

REGULAR MEETING  
July 12, 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, July 12, 1999 at 5:49 p.m.

ROLL CALL:

Present were Mayor Drake, Couns. Wes Yuen, Dennis Doyle, Forrest Soth, and Cathy Stanton. Coun. Evelyn Brzezinski arrived later in the meeting as noted later in these minutes. Also present were City Attorney Mark Pilliod, Chief of Staff Linda Adlard, Community Development Director Joe Grillo and City Recorder Darleen Cogburn.

EXECUTIVE SESSSION:

Coun. Soth MOVED, SECONDED by Coun. Yuen, 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. Yuen, Doyle, Soth and Stanton voting AYE, the motion CARRIED unanimously. (4:0)

The executive session convened at 5:50 p.m.

RECESS: The executive session was adjourned at 6:13 p.m., and Mayor Drake called for a recess.

RECONVENED:

The regular meeting reconvened at 6:49 p.m.

Also present for the regular meeting were Finance Director Patrick O'Claire, Human Resources Director Sandra Miller, Operations/Maintenance Director Steve Baker, Library Director Shirley, Police Chief David Bishop, Principal Planner Alwin Turiel, Development Services Manager Irish Bunnell, Project Engineer Jim Duggan, and Deputy City Recorder Sue Nelson.

Mayor Drake noted that Coun. Brzezinski would arrive later for the meeting, and explained that she worked for the Portland School District and had a meeting related to her employment. He conveyed her regret

that she would not be there from the first of the meeting, but would listen to the tapes and get the information.

CITIZEN COMMUNICATION:

There was no one present who wished to speak.

COUNCIL ITEMS:

Coun. Soth announced that the Photo Red Light Bill had passed in the Legislature and would soon be signed by the Governor. He declared that Red Means STOP in Beaverton! He reminded them of "Cathy's Parade" and the Taste of Beaverton event.

Coun. Stanton explained that she was the one who promoted the Council riding together during the Good Neighbor Days Parade.

Coun. Soth announced that for those along the Parade route, the SPS 700, a real honest to goodness steam locomotive with a real whistle, would be there.

Mayor Drake said there would be an opportunity to purchase tickets to take an excursion ride on the train.

Coun. Doyle reminded them that the City was welcoming 167 soccer teams from all over the world this week. He said they would be playing at various local fields.

STAFF ITEMS:

Linda Adlard, Chief of Staff, reported that during the month of June there were more than 150 citations written for drivers running red lights. She said they would be doing this intensively until school began. She noted there would be traffic reminders placed in the neighborhoods to try and remind people to obey the red lights, and improve awareness.

PRESENTATION:

99-207 Presentation of Shields and Swearing in of New Officers to the Beaverton Police Department

Mayor Drake noted that this was an opportunity to welcome and recognize the new officers.

Police Chief David Bishop came forward and welcomed the families and friends of the new officers who were present. He also introduced retired US Attorney General Charles Turner, who had come down for the occasion. He noted that four of the officers were transfers from other agencies.

Chief Bishop called the new officers forward and issued the oaths to them as follows: Christopher L. Kitto, Shane A. Pallesen, Mark R. Hevland, Steven L. Enyart, Jeffrey M. DeBolt, Aaron M. Petrella, Pawel J. Nowaczewski, and James J. Cummo, Jr.

Mayor Drake presented the shields to the officers.

Bishop introduced Jessica Hamilton from Congressman Wu's office, who had come to extend congratulations from the Congressman.

CONSENT AGENDA:

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

Minutes of the regular meeting of March 29, 1999

- 99-208 Liquor License – Change of Ownership: AM/PM
- 99-209 CPA 98027/RZ 980026 Carlyle Group Annexation Comprehensive Plan Amendment and Rezone
- 99-210 BDR 96131/TPP 96016/VAR 96016 New Beaverton Library; Modification of Conditions
- 99-211 Bid Award – Fire Hydrant Replacement Program, Contract No. # 1
- 99-212 Establishment of Communications Analyst Classification
- 99-213 CUP 99012 New Beaverton Library; West Parking Lot
- 99-219 Authorize an Agreement with Carter Pacific Development LLC to Modify the Waterline Installation for the Lombard Commercial Building

Coun. Stanton said she would abstain from voting on the minutes because she had not read them.

