbag said he wanted all this on the record.

Mayor Drake reported that he had talked to Balbag and a neighbor and thought one of them did not live there when this was done.

Balbag said he owned the lot but did not live there, was unaware of it, and thought it was all with the County. He said they had voiced their concerns to the County. He said the County took too long and that it went on.

Coun. Yuen called for a point of order. He noted that they had gone on for a long time and Balbag had used his allotted time. He said Balbag's comments had brought out some interesting issues, and he had questions for staff. He asked if the property annexed to the City, even though the development had been approved by the County, did the City building inspector oversee the building.

Grillo, "Yes."

Coun. Yuen recalled that Grillo had said the City inspectors might be more rigorous than the County. He stated that it occurred to him that there was a certain irony that if people asked them not to annex the property, the one leverage they had was that if it was annexed the City building inspectors would review it and not the County's.

Coun. Stanton asked if the grading permits were to the County standards. She read from the information (in record), and wondered if that would be County inspectors.

Grillo said he could not tell her with a yes" or "no," there was more to it.

Coun. Stanton read from the agreement and said she assumed that grading would be taking place before lots would be sold, and if that was true it would be to County standards.

Grillo said that was a possible scenario, but it depended upon when the developer got his grading permit. He clarified that if the grading was not done before it was annexed into the City, then the developer would have to get a Site Development Permit from the City. He explained that the developer would not proceed down the normal path of development review because the City would be bound by the land use action of the County, so it would be a hybrid.

Scott Russell, 31291 Raymond, Scappoose, 97056, said his mother owned property adjacent to the land. He noted they had been involved in some litigation on the property. He stated that he was representing his mother and they were in opposition to the project until someone took responsibility for potential damages. He commented on the staff report of Dec. 7, 1998, and noted they had not talked about the improvement of the roads at 155<sup>th</sup> and Scholls Ferry.

Russell said it was more complicated with the realignment of those roads. He reported that prior to any action by Aspen or their interest in the property, he had talked with the County engineer regarding the roads at the time the land to the south of his mother's was being developed. He said he talked with Irish Bunnell, Development Services Manager, and at the time that piece of property had one access to the north, to his mother's property and this Murray Ridge property. He reported that when he asked the County engineer if 155<sup>th</sup> would be an acceptable access for development, said "No," and much stronger words than no about using that road. He explained that there was a curve there and other issues. He said they reported this at the Mandamus hearing and said it was extremely dangerous and difficult to get out of that road. He said in the meeting with Bunnell and Matrix Development they increased the number of accesses to the north to five, and noted that the development was planned to include the land to the north.

Russell said because of the density, Windsor Park could not have as much access. He noted that the staff report made no reference to the fire and rescue access via Alvord Lane, which was chosen in the County permit for such access. He reported that during the hearings the fire and rescue people said it would not qualify and would take some work to meet their requirements. He said they had been trying to point out some practical problems. He reported that Mr. Vukanovich had approached his mother, and proposed to increase the project to 180 units. He said the main problem was the City stated in the pre-annexation agreement that the development would comply with City Code, and the City issued a letter to Aspen Group at the time they asked for an extension, (and read from the 6/26/96 letter from Pilliod in record) where they said the City staff was not recommending approval of the extension since they were not going to develop according to City standards. He said it seems that the City was doing its job (asking it be built to City standards), so maybe there is a place there to get the development up to City standards.

Mayor Drake asked if he was talking about utility construction. He explained that his understanding was the road and fire access was part of the pre-approved plat.

Grillo said as it related to the conditions, the County surveyor did not make land use decisions with the County just his opinion. He stated that this may have been all part of the deliberations, but he did not have the record

to review and respond. He pointed out that the judge, specifically concerned about access on Scholls Ferry rendered the land use decision. He reiterated that the City could not change that at this time other than to make sure that it was carried out to standards.

Pilliod noted, regarding Grillo's comments about the concerns related to access on 155th and emergency vehicles on Alvord Lane, part of difficulty was that in the amendment to the pre-annexation it refers specifically to where Aspen agreed to provide secondary access allowing for steepness of the drive.

Russell said it was interesting to note that the current pre-annexation agreement was on the consent agenda and they barely had a chance to comment. He said the original developer did not develop the property, but went shopping for the best deal, and went to the County to not have to meet City Codes, when they said they would meet City Codes and he thought that could be investigated.

Mayor Drake noted that Russell and his mother were heavily involved in this with their attorney Mr. Cox, and he was sure Mr. Cox had a record of this. He stated that he thought Pilliod's recollection was correct. He noted that Russell was heavily involved in the pre-annexation agreement and they had not been shy with the City Attorney and Chief of Staff.

Russell said he thought the City made an excellent effort in the pre-annexation agreement and had the understanding with the developer, and he thought that was where part of the problem was.

Mayor Drake said he thought much of that was territory developed in court and Russell and his mother had a large part of that.

RECESS: Mayor Drake called for a recess at 8:45 p.m.

RECONVENED:

The regular meeting reconvened at 8:54 p.m.

