

REGULAR MEETING

March 1, 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 March 1, 1999, at 5:46 p.m.

ROLL CALL:

Present were Mayor Drake, Couns. Evelyn Brzezinski, Dennis Doyle, Forrest Soth, and Cathy Stanton. Coun. Yuen 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. Brzezinski that Council move into executive session in accordance with ORS 192.660 (1) (h), to discuss the legal rights and duties of the governing body with regard to litigation or litigation likely to be filed. Couns. Brzezinski, Doyle, Soth and Stanton voting AYE, motion CARRIED unanimously (4:0)

The executive session convened at 5:47 p.m.

The executive session adjourned at 6:38 p.m.

RECESS: Mayor Drake called for a recess at 6:38 p.m.

RECONVENED:

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

Also present at the 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 Chief David Bishop, Principal Planner Ali Turiel, Associate Planner Jeff Salvon, City Utilities Engineer David Winship, and Deputy City Recorder Sue Nelson.

CITIZEN COMMUNICATION:

Terry Brennan, 10075 SW Flicka Pl., addressed Council and said he had concerns about speed and noise from passing traffic on SW Davies from Scholls Ferry Rd. to Brockman. He said since he had built his home in 1984 he had expected growth in the City, but had not expected the City to allow traffic flow and speed that destroyed the livability of homes close to Davies Rd. He noted he had been very satisfied with efforts of the Traffic Department staff to get people to obey the speed limit, but people seemed to not want to comply. He explained there was extreme noise in his backyard from drivers going over the speed limit and pointed out that the neighborhood qualified to get traffic calming devices on Davies and that was what he wanted to see happen. He noted he would prefer traffic tables because they did not give the horrid jolt that a traffic bump gave. He commented that he believed Davies Rd. was a good place to have photo radar. He said people in his neighborhood were afraid to walk or let their children ride their bikes and that was unacceptable.

Mayor Drake suggested that Brennan talk with Randy Wooley in the Transportation Department about the process to get on the qualifying list for traffic calming. He noted there were criteria and a process for neighborhoods that wanted traffic calming and the Traffic Commission would be reviewing the proposed projects for the next fiscal year in the coming week.

Brennan asked why no one had told him about the process earlier, so he would have been able to get in the queue sooner. He suggested that in the future when the City decided to turn a neighborhood collector into a major highway that a public meeting would be in order. He said he did not recall any public meetings when the street was widened.

Coun. Stanton said she thought Davies Rd. was always a collector, and had been for many years.

Brennan said he thought the nature of the street had always been a collector, but it was widened some years ago and was a wide, straight street where people could not help but speed. He said he believed that the speed limit to be 30 mph and that Lombard Ave. was 25 mph. He claimed that 25 mph was infinitely more quiet than 30 mph and it was the tires on the pavement that made the noise directly related to speed. He commented this was the same kind of nuisance as a barking dog and he believed the citizens deserved more protection than they got.

Coun. Doyle asked how many of the neighbors would like to see photo radar every day.

Brennan said the people back in the neighborhoods were not as affected by the sound as he was and jokingly said if they warned them they would like photo radar every day.

Francine Kaufman, 5486 SW Alger St., addressed Council with concerns about the sewer pipe and residential water repair work on Alger Street. She said she had voiced concerns to a department of the City, and got a letter, which was not signed. She noted the letter said the work should be completed by February and it was now March and the work was not completed. She commented she had voiced her concerns in January or February and had received a letter from Tom Ramisch. She said she had asked for the amount of money being allocated and a time line for completion of the project and Ramisch gave her that information. She said she believed the letter said they would be done by Feb. 25 and there would be further work perhaps through April that would complete the project and allow for repair of the street. She asked what had been done to insure that the project would be completed in a timely manner.

Mayor Drake said he recalled that she had multiple conversations with the City Recorder's office, the Engineering Director Tom Ramisch, and the Chief of Staff, and staff would be glad to repeat any information for her.

Kaufman said she was grateful for the return calls but had asked that Administrative Analyst Jarred Clark or Chief of Staff Linda Adlard not call her back. She said she knew that Adlard was a very busy person and she had only requested a bit of information and did not want to speak to her at length.

Mayor Drake pointed out that Adlard and Ramisch had tried to answer Kaufman's questions. He asked Kaufman to allow Ramisch to answer the question she had posed to Council.