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

ACTION:

- 99-214 Gilbert "Expedited" Annexation (ANX 99003)

Coun. Soth MOVED, SECONDED by Coun. Doyle, that AB 99-214 be continued to the July 19, 1999, Council meeting in order for staff to have additional time for research.

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

Mayor Drake said they would take things out of order and take action on the Ordinances at this time instead of at the end of the meeting.

**ORDINANCES:**

Suspend Rules:

Coun. Soth MOVED, SECONDED by Coun. Yuen that the rules be suspended, and that the ordinances embodied in ABs 99-216, 99-217, and 99-218 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. Soth, Yuen, Doyle, and Stanton voting AYE, the motion CARRIED unanimously. (4:0)

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

First Reading:

- 99-216 An Ordinance Annexing Parcels of Land Lying Generally West and South of the Existing City Limits to the City of Beaverton; ANX 99002 (Pechan Annexation)
- 99-217 An Ordinance Amending Ordinance No. 1800, the Comprehensive Plan Map and Ordinance No. 2050, the Zoning Map, to Designate the Property Commonly Known as Valley Community Church Annexation; CPA 99003 and RZ 990003 (Valley Community Church)
- 99-218 An Ordinance Amending Ordinance No. 1800, the Comprehensive Plan Map and Ordinance No. 2050, the Zoning Map, To Designate the Property Referred to as Yamamoto/NW 167<sup>th</sup> Place Annexation; CPA 99001 and RZ 990001 (Yamamoto)

Second Reading:

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

- 99-205 An Ordinance Expressing the City of Beaverton's Election to Receive Distribution of a Share of Certain Revenues of the State of Oregon for Fiscal year 1999-2000, Pursuant to ORS 221.760

Coun. Soth MOVED, SECONDED by Coun. Doyle the ordinance embodied in AB 99-205 now pass. Roll call vote. Couns. Soth, Stanton, Doyle and Yuen voting AYE, motion CARRIED unanimously. (4:0)

**PUBLIC HEARING:**

Appeal of Aspen Woods (BDR 99022 & TPP 99002)

Mayor Drake read the procedural rules related to the public hearing, and gave a detailed explanation of the process that would be followed that evening. He called for any abstentions from the Council. There were none. He noted that he would only vote in the case of a tie. He called for any objections. There were none. He noted that it was a de novo hearing.

Mayor Drake asked if there had been any ex parte contacts or any site visits by Council.

Coun. Soth said he had walked the site.

Coun. Stanton said she walked the site the previous day, talked with Ms. Watson, and noted that she had general conversations with several persons in the room. She said the conversations were basically process, and that early in the fall she had talked to several at her church.

Coun. Doyle said he had visited the site over the past years and surprisingly had only a few contacts from the public.

Coun. Yuen said he lived near the site and had not visited it lately, and had no contacts.

Mayor Drake stated that he had contacts with Roy Dancer and other citizens, and noted that it was difficult to be Mayor and not talk to citizens. He said he spoke with Jack Orchard and representatives of Polygon. He stated that the conversations had all been general in nature and he had advised all the individuals that the Mayor would vote in the case of a tie, so he kept the conversation general and arrived at no decisions. He said he ran in the Nature Park (Park) and was familiar with it.

Coun. Doyle commented that the Council had received a letter related to political contributions and he had received nothing (no contributions) during his campaigns, and in terms of the current land owner, it had gone the other way on occasions; he had made contributions to the Archdiocese.