James Whiting, 15740 SW Deercrest Lane, Beaverton, said he lived across Deercrest Lane from the annexation, and was not opposed to annexation because he knew the property would be developed. He explained that he was opposed to annexation under the current process: accepting in whole with out review a process approved by the County under procedures perhaps not entirely confirming with what the City would have done. He said his problem was the issue of 91 units at the intersection of 155<sup>th</sup> and Scholls Ferry, where traffic had increased over the past five or six years, in both directions. He expressed his concerns with the access for emergency vehicles and the fact that it would not be to City standards.

Mayor Drake pointed out that Scholls Ferry was a County road with County standards.

Whiting said as he listened to Council discuss this, it was interesting to hear what sounded to him that City denied any obligation for due diligence in performing its pre-annexation decision and subsequently the annexation decision. He said he had heard that the City's sole responsibility after annexation would be to make sure the developer lived up to County standards, and would not impose any City requirements or desires. He asked for an answer from those who would be responsible for erosion, and that was to do the math for 20 acres of run-off in January, and the water usage of 91 units with possibly 150 people, and plug that into the 10-inch drain.

Mayor Drake said it was done on a standard basis and would pass any engineering standards, based on averages and whatever would happen whether it was in the City or not. He noted that Grillo could tell him about County standards.

Whiting reiterated that he objected to the development because of the intersection of 155th and Scholls Ferry.

Coun. Soth stated that development standards were a distinct and separate part of the process, and land use was quasi judicial which required a separate type of proceeding. He noted that under City agreements with the County there was no provision to start the whole ball rolling over again.

Alex Marrero, 11314 SW Meadow Lark Lane, said he took issue with staff saying that land use and annexation were two different issues, because to him they obviously were not. He directed Council to their eight goals, and say that annexation was not strictly Goal 2, how much money they could get into the coffers. He said annexation should also be the rest of their eight goals. He explained that the development at its best, was less than 200 feet wide, 91 homes on an incline to the east that would be deleterious to homeowners below it. He noted that the pre-annexation was supposed to be entered into in good faith with the developer agreeing to meet City standards. He said that was not being done, and the Mandamus preempted most of the studies and reports that were supposed to come in prior to the development. He stated that the developer was fairly shrewd, the County was fairly lax and the homeowners were very naïve. He said the Mandamus allowed the development to go through without some important things and that was a problem for the City, not just for the County. He stated that he originally came that night to ask Council not to approve the annexation that night and believed the builder wanted the annexation to go through. He said by Beaverton taking the annexation with all of its problems, the City would inherit those problems. He said even though they said the City would not have legal problems, he believed they would be involved in legal problems. He declared that homeowners would be adversely impacted and would come to the City first. He said he

realized that the City could not go back on an agreement. He stated that if the mindset was to annex, then they could go ahead and put every effort to make sure it went forward. He believed the builder wanted the development and he wanted the City to put pressure on the builder to make changes.

Coun. Yuen commented that so far he had heard reasons why the City should not annex and he respected those opinions. He noted that it seemed some of this was a little counter productive, since the real issue that night was whether it would be built in the City or not. He reiterated that if the City did not annex it, then it would still be built and the City would not gain any control over it. He noted that should an appeal succeed, then the development would be outside of the City, but if the City annexed it then the City would gain tax benefit, and part of the review would occur within the City. He further noted that if the project went through Development Review, the citizens would have direct access to officials.

Marrero said they were present to make statements and the Council should make the decision as soon as possible. He noted that if the City did annex, the property could it be rezoned.

Grillo clarified that the City had an urban planning agreement with Washington County and were obligated to main it. He said the property would have to go through a planning process six months after annexation, and the Comprehensive Plan and zoning would be according to the County.

Marrero said if it was rezoned to R-5 then 91 homes could not be built on it.

Mayor Drake explained that you could get the same kind of development in the City with a planned development, since R-5 in the City and R-9 in the County were virtually the same. He said when Marrero built, the R-9 zoning was already in place, and noted that the Boy Scouts had plans to build a camp there but they sold it.

Cam Henderson, 16360 SW Nighthawk Drive, said it was an education for him to be there that night. He noted that it was clear that the City had more stringent conditions. He said his neighbors were concerned with the developers building under County guidelines instead of Beaverton, and were concerned that it would be "ramrodded" through. He said it sounded to him that if they annexed it earlier rather than later the City might have more say in it. He expressed his concern about trees being blown down during storms, and reported that an arborist said the trees on Murray Ridge were shelter and if trees were taken down then more damage could occur. He said he thought if the tree removal process was under the City, the trees might be better taken care of.

Mayor Drake noted that they heard a lot of whining about the City's stringent standards for trees from developers.

Mayor Drake noted that he had a card from Karen Dill who was opposed but did not wish to speak.

REBUTTAL:

Mayor Drake informed Vukanovich that he had an opportunity to rebut the previous testimony.

Vukanovich did not want to rebut the testimony.

Mayor Drake asked for any question from Council.