Tom Ramisch, Engineering Director, said he thought the question referred to when the project would be done. He reported that they tried to get it done the past week (2/26), but it had been plagued throughout its duration by bad weather. He said the rain in February had set the work back day-by-day and he believed they had been trying to get the equipment out that afternoon. He commented they were virtually finished with the work in the roadway at that time, but still had some concrete work to finish in a driveway and on a small piece of sidewalk and that depended on the weather. He said if they did not get the equipment out that day, they would get it out as soon as possible. He commented they were in the process of evaluating pricing for the street reconstruction and the original plan for the project was to leave it patched and then do a simple overlay in the summer overlay program. He explained that there were real problems with the subgrade and some strange old construction under the street and what had been done there in the past, so they wanted to rebuild the street properly. He explained as soon as there was some good weather they would be doing the street reconstruction.

Kaufman said in retrospect they could have done it better, and thought in the planning process they made allowances for the weather. She asked about the planning process in this case.

Mayor Drake said the weather was always factored in. He noted that he was an amateur weatherman, and there was almost 11 inches of rain measured in his personal rain gauge in February. He commented it had been a very wet winter and the in the last four months there had been almost 40 inches of rain. He said considering the amount of rain, the difficulties the contractors experienced in the subgrade, and widening the area for the pipes to prevent cave-in, all cost additional time and dollars. He noted that one could not always predict (possible problems) coming into a project. He said that area was Beaverton's oldest neighborhood and the work done was to upgrade the neighborhood so there would be adequate water, sewer and storm drains. He said it was a similar situation in the Lombard area and the City had in place a replacement program for the underground water pipes. He explained it was part of a Citywide process to upgrade the system and keep it operable for the years ahead.

Kaufman noted that there was work being done on Lombard St. and she was worried about blocking up those streets at the same time.

Mayor Drake said that Lombard had stayed open, sometimes with one lane traffic and in order to get these projects done, the City needed to move forward on them so the systems could be improved.

Kaufman suggested that without causing too much extra work, perhaps allowing the neighbors to know a few more details before a project started, would be helpful, and she would be more than happy to assist with that.

Mayor Drake said he appreciated her offer, and in anticipation of her questions from that afternoon, he had checked to see if the notice area included her home. He clarified the area had been notified more than once, and the notice included a phone number for questions. He said Kaufman was not the only one concerned about the work and he appreciated her calls and concerns. He pointed out there was only a certain window of time to lay asphalt and that was why they were working on Lombard at that time.

COUNCIL ITEMS:

There were none.

STAFF ITEMS:

Linda Adlard, Chief of Staff, reported the Red Light Photo Radar bill had passed out of committee and would be voted on at the floor of the House on March 8. She noted that she had given Council the addresses of the legislators, so they could make contacts and she encouraged citizens to voice their opinion to the legislators.

PROCLAMATION:

American Red Cross Month

Kerry Kymchuk said he was Oregon Chief of Staff to Senator Gordon Smith and a member of the Red Cross Board of Governors for the Oregon Trail Chapter and he reviewed the many services Red Cross provided, and noted that all their work was done with private donations. He explained the Red Cross was Oregon's and the Nation's leading humanitarian agency and they appreciated the proclamation.

Mayor Drake presented Kymchuk with the Proclamation Certificate.

CONSENT AGENDA:

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

- 99-55 Liquor License – Annual Renewals
- 99-56 A Resolution Declaring a Nuisance of Scattered Rubbish and a Discarded Vehicle, on Property at 4925 SW Angel Avenue Beaverton, OR 97005 (Tax Lot #1S1 16 AD 9901) and Ordering its Abatement
- 99-57 A Resolution Declaring a Nuisance of Rubbish Accumulation, on Property at 5190 SW Chestnut Avenue Beaverton, OR 97005 (Tax Lot # 1s1 14 CA 3000) and Ordering its Abatement
- 99-58 RZ 980024 Tanner Rezone
- 99-59 Bid Award – Nora Woods Water Transmission Main
- 99-60 Authorize the Mayor to enter into An Intergovernmental Agreement with Washington County for Services Relating to US Highway 26 Interchange

Mark Pilliod, City Attorney, noted that in response to a question from Coun. Stanton, he produced a brief memo (in record) referring to AB 99-60. He noted the memo suggested Council accept an amendment to the motion that would enable staff to include with the IGA the approval of an agreement as indicated in the memo, authorize specific material to be entered into the record and that findings be made at the County level.

Couns. Soth as the maker of the Motion, he would accept that as a friendly amendment. Coun. Doyle agreed.