Mayor Drake said a person asked for the record to be left open for seven days, but Beaverton Code (Code) was discretionary and pointed out that they would be continuing the hearing to the next Monday. He said he expected a decision to be made at that time so the record would be kept open for the seven days until the following Monday. He noted that they were on a tight timeline to complete this in the 120-day timeframe, and the decision would be made final before the August 5 deadline. He asked people to hold applause and not disrupt because it would take added time. He said they would end by about 10:30 that evening. He asked that if they did not have an opportunity to speak, they should get things to the City Recorder by the meeting of July 19, and it would be entered into the record.

Coun. Stanton pointed out that if they waited until 4:30 p.m. or 5:30 p.m., the next Monday, it would not get the full read from her that it would if submitted early.

Coun. Soth noted the huge stack of materials in front of him (and the others), that represented the record on this issue, and stated that he had read it.

Mayor Drake reported that there had been a question raised about the format of the hearing and the past week he conveyed the format to both Roy Dancer, (on behalf of the appellants, Dick Schouten and Jack Franklin), as well as the applicant's attorney, Jack Orchard. He pointed out that Code prescribed the order of the hearing and that order stated that the applicant had the burden of proof, so the appellant asked for the hearing, and in essence the Council was acting as the Board of Design Review (BDR). He said there was a lot of information on the public record and they had all read it.

Mayor Drake reiterated that they would hear from the applicant first since they had the burden of proof to show it met the Code requirements, then the appellants, Jack Franklin and Dick Schouten, would make their case and then those in support would be allowed to speak. He said after that the applicant would be allowed to provide rebuttal testimony and if anything new was brought up in rebuttal, the appellant would be able to rebut that. He expressed their hope that they would not have rebutting going on until 4 a.m. the following week. He clarified that after the 45 minutes for the applicant, and 30 minutes for the appellant team, everyone else would have three (3) minutes each.

Mayor Drake clarified that they would hear both appeals at the same time, the BDR and TPP.

Mayor Drake asked Community Development Director Joe Grillo, to have his staff give their presentation.

Grillo asked Development Services Manager Irish Bunnell and Associate Planner Colin Cooper to go ahead and set up and he would make a few comments. He said after talking with City Attorney Mark Pilliod, he had some observations he wanted to pass along to the Council. He suggested that in reviewing the application, this was a limited land use decision, and based upon that he felt he needed to strongly encourage Council to steer away from any consideration involving several points that were made in the appeal. He outlined those points as follows: 1) Reference to City Goals, they were not found within the Code or Comprehensive Plan; 2) Purpose statements should not be considered; 3) because it was a limited land use decision, if in fact there was a specific Comprehensive Plan citation within the Code that the Council believed had merit, they should give it consideration. He stated that if it was a generic quotation of the Comprehensive Plan or Development

Code, he would encourage them to steer away from giving any consideration to that. He reiterated that his suggestions were premised on his conversation with Pilliod and their understanding of State law.

Irish Bunnell said he came to work for the City 15 years ago the previous week, and his first day at work, staff took him out and showed him the Tualatin Hills Park and Recreation District (THPRD) Nature Park. He said that day he noted that on the zoning map was the Park was zoned R-1 – High Density, Multi-family Residential, and two parcels next to the park were zoned Campus Industrial. He noted that the northern of those two parcels was the one they were discussing that evening. He said in 1989 the northern parcel was rezoned to General Commercial, with the notion that an auto mall would be built on both of those parcels owned by the Archdiocese. He noted that the auto mall did not materialize and in 1993, the zoning reverted to Campus Industrial.

Bunnell said no development occurred and in 1997 an applicant came forward and asked that both parcels be rezoned to Station Area Medium Density Residential (SA-MDR). He said that was accomplished in January of 1997. He pointed out that there were 21 permitted uses in SA-MDR, which applied to this property, and Multi-family was one of those outright permitted uses. He explained that the issue was not if it occurred on the site, but how it occurred on the site.