Pilliod commented that he wanted to make sure Council was aware that in addition to the original materials, there was supplemental materials, and his direction to staff was to make sure that the decision-making previous to this such as the County, Circuit Court, Boundary Commission, LUBA, Court of Appeals, etc., were all entered as part of the record, and if this decision was appealed, those would be included in that record.

Mayor Drake closed the public hearing.

Coun. Soth MOVED, SECONDED by Coun. Doyle, that the City Attorney be directed to prepare an ordinance annexing Murray Ridge PUD into the City not later than December 31, 1999.

Mayor Drake noted that there had been discussion that if a motion was made to approve not later than 12/31/99, but if the appeals were exhausted, it would become effective immediately, was that correct.

Coun. Soth said that would be satisfactory with the motion maker.

Pilliod said the Community Development Director said that an application to extend the PUD approval was appealed, and the County Hearings Officer would hear that and render a decision. He said at the conclusion of that decision and any appeals of that decision, the City would notify the County Assessment and Taxation, that the ordinance thus became effective. He said if that did not happen before 12/31/99, they would advise the County that it was effective on that date.

Coun. Soth said he had no objection to that.

Coun. Doyle, motion seconder, also agreed.

Coun. Stanton said she would like a June 30, 1999, date because, assuming everything happened as it was going to with all the same verbiage, as soon as the appeals were exhausted. She explained that if it happened sooner then it would be better, and she was trying to get the best of both worlds. She said it was a given that the City was getting the 91 unit plat, and with City engineers and staff looking at it, it would be a better product. She stated that she was trying to figure out a way to get

the best of both worlds, and as good as County staff was, City of Beaverton staff was better!

Coun. Soth explained that was why he said not later than December 31, 1999, it could happen anytime from this time forward.

Mayor Drake pointed out that only if the appeal that was currently sitting at the County was exhausted, then the annexation would be immediate.

Coun. Stanton asked if instead of the appeals being resolved in two weeks, but it took two years, would it fall back to December 31, 1999.

Mayor Drake said what she wanted was covered.

Coun. Yuen said he thought that might be the practical outcome of the motion, it was not immediately obvious from the motion, hence the discussion. He said he would have preferred the motion say March 31, or until.... He explained that would set the clock ticking, but until the appeals were satisfied it was not a done deal, which was clearer.

Mayor Drake asked if he wanted to offer that as an amendment.

Coun. Yuen offered that as a friendly amendment.

Coun. Soth accepted the amendment.

Mayor Drake repeated the amendment : To approve the annexation effective March 31, 1999, or thereafter once the appeals had been exhausted.

Question called on the motion. Couns. Soth, Doyle, Yuen and Stanton voting AYE, motion CARRIED unanimously. (4:0)

#### ORDINANCES:

##### Suspend Rules:

Coun. Soth MOVED, SECONDED by Coun. Doyle that the rules be suspended, and that the ordinance embodied in AB 99-54 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, Doyle, Soth, and Stanton voting AYE, the motion CARRIED unanimously (4:0)

##### First Reading:

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

99-54 An Ordinance Amending Ordinance No. 2050, The Development Code, to Add Assisted Living Facilities (ALF) as a Permitted Use in the Community

Service (CS) Zone, in Addition to Other Related Amendments; TA 980007  
(Assisted Living)

Second Reading and Passage:

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

99-39 An Ordinance Amending Ordinance No. 1800, The Comprehensive Plan Map and Ordinance No. 2050, The Zoning Map, to Designate the Property Known as R. Storer/158<sup>th</sup> Avenue; CPA 98017 and RZ 980017 (R. Storer/158<sup>th</sup> Ave.)

99-40 An Ordinance Amending Ordinance No. 1800, The Comprehensive Plan Map and Ordinance No. 2050, The Zoning Map, to Designate the Property Commonly Known as Cornell Oaks Corporate Center Annexation; CPA 98018 and RZ 980018 (Cornell Oaks Corporate Center)

99-41 An Ordinance Amending Ordinance No. 1800, The Comprehensive Plan Map and Ordinance No. 2050, The Zoning Map, to Designate the Property Known as P. Williams/Center Street Annexation; CPA 98019 and RZ 980019 (P. Williams/Center St.)

Coun. Soth MOVED, SECONDED by Coun. Doyle, that the ordinance embodied in ABs 99-39, 99-40, and 99-41, now pass. Roll call vote. Couns. Soth, Doyle, Yuen and Stanton voting AYE, motion CARRIED unanimously. (4:0)

OTHER BUSINESS:

Coun. Doyle MOVED SECONDED by Coun. Soth, that Council exercise its authority to waive the provision that requires Board and Commission members to live in the City for Planning Commission member Tom Wolch to allow him to stay on the Commission for the rest of this year, 1999.

Coun. Stanton asked where he was going to move.

Mayor Drake said he was moving to Tigard.

Question called on the motion. Couns. Doyle, Soth, Yuen and Stanton voting AYE, motion CARRIED, unanimous. (4:0)

ADJOURNMENT:

There being no further business to come before the Council at this time, the meeting was adjourned at 9:33 p.m.

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Darleen Cogburn, City Recorder

APPROVAL:

Approved this 17th day of May, 1999

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Rob Drake, Mayor