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

PUBLIC HEARINGS:

- 99-61 Home Depot/Public Annexation (ANX 99001)

Mayor Drake reviewed the rules and process that would be followed for both the public hearings.

Mayor Drake opened the Public Hearing.

Ali Turiel, Principal Planner, addressed Council and said there were two annexations being considered that evening. She noted the Home Depot Annexation had been initiated by a petition from the property owner, and it was noted in the staff report that the owners wished to modify their site according to the City's Development Code rather than according to Washington County Code. She clarified that the decision would not approve or prevent any development and subsequent rezoning following annexation and would enable the petitioners to take advantage of the City's standards. She reported the petitioners had asked for the public hearing to be continued in order to get information from the County about the Town Center Planning process. She submitted the letter from the property owner's representative into record.

Turiel noted that even though the annexation was submitted by 100% property owner petition the City did not opt to process it under that 100% statute (ORS 222.125) that allowed for property owner petitions to be approved without a public hearing. She explained that instead, the City provided notice of the annexation under ORS 222.120 which described the regulation for double majority annexation and also ORS 197.763, quasi-judicial land use proceedings. She said that mechanism made the decision open for appeal to LUBA, should there be an appeal. She explained notices and posting of the property and reported another owner had asked to be included in the annexation, and that property was shown on the new map.

Turiel explained three letters had been submitted into the record from Beaverton School District, Washington County, and Tualatin Hills Park and Recreation District (THPRD), all property owners as well as Metro, who was a joint property owner with THPRD on the second annexation to be discussed that night. She said the letters indicated that none of the special districts had any issue with the annexations and supported them as did Washington County. She concluded by saying most issues had been discussed and been introduced into the record and staff recommended the hearing be continued to March 15.

Coun. Soth asked if a reason for the continuance was the Cedar Mill Town Center plan going forward.

Turiel said the company thought the City was doing the Cedar Hills/Cedar Mill Town Center plan. She explained the City was coordinating with Washington County on that project and she hoped those issues would be resolved by March 15.

Coun. Doyle noted Council had received a letter from the Somerset Christian Church and they did not want to be included in the annexation.

Turiel said that was correct and the revised map reflected that parcel of land being deleted.

Coun. Soth MOVED, SECONDED by Coun. Stanton that they continue the Home Depot/Public Annexation (ANX 99001) to March 15, 1999.

Mayor Drake said he had testimony cards from Steve Abel, Don Waggoner, and Todd Sadlow concerning the Home Depot Annexation. He asked if they would like to wait to speak at the future public hearing.

Those who had signed up to speak said they would wait.

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

Joe Grillo, Community Development Director, suggested the public hearing be opened allowing those who wished to testify to do so. He commented that because it was noticed as a public hearing, it would be prudent to allow people to speak and then continue the hearing to March 15, 1999.

Mayor Drake said he thought that was correct, but there were just three testimony cards and those listed on the cards said they did not want to speak that evening. He asked if there was anyone else who wanted to speak and he specified that he considered the hearing open.

Grillo said he felt more comfortable if the parties who filled out testimony cards agreed that they had chosen not to speak that night and agreed to come back on March 15, 1999.

Mayor Drake said everyone in attendance said they wanted to wait until the next meeting. He confirmed that they would be able to speak at the next meeting and he felt the potential speakers had an opportunity to speak at the meeting that night, but chose to wait for the public hearing of March 15. He assured them they would be able to speak at that meeting.

Coun. Soth commented that he agreed Grillo was correct and he apologized for the inconvenience he may have caused for making the motion to continue the public hearing to March 15 before everyone had a chance to speak if they chose to.

Mayor Drake reconfirmed the public hearing would continue to March 15, 1999.

Mayor Drake noted that he had read the format and the disclaimers, which applied to the both public hearings that evening.

Turiel said this was a petition from a property owner and it would not prevent or approve any development, however the owner had subdivided the property for development through Washington County, but it required City water service. She said water service to the area was subject to a Memorandum of Agreement between the City and Tualatin Valley Water District (TVWD) which stipulated the petitioners parcel was within the City's water service area. She said because the City required properties be annexed in order to benefit from service, the property owner chose to initiate a petition for annexation in order to allow the subdivision approval to be completed at Washington County. She noted the City did not have to hold a public hearing, but had chosen to and had completed all required notices. She reported that they also notified all the special districts that were affected and they had responded that they had no problem with the annexation.