Colin Cooper reviewed the proposal that was subject to the appeal hearing. He reported that Polygon Northwest had received approval from the BDR for a proposal for 239 multi-family, owner-occupied dwelling units in the form of attached town homes and flats. He noted that in addition the site had a commercial pad for future development. He said the application as proposed required both a BDR Type III, (which both Grillo and Bunnell had described), and because the site was part of Tree Grove 38, a Tree Preservation Plan (TPP). He reported that both of those applications were heard on May 27 and June 10 by BDR and received 5:0 approval. He explained that SA-MDR zoning required a minimum density of 20 units per acre and allows a maximum of 30 dwelling units per acres. He noted that it also allowed for a limited amount of commercial development on the site. He explained that SA-MDR had fairly flexible provisions for site development standards primarily to encourage unique development. He said staff discussed many different scenarios for development of the site with the applicant. He pointed out that they could see in the staff report (in the record) that staff recommended approval of the project.

Coun. Soth asked what the difference was in Code between *significant* natural resource and *important* natural resources, and noted that those words seemed to be used interchangeably.

Bunnell explained that the two overlay designations were established in 1984 after thorough analysis of such things as habitat, cover, food, and different sites for wildlife. He said all sites were scored based on those factors and the higher scores became *significant* natural resources and

the lower scores were classified as *important* natural resources. He noted that it was pertinent to the conversation that evening that the Park itself was a *significant* natural resource and the parcel they were looking at that evening was an *important* natural resource. He reported that the inventories were fairly generalized, and it was fairly clear that it was meant to be along property lines in that case.

Coun. Doyle noted that in the material there was reference that staff encouraged commercial and ask what the rationale for that was.

Cooper explained it was to reduce Vehicle Miles Traveled (VMTs) and try to create a neighborhood environment that would encourage pedestrian movement between the residences themselves and the Beaverton Creek Station Area. He continued that it was to encourage a multiple-use type of development.

Coun. Doyle asked if, in reference to the site, depending on what type of business it was, would that not also be a way of encouraging people to come in off of Murray or TV Highway. He said he did not have an idea of what type of business it would be.

Cooper explained that the scale of the development that was allowed by the SA-MDR and what was specifically proposed for the pad, was not so large as to encourage that movement. He acknowledged that was a concern.

Coun. Doyle asked if a 7-11-type of convenience store could go in there.

Cooper said it could.

Coun. Doyle clarified that the City could not control what went in there.

Cooper said that was correct, but the parking for the SA-MDR was very limited, so he did not know that it was the type of place that would attract a national convenience store.

Coun. Doyle asked if they could limit the hours.

Cooper said they could not under the limited land use design review standards, under permitted use.

Mayor Drake reported that he understood the applicant was not looking at a convenience market, bar or nightclub. He asked if Cooper was saying that there was no limitation on the hours as there were in other commercial zones. He explained that the thought he read that the applicant was proposing something office-like, such as real estate.

Cooper clarified that the applicant had indicated they were looking at office-type commercial, and in fact with the SA-MDR, they were limited to the types of commercial activity and noted they could not have a bar.



Coun. Stanton asked Grillo, in reference to the Code, 40.10. 15.3.C.2.c, where it talked about significant natural resource sites, of which this was one, and asked if that was correct.

Cooper explained that the SA-MDR included a specific requirement that specific natural resource polices in the Comprehensive Plan, be addressed. He noted that most of those policies referred to the significant natural resource areas and they had reviewed those in the staff report. He reported that the applicant had submitted findings to those policies, primarily because, as Bunnell had indicated, the general nature of the actual inventory sort of left some fuzziness along the southern property line. He stated that they felt being conservative in the review was appropriate based on the sensitivity of the surrounding Park with the development. He pointed out that those policies and those alone were what they were to look at for the hearing. He said the other general Comprehensive Plan Policies, by virtue of reference in the technical and design standards, were not to be used.

Coun. Stanton noted the overlay for phase 1, and asked if it was a significant natural resource site.

Bunnell said that based on the inventory they had it was questionable, and most likely it was not; it was an important natural resource.

Coun. Stanton asked how it was listed.

Bunnell said it was listed as an important natural resource site, however because the inventory was not that precise, staff erred on the conservative side. He explained that staff had analyzed the policies referenced in the Code and referenced in the Comprehensive Plan, that they needed to analyze for significant natural resource, so they went above and beyond what they had to.

Bunnell said he believed it was an important natural resource, but the line was not absolutely distinct on the inventory maps. He stated that the Park was unquestionably significant, and the property line of the site and parcel south, appeared to be the delineated line between the significant and important natural resource.

Coun. Stanton asked who made the decision, and how and when they got there.

Bunnell said it was a Council decision in 1984.

Applicant:

Fred Gast, representing Polygon Northwest, and Mike Miller of Alpha Engineering were there to make the presentation.

Gast noted that this was his first opportunity to speak before the Council, and said they would be brief. He said they wanted to talk about four areas, with the first being a historical perspective of the property, then the development concept including how they approached the property and the thoughts they had in looking at the property. He said from that they got their site development plan, which was the third area he wanted to discuss, and last he would like to make some concluding remarks and address the appeal items.

Gast noted there had been many histories presented and said he had not been there throughout the past, but he wanted to find areas where there was agreement on what happened. He pointed out that the Archdiocese sold 180 acres to THPRD, which he believed was an undisputed item. He said the balance of the site, some of which they were presenting that evening, was not included in that sale, and that also, was not disputed. He said the site had been zoned for development from that time as Industrial, Commercial Industrial and then Medium Density Residential (MDR), and it had been on the market for a considerable period of time. He said Polygon was the lucky buyer and noted there had been eight different buyers.

Gast said the zoning was unanimously changed to MDR in 1997, by Planning Commission (PC) and Council. He noted that in regard to the criteria they looked at to develop the site plan, there were three factors they considered, and their mission was to balance those factors. He said first they looked at the external factors such as the Park, Beaverton Creek (Creek), and Millikan Blvd. He noted that the development criteria called for them to be sensitive to the surroundings and to give consideration in regard to increased set-backs, buffers, building heights, landscaping with appropriate materials, (and noted that Polygon felt they should use native materials), lighting, THPRD requests and storm water quality.

Gast noted that the second criteria they looked at were the resources they had on the site. He said they viewed them as assets and amenities and as such, one of their goals was to weave those resources into the plan. He reported that the criteria also called for, rather than filling wetlands that were permitted to be filled, taking those unique resources and make them focal points. He noted they had preserved viable green corridors for wildlife and plant habitat, particularly along the riparian area where the set-backs were excessive. He said they would maintain a balance of the preserved resources, the wetlands, the coniferous and deciduous forests, and preserved significant other trees in large groves. He noted they saved significant trees that THPRD had pointed out to them.

Gast said the third area they needed to balance was a product that worked in the site and the marketplace. He noted that was not necessarily a Code provision, it was something they needed to have in order to develop a successful property. He said part of that was to develop a for-sale product, and one that was under-served in the Beaverton area. He

explained that they wrapped those three criteria together and developed their plan.

Gast explained that the concept was to advantageously weave the property's exceptional natural resources into a community of 239 moderately priced townhouses and condominiums. He noted that their plan created three, distinct clustered neighborhoods in one master-planned community.

Mike Miller, Alpha Engineering, reviewed the plan and noted they had been at the design since early in the year, and a number of people had been involved including numerous consultants, architects, archeologists, biologists, structural engineers, traffic planners, landscape architects, and more. He reported they had had many meetings with THPRD and the neighbors and tried to incorporate their comments into the plans. He said the plan had evolved in a positive way, and noted that the three things to be considered were the site, the market and the regulations.

Miller said the site was 22 acres, fairly flat, and about half of it was developable. He noted that there were about 1100 trees and a number of wildlife trails and habitat. He referred to the map (in record) and noted there were three different habitats, a riparian slope, both coniferous and deciduous forests, as well as some larger trees including oaks and quaking aspens. He said there were a number of wetlands and the most unique one was the "perched" wetland, which was on the higher point of the site. He stated that their goal was to balance the resources and not compromise any of them.