Turiel mentioned that since the annexation included some right-of-way as well as some improved road along 170th, as part of annexing roadways the City would take responsibility for maintenance of sanitary sewer lines less than 24-inches in size as well as storm drainage facilities. She explained street jurisdiction and maintenance were covered under a separate agreement with Washington County following annexation and usually only local streets or minor collectors were accepted for maintenance, and the County continued to maintain major collectors and arterials. She reported that staff recommended approval of the annexation, and the associated rights-of-way as shown on the adjusted map, and the adjusted staff recommendation that appeared in Community Development Director Joe Grillo's memo of February 22 (in record). She said staff recommended the annexation be effective April 1, 1999. She noted it was currently undeveloped land and the property owner wished to proceed with the development within City codes.

Mayor Drake clarified that Turiel's reference to the memo of February 22, was regarding the abbreviated annexation that was modified.

Turiel said it referred to the properties owned by Lodato, THPRD and the Cooper Mountain Elementary School.

Coun. Soth said he received a call about procedural issues.

Coun. Stanton said she received a voicemail message that was also procedural.

Coun. Brzezinski said she was also contacted about a procedural issue.

Mayor Drake said he met the past week with three property owners in the Cooper Mountain area and explained the Mayor only voted in a tie vote, and the modification was a follow up to that conversation.

Mayor Drake asked if any one objected to the Council's jurisdiction.

Consensus was no one objected.

Applicant

Tom Lodato, 17336 SW Kemmer Rd., clarified that he did not own the property but represented the owner. He said he had two concerns he had discussed with staff, which he did not see in the ordinance that was proposed that night. He noted he wanted the annexation to be after the final plat was recorded with Washington County and said he would prefer they set a certain date or 10 days after the plat was recorded which ever came later.

Mayor Drake asked staff for comments.

Grillo said he assumed that Lodato was trying to activate the annexation within 10 days. He specified the document could be crafted to have a "not to exceed" date of June 30. He noted he presumed Lodato's plat would be recorded before June 30.

Lodato said they would like to have it annexed sooner.

Mayor Drake explained what they did the previous week was set a "not to exceed date" and if there were no appeals and the time expired then it would be effective. He said the Councilor who made the motion at the end should take that into account and June 30 sounded like a good date unless he heard otherwise.

Lodato said he had discussed with staff that the County setback standards be applied to the lots once the property was annexed due to the fact that the lots were designed as per County standards and they differed from the City's standards.

Mayor Drake asked if Grillo was aware of the setback issue.

Grillo said he thought that as part of the City's responsibility within six months of the annexation and providing a Comprehensive Plan and Zoning designation (which was the most similar to what the County used), they would seek to use the flexible setback standards. He explained that would be the staff's recommendation.

Lodato said he was comfortable with that.

Coun. Stanton explained the City's setbacks had been revised and it would be to City standards, because now they were flexible.

Lodato asked if that was after six months.

Grillo said they would proceed to do a Comprehensive Plan and a rezoning within a six-month period or sooner if that was the request, but

the applicant was required to meet City standards. He went on to say that under the Flexible Setback Standards, when a piece of property was brought in there was a section in the Code that said they would be given the setbacks they were assigned in their land use action with the County.

Larry Derr, 53 SW Yamhill, Portland, said he represented concerned neighbors of the proposed annexation. He asked for a show of hands of those neighbors present at the meeting who had concerns about the annexation and noted it was most of those present. He stated that Council was aware the proposed annexation had changed dramatically since it was first started, and submitted into record petitions signed by 226 residents of the area in response to the original annexation. He said the petitions read that the signers opposed the proposed annexation and the petitions were circulated in response to the initial proposal.

Coun. Soth asked if they were looking at the proposed plat development which Lodato was speaking of, or were they referring to the annexation of the property to the City.

Derr said the development was not the issue, just the annexation.

Coun. Stanton asked if they were concerned about the whole area.

Derr said the entire annexation was initiated by Lodato because he wanted to bring in his in-process County development. He said they had worked in the past week to pare down the requested area and while the City had expressed sincerely that it had not created opportunities for island annexations, one could not look at the map and not question that policy. He said the map created six islands and while they were past that on this particular proposal, and it was his understanding that all the Council was considering at that time was the reduced proposal. He clarified that the reduced proposal only included the School District Property, the THPRD Property and the Lodato Property.

Mayor Drake asked if any one was opposed to the staff proposal.

Coun. Brzezinski clarified it was the staff proposal dated February 22, 1999.

Mayor Drake said that was correct and asked if there were any members of Council opposed to that staff report.

There was no one opposed.