Miller noted that a previous plan had clustered most of the density in the mixed deciduous forest and had preserved the coniferous forest, but their goal was to provide three clusters and preserve equally the various resources on the site. He stated that they went to great lengths to save the larger specimens, and instead of filling in wetlands as was permitted, they would make them the focal points. He said there were wildlife corridors that were maintained intact to link the wetland to the Creek in two locations and there were bridge culverts that would allow crossings to the wetlands. He noted they would preserve an aspen grove.

Miller said the goal was to also address adjacent issues. He noted that the houses in the northern section would be at least 30 feet from the boundary, the commercial piece was about 5,000 square feet, and they had offered about four to six acres to THPRD for open-space areas. He pointed out that the project not only met Code, in most cases it exceeded Code. He said the zoning was SA-MDR, with the minimum density of 20 units per acres ranging up to 30 units per acres. He explained that meant that at a minimum they needed to have 227 units, so at 239 they were toward the minimum, and clarified that there could be 360 units on the site. He noted that they had exceeded the setbacks on all sides and noted them on the drawings (in record). He said they could have 60-foot high buildings and none of their proposed buildings exceed 35 feet, with most

being less than that. He noted that the Code only required that 5% of the trees had to be preserved and they were preserving 45%, and most all of the larger specimens. He stated that every wetland was preserved including the perched wetland. He reported that they were at the upper end of parking requirements and the water quality swales were twice as long as required.

Miller noted that there were some parts of their plan that were not required at all, and pointed out that their stewardship plan included training the residents so they would know how to take care of the resources. He said they had been through the BDR process, and read various positive comments from board members present at the BDR hearing, from the minutes (in record). He said the members of the team that had worked on the project were very proud of the project and they believed they had demonstrated how the plan complied with all the requirements in the Code.

Mayor Drake asked if Gast had any further testimony.

Gast said he thought Miller had done a good job of demonstrating that the three factors they looked at in developing the plan were implemented. He said that it was important to recognize that they started with the property as a blank slate and looked at how they could preserve the resources first, instead of how many units they could put on the property. He noted that he expected passionate testimony that evening, and said they had looked for that passion in the community, and they were pleased with that outpouring but wished it was in support. He said in closing he wanted to say that of the few main points the opponents focused their energy on, one of those was compatibility, specifically Design Criterion A. He pointed out that the issue of compatibility had been determined a long time ago, when it was set up for development nearly 20 years ago being zoned commercial, industrial and now SA-MDR. He said the idea of whether or not a multi-family development could go on the site was made at that point, it was not *if*, it was *how* and said he felt they had made a good effort at *how*.

Coun. Soth noted that in a 5/26/99 letter from THPRD there were 62 requests to be addressed by Polygon. He pointed out that throughout the record there were numerous instances of correspondence and meetings with THPRD. He asked how many of the 62 had been addressed.

Gast said he thought there were more than the 62, including setbacks, buffers, landscaping, and the 62 came out of an analysis by Kurahashi. He reported that they had recent meetings and tried to reconcile the 62 vs. Polygon's application. He reported that he believed they had resolved all that they could resolve with the exception of perhaps two of the issues. He gave the example that in BDR they asked that the lights go off from 1:00 a.m. to 5:00 a.m., and they would not want to do that from a safety standpoint, and did not think the City would either.

Coun. Soth noted that throughout all of this there had been pro and con about the black fence around the perimeter and he understood that was a request.

Gast said THPRD wanted black, Polygon agreed with them, and the City staff preferred brown.

Coun. Soth asked if he was correct that there was not a great deal of concern about the movement of animals.

Gast said that was correct.