Derr said he hoped the Council understood the reason why there were so many attendees at the meeting that night. He commented if it was not the policy of the City to try to create opportunities, they should try to avoid the appearance of doing so.

Mayor Drake said island creation was not unusual, and noted that the City did not make it a practice of annexing islands. He explained that because citizens were so concerned about it was the reason he had instructed staff to pare back the annexation. He said a more positive approach would be appropriate, and there were multiple islands in the City that they had not touched and likely would not touch. He stated that if people did not want to be annexed into the City, then the City did not annex them.

Derr said he had no reason to doubt what Mayor Drake said about what the City had done in the past. He said he found it difficult to understand how the City's annexation policies would be furthered by the original proposal. He said he talked to Grillo that afternoon and he had explained the annexation rationale. He said he was not convinced, but his point was not to debate that, and asked why the City would find it to be good policy to do that kind of configuration if it had no intention of taking islands.

Derr described one more step the Council could take to further its expression to the neighbors that the City didn't have any desire to bring in areas against their consent. He suggested they reduce further the proposal, and take off the road frontage on 170th in front of the school and on Nora Road, at the south end of the proposal. He said he could give reasons in terms of the City annexation policies and why they should do that, and the reason why he proposed it to Council and why the people he represented requested it.

Derr explained that the reason it fit the policy was the annexation standards were fleshed out in a couple of policy statements that talked about annexation straightening out the boundaries and providing a clear identification for the City. He commented that neither of those pieces did that; all they did was take the property and extend it across the road. He said he recognized another policy was if the road was to be the boundary the City would generally look to crossing the road.

Derr said the policies all had to be weighed, one against the other. He noted the most persuasive policy was the annexation was to be weighed in a cost/benefit analysis and where the City was proposing to take in some right-of-way that would not generate tax revenue. He said while the services that it would require were fairly limited, they would nevertheless add to the services the City had to provide, and could not be justified on a cost/benefit ratio. He said if the City did not intend at the present time to annex across the streets to the adjoining property then what would be the reason to take them in at this time. He explained he had talked to Grillo and they had discussed both sides of that issue. He noted Grillo had said there was no strong need for the City to do that, but on the other hand there was a policy that perhaps the City would want to. He said in the case where it was on the fence as to why to do it, that it would be a good expression to stop the line at the properties. He said knowing that if the City was going to annex across the street in the future that would be timely enough to take that land in. He concluded by saying that was their request

for further modification, and with that change, the people he was speaking for thought it was a proposal that could be supported.

Mayor Drake said the City had a strong partnership with the School District, and as a parent he looked at the annexation piece on 170th in front of the school and thought photo radar would be allowed there because that roadway was very dangerous. He said he saw that area as an opportunity to deal with people who made the school zone unsafe. He noted that beyond that he could not imagine why that area would not be annexed, but he appreciated Derr's comments.

Coun. Doyle asked what the concern was about annexing the roads.

Derr said they did not want the City to be in a position to annex their property without them being able to speak on it and express their intent. He said all other things being equal, they tended to believe that if the City came across the road and up to their property, they felt their property would be next when all they really intended to do was take in the property on the other side of the road.

Rod Johnson, 1690 SW Spellman Drive, said the modification he heard sounded like it was O.K. with him. He asked if the area of 170th and Spellman Drive would still be an island.

Mayor Drake said it would not be an island.

David Poindexter, 8707 SW Firview Place, said he was satisfied and thanked them.

Douglas Baxter, 16085 SW Flagstone Dr., said he was not satisfied and said they had a cherry stem annexation, which was illegal in the State of Oregon. He said he objected strongly to the fact that the original proposal had lassoed all of the neighbors and residents in the interior never received notification from the City. He commented that kind of action was the kind that allowed the City, under law, to annex them without their approval.

Mayor Drake asked Baxter to keep his voice level down.

Baxter said the City did not seem to understand the demonstrated benefits of fluoridated water and he thought the enhanced Sheriff's patrol they already had was excellent.. He said he thought the City's intent was to island the residents and it did not make sense to pay maintenance on roads when no benefit was gained from it. He commented that the leadership of the City had demonstrated an interest in development so as to generate more revenue at the expense of the environmental issues. He gave an example as the vegetation on Sexton Mountain as not being old growth and therefore expendable. He said that demonstrated a lack of understanding of the value of watershed and noted they were not interested in that kind of leadership and talked about the City eventually

annexing areas that had a cherry stem pattern and the need the City had to smooth out boundaries. He referred to a kind of cat and mouse game and said it was a way to tax them without representation, and they demanded a voice in issues that involved their taxes. He said he would like to further object to annexation of Cooper Mountain on three issues. He explained those issues were increased cost of electricity, loss of fluoride in the water, and increased cost of permits. He strongly urged the Council to vote against the annexation on the basis that those kinds of things were against the law in Oregon. He said the City had done it before and that did not excuse or justify it.

Mayor Drake said one thing Baxter was blatantly wrong on was the water service would stay with Tualatin Valley Water District (TVWD), and that would not change.

Baxter said the battle had been about water and it was about the City supplying Cooper Mountain with water. He asked why Lodato could not buy water from TVWD. He suggested the City of Beaverton needed to demonstrate the ability to provide competitive services at competitive costs. He said he saw three different annexation versions and he didn't want to see any more in the future.

Gerry Lukos, 16087 SW Old Oak Dr. said he did not need to testify.

Jack Millay, 17421 SW Constance St. thanked Council for making the modifications. He said he objected to the City incorporating areas of the street just for setting up photo radar. He explained there were many schools in the county and it looked to him like it was simply a revenue opportunity for the City of Beaverton as opposed to a need of the school. He commented he supported the change in the boundaries to not include the streets and he understood the City did not want to accept maintenance of the streets. He commented the City wanted a free ride where they would take the street and not provide maintenance it looked like his taxes would increase \$1000 per year without any benefit to him. He said he was suspicious when the City appeared to grow their boundaries for good, rational reasons and he recommended taking the streets out of the boundary.

Mayor Drake said the legislature controlled where the photo radar was, and only two cities had it (Beaverton and Portland) and as much as he would like to see it Countywide, the City or the Sheriff could not control that.

Millay said if the citizens wanted it Countywide they would have it and the fact that it wasn't Countywide suggested that everyone did not want it.

Mayor Drake explained it was not the County Commission or the City that decided, it was the Legislature. He noted that it was up to the County Commission to give up the jurisdiction on the roads.

Coun. Stanton said she thought she heard Millay say that when the City worked with Washington County for them to deed over the roads along with the neighborhood in an annexation, the City did not want to take them until the County got them up to standards. She said because the roads were often substandard, the City worked with Washington County to get them up to City standard so citizens as a whole were not stuck with paying for roads that had not been maintained for a number of years. She said it was never a case where the City was responsible for the road but did not do the maintenance and that was why the County off-loaded the roads.

Millay said the County Commissioner he had talked to said when there was a grand plan to take all the roads, then that meant the City was not planning on maintaining them and he would vote against it until the City decided it would also accept maintenance.

Coun. Stanton asked which County Commissioner Millay had talked to.

Millay said he believed it was Andy Duyck that said the City was not proposing to take over maintenance.

Gerald Outslay, 8762 SW Firview Place, said he was a homeowner in the Cooper Mountain area and president of Madrona Heights Homeowners Association. He noted he would pass on commenting on the issue of the roadways encircling the neighborhood. He said with the introduction of the memo of February 22, they felt it addressed their main issues of concern. He thanked the Mayor for speaking with several of the residents.

Tim Morgan, 16186 SW Sexton Mountain Drive, said the first speaker satisfied his objection and on June 12, 1998 there was letter from the City that stated the Satterberg Heights area water service provider would change. He asked where that issue stood currently.

Mayor Drake said this was not the same issue and all the Council was addressing that night was the annexation proposal.

Morgan said he agreed with the original speaker on that concern but wanted to bring the water issue up to see if it was also still part of it.

Coun. Doyle thanked Outslay and the Madrona Heights Homeowners Association for the letter.

Marc Brenner, 16958 SW Arbutus Dr., said he supported Derr's recommendations. He pointed out he approached Council with comments related to Council Goal One, and he believed that watchfulness and diligence were necessary. He commented he would look for the City to encourage voluntary annexation.

Kathy Sayles, 16985 SW Kemmer Rd., said she was a resident of Cooper Mountain and had a letter to submit from another neighbor. She read from

a letter from the Washington County Sheriff for the record, and thanked Council for being responsive. She read from annexation criteria E-1, and said that whoever felt that the City standards were better were wrong. She referred to criteria E-3A, No. 4, and said the City sent a message that there was additional and better police service than in the County, and that message was not true. She said the people who would have been islanded were being told City police services were better and she believed the only reason the City wanted to annex was because the City needed the extra property taxes to pay for its reservoir. She stated that the unincorporated residents did not benefit from the reservoir and submitted a letter from the Boundary Commission which she said made her statement clear.