Coun. Soth noted that a particular concern for him was a letter from Tualatin Valley Fire and Rescue (TVF&R) dated 4/14/99, which was part of the Facilities Review (Fac Rev) process (in record). He read from the letter regarding the project not meeting access requirements for TVF&R, which he thought was related to the access driveway, and the substitution of sprinkling.

Gast said the concern was access and that was taken care of with the sprinklers.

Coun. Soth asked, if Polygon sprinkled the buildings, was that acceptable to TVF&R.

Gast responded that was correct, and noted that TVF&R had sent out a new letter clarifying that if the buildings were sprinkled, they were OK.

Coun. Soth said another thing of concern was the drainage from the property into the Creek, and noted that he recently participated in a task force sponsored by USA (United Sewerage Agency) to address the Creek and its tributaries on those kinds of things. He said one of the criteria was to enable the runoff from downstream areas such as this, to flow through prior to the arrival of runoff from upstream areas. He explained that this would not impose a tremendous burden at one point due to simultaneous arrivals, and asked if that had been considered.

Gast said it had, and said that Gary Bliss, Alpha Engineering, had provided a letter outlining some of the issues. He explained that from the start they decided to implement a state-of-the-art water quality system for this property. He reported that they had conversations with City staff and USA, and in an effort to exceed the standards that were set out by both jurisdictions, they developed that system. He stated that they believed that they had a system that went beyond the requirements, and set a higher standard for what they should expect.

Gast noted that USA had been looking for a native landscaping plan for the swales as opposed to grass swales, and to try to put the swales where there were trees, etc., to keep the water cooler. He said Polygon had attempted to do that.

Coun. Soth said a concern that had been mentioned was a possibility of erosion from those swales, and asked if Polygon had methods to minimize that.

Gast stated that erosion issues during the construction periods and after construction were different. He explained that they had implemented construction standards that would meet or beat the best management practices for site development, including preservation of significant buffers around the wetlands that feed the riparian corridors. He said that was the first line of defense and noted they also were using native materials because of their lower degree of maintenance. He said they would take measurements during the construction period to make sure there were no impacts.

Coun. Soth noted that erosion was of particular concern to him since he had recently participated in a DEQ task force, which addressed erosion and erosion controls, going beyond what was currently required.

Gast said they would have onsite management, and ongoing monitoring programs for upstream and downstream (from the property) in the Creek. He said they would be able to make adjustments during the construction period and minimize runoff.

Coun. Soth said one of the things explained to the task force was that construction and maintenance of such things as erosion fences, chip bags, and hay bales needed to be in compliance throughout the process.

Gast noted that he lived in a development at the end of a stub street that would soon be expanded and they had the bio-bags around there. He stated that the idea of maintenance and preservation of those had been few and far between. He stated that Polygon would have on-site management, and would not only be the builder but the developer of the site. He stated that they would have from six to nine, full-time construction management personnel, who would be on-site to monitor such things.

Coun. Stanton referred to the drawing and asked if they were going to plant all the trees along Millikan that were not there now.

Gast said they were required to plant street trees, and it was an accurate rendering of the trees; they would meet Code.

Coun. Stanton said she noticed that in the development there were trees along the traffic patterns, and asked if those would be new trees.

Gast said that was correct and reported that they would be planting 1158 trees.

Coun. Stanton asked how many trees they would remove and then said not to tell her. She went on and asked about the buffer around the oak trees.

Gast said it was about 30-40 feet of buffer.

Miller pointed out that the arborist said it was OK and they could go through there without damaging the trees.

Coun. Stanton stated that when she looked at the rendering of the wetland, she did not see a buffer; it looked like a cement pond.

Mayor Drake clarified that he thought she was asking if it was the natural water up to the edge of the pond, and what application would they have around the edge.

Gast said the pond was a rendering, and noted they met the City and all other requirements of setbacks, etc. He explained that they had set out on a path to see that the long time survival of the wetlands was doable. He said they had set up a system to capture the storm water, send it off to the facilities where it would be cleaned, and send it back to the wetlands to make sure they stay hydrated. He explained that it was not a pond per se, and it had a level that would rise and fall. He noted that there were routes for the water to be released and they had built open bottom bridges to allow it to be released to the pond south of the perched wetland, and down the corridor out to the Creek.