Sayles said she had heard that Stu Luxemburg , a resident on 155th north of Hart Rd. was islanded and was annexed without his consent. She said if annexation had been proposed in an open manner there would not have been opposition. She said the existing decision from the Land Use Board of Appeals (LUBA) vs. the City of St. Helens found such types of annexation (cherry stems) unreasonable, or illegal. She commented she not like it when the City treated her neighbors that way and they had a right to voice their concerns, most essentially when it was about their form of government. She noted this action had brought everyone together she hoped they would never see something so underhanded again. She suggested that perhaps the water agreement could be an amendment and it would save ripping up all of 171st Ave. since the water pipe was there from Tualatin Valley Water and it would not make any difference to the annexation. She said she heard some concerns about the road portions that were being included on 170th and about traffic concerns. She explained there were no traffic concerns on the Nora Rd. extension, which would be taken in under the proposal; it was not a finished road at that time and it wouldn't change anything for City purposes.

Coun. Soth referred to Sayles comment about the Cooper Mountain Reservoir funding. He said none of the funding was from property tax dollars, but it all came from revenues for the water department. He said it was financed by revenue bonds paid for by sales of water out of the water area and there were no general funds in that area.

Sayles said the document she would submit spoke about Satterberg West. She read from the document about the City not being able to pay for the reservoir if the Satterberg West area was not annexed.

Mayor Drake said that document was not relevant to the annexation that night.

Coun. Soth said Satterberg West was an entirely separate area and an entirely separate issue.

Sayles said it spoke of the areas immediately west of the Statterberg area which was what they were looking at currently.

Mayor Drake reiterated that Council was looking at a specific annexation that night.

David Stein, 16675 SW Spellman, said he had done some homework about why they wanted to annex Cooper Mountain School. He said City staff had provided a third reason. He said that reason was referred to as a good faith effort with Washington County and because the Beaverton School District wanted to be inside the City because services were better. He commented that Beaverton Schools did not ask to be inside the City boundaries because the services were better and he felt that was a stab to the Washington County Sheriff's Department. He said staff also said they wanted improved storm water and sewer lines, and the last reason was to have photo radar in the zone because traffic was horrendous. He noted it was horrendous because of the number of people who took their children to school and he did not see the conflict of the police department watching over a section of 170th that was almost at a stop because of an exchange of students. He said as a taxpayer the surcharge on power consumption by the City was a direct expense to his pocket book and to the School District. He noted it might be a minor amount but still it was his tax dollar.

Coun. Soth asked about the surcharge on the power bill. He said the City was not in the utility distribution business for power purposes.

Stein asked if there was a percentage of the electric bill that went to the City because of Portland General Electric transmission lines going through the City.

Coun. Soth asked if he was referring to franchise fees.

Stein said franchise fees were still a charge.

Coun. Soth said utility fees were allowed by statute and most utilities considered those fees a cost of doing business.

Stein said that did not exist outside of the City limits.

Cindy McFarlane, 16082 SW Sexton Mountain, said she was a resident of Satterberg Heights. She referred to the road in front of Cooper Mountain School and said Washington County planned to modify a hill area there. She said the school committee had been working with Washington County to modify the hill, because they were going to do improvements to the parking lot and the hill was very dangerous. She asked if the City took over the road what would happen to all the planning Washington County had already done.

Mayor Drake assured McFarlane the work going on there would continue. He said he talked with the deputy superintendent that day and he confirmed the continuation of the work there. He said there was an issue

regarding access on 170th and the cherry stem that would be used to annex the school from the existing Hart Rd. area. He explained the issue referred to the School District need for a bus turnaround area. He noted that 170th was a County road and the County would probably not give up jurisdiction of that road and the City offered to work with the School District on a side road on Hart. He concluded by saying the City was aware of the work on 170th and the issues related to the parking lot.

McFarlane said throughout the County they had a DARE officer, and wondered if there would be a Beaverton DARE officer for Cooper Mountain School.

Mayor Drake said they would have a DARE officer available because there was a point in time the City would need to add another DARE officer. He said the tax base improvement last year allowed for an additional seven officers with more officers being hired over the next five years.

Patrick O'Claire, Finance Director, said that they would add 33 officers to the Police Force over the next five-year period.

Mayor Drake said he was confident that Police Chief Bishop would ask for one of those officers to become another DARE officer. He said the City also provided DARE services to private schools.

Coun. Doyle said from his view the DARE program would not go away.

Mayor Drake asked if anyone else wished to speak.

Lodato said he would like to speak.

Mayor Drake asked Lodato if this was his rebuttal and advised it would be his last chance to speak.

Lodato said Sayles raised a point about the necessity for the water line to be built if the City had no intention of coercing other residents past the current project to join the City's boundary limits.

Mayor Drake explained as part of the agreement with TVWD, the City would provide water service.

Lodato asked if they could agree to be annexed to the City and yet be served by Tualatin Valley Water.

Mayor Drake said the meeting that evening was not to discuss water annexation.

Lodato said it was all predicated on the point that water service would not be provided unless the area was annexed.

Grillo suggested that Lodato could discuss that issue with the Mayor's office outside of the annexation. He explained there had been a land use decision at the County in which the City came forward and expressed their position. He said Lodato either agreed or chose not to disagree as to what the City's position was going to be. He said Lodato could raise the issue again with the Mayor's office and the City engineer. He advised Council not to open up further discussion on the issue that evening.

Lodato said he understood at that time there was an agreement between the City and TVWD pertaining to water and they had no choice but to annex if they wanted water service. He clarified he was asking Council that evening if they could obtain water service and agree to the annexation without building the water line.

Mayor Drake said there was an agreement with the TVWD and Lodato was part of that agreement. He explained there was a legal binding agreement, and they would not negotiate the issue that night. He asked if Lodato had anything else in rebuttal.

Lodato replied he did not.

Mayor Drake closed the public hearing.

Coun. Soth MOVED, SECONDED by Coun. Brzezinski to approve AB 99-62 and direct the City Attorney to prepare an ordinance annexing the Lodato and Identified Public Owned Properties with associated rights-of-way in to the City, and in accordance with the Memorandum dated 2/22/99 and those terms, and date the annexation not later than June 30, 1999 or sooner if possible. He said it included the memo and the staff agenda bill, dated 2/9/99 but with modifications of 2/22/99.

Coun. Doyle asked staff to check into why some people had not received notice.

Mayor Drake noted that it was Millay who said he had not received notice and he would check on that the next day.

Coun. Stanton said she felt like she had to abstain because it seemed like even the applicant did not want to go forward at that time. She said it made her uncomfortable because it was her intention that people come in to the City of Beaverton only if they wanted to.

Mayor Drake said he did not hear from Lodato that he did not want to annex, only that he wanted to cut a deal different from what was in the agreement.

Question called on the motion. Couns. Brzezinski, Doyle, Soth voting AYE. Coun. Stanton abstained. Motion CARRIED. (3:0:1)

ORDINANCES:

Suspend Rules:

Coun. Soth MOVED, SECONDED by Coun. Stanton that the rules be suspended, and that the ordinances embodied in AB 99-63 and AB 99-64 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. Brzezinski, Doyle, Soth, and Stanton voting AYE, the motion CARRIED unanimously (4:0)

First Reading:

- 99-63 An Ordinance Amending Ordinance No. 4022, Which Amends Ordinance No. 1800, the Comprehensive Plan Map and Ordinance No. 2050, the Zoning Map, Designating the Property Commonly Known as Woodside Triangle, to Clarify Property Map Descriptions; CPA 98025 and RZ980022
- 99-64 An Ordinance Amending Ordinance No. 2050, the Development Code, Pertaining to Setbacks, Flexible Setbacks and Zero Setbacks; TA 980003 (Setback Amendments)

Second Reading and Passage:

Mark Pilliod, City Attorney, read the following ordinance for the second 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)

Coun. Soth MOVED, SECONDED by Coun. Doyle that the ordinances embodied in AB 99-54 now pass. Roll call vote. Coun. Brzezinski, Doyle, Soth, and Stanton voting AYE, the motion CARRIED unanimously. (4:0)

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

RECONVENED:

The regular meeting reconvened at 8:50

SOTH MOVED, SECONDED by Coun. DOYLE that Council direct staff and the City Attorney to proceed with negotiations with BCB partnership as outlined in the executive session. Couns. Soth, Doyle and Brzezinski voting AYE, motion CARRIED. (3:0) Coun. Stanton was out of the room.

ADJOURNMENT:

There being no further business to come before the Council at this time, the meeting was adjourned at 8:52 p.m.

Darleen Cogburn, City Recorder

APPROVAL:

Approved this 24th day of May, 1999

Rob Drake, Mayor