Coun. Stanton asked what the buffer was between the wetland and the driveway.

Gast stated that the wetland buffer averaged 25-feet. He noted that at BDR they had removed the sidewalk and parking on the inside of the loop street to increase the buffer.

Coun. Stanton noted that Gast had said the open space areas had been offered to THPRD, and she wondered how THPRD would maintain them.

Gast explained that THPRD was not interested in natural areas other than what touched their property, so they would only take about 20% of the property rather than the 30% that was offered.

Coun. Stanton said she thought she heard Miller say that 45% of the trees were preserved, but only 5% were required to be preserved, and that 45% of the open space was preserved but only 15% was required to be preserved. She asked if that was correct.

Miller said that was correct.

Coun. Stanton asked how much of the 45%, a) did they offer to THPRD, or b) was setback requirements, or not.

Miller reported that they offered six acres to THPRD and there were about 10 acres of open space.

Coun. Stanton said she was trying to find the perimeter fence on the drawing and asked about the six-inch gap at the bottom.

Gast reported that THPRD asked for the gap, and said staff and Polygon did not have a problem with the gap.

Coun. Stanton asked if the development was restricted for pets.

Gast said it was. He said initially they had a leash law, and cats indoors only, with no exotic pets. He said THPRD wanted them to exclude pets and exotic pets, but they had subsequent conversations and had agreed to have, in their CC&Rs to have no exotic pets allowed. He said they had maintained their leash law portion. He noted that THPRD had requested a bell on cat's provision, and Polygon had a no-cats-outside provision.

Coun. Stanton asked how that would be enforced.

Gast explained that if the cat was found outside the homeowners association could fine the cat's owner.

Coun. Stanton clarified that this would fall on the homeowners association. She asked if he had similar situations before.

Gast reported that Polygon, between the Portland and Seattle operations had closed about 1000 units per year, about half of which were attached, for-sale units, etc. He said they had had the opportunity to put together several homeowners associations and help them get started and found them to be successful. He noted that it did take a commitment and those who owned units did take an active role.

Coun. Stanton said she was concerned with the lights and asked if they were in the green corridors.

Gast reported that the lights proposed for the green corridors and the path were the same as used by THPRD, the podium lights.

Coun. Stanton asked for clarification that in the corridors there would not be lights and the lights in the abutting neighborhoods would not be shining into the corridors. She also asked if there would be lighting on the wetlands.

Gast said that was correct, and there would be no lighting of the wetlands. He noted that there would be street lighting, as in the Park area.

Mayor Drake reported that in discussions with THPRD there had been a concern about animals and he was curious about the control of domestic



pets. He noted that it was a large tract of land, and like others in the area, he lived here in 1980 and put out signs supporting passage of the bond for the Park. He said he was curious if THPRD had suggestions about how to control domestic pets around the site, including the apartment complex on the southwest side, public access on 170<sup>th</sup>, and people leaving cats off at the Interpretive Center.

Gast noted that it was a significant concern but he had not received any information. He said THPRD did not want to allow any pets, and Polygon had tried to meet them on middle ground.

Coun. Doyle asked in terms of laying out the density, was there a reason for laying it out the way they did. He wondered if there was a reason to not take it away from the Park property on the north.

Gast reported that they had several conversations with THPRD and had tried to maximize the buffer. He explained that the reason they had not moved it farther to the south was because of the Creek itself, the riparian area, and the information from Fishman. He noted that the majority of the sensitive plants were in the riparian area and they needed to maintain a significant buffer there and they had. He noted they had met and exceeded all applicable criteria for that including Title 3 which had not been adopted yet.

Coun. Doyle asked who would be maintaining the water quality system in the future and how did it work.

Gast explained that one of the aspects of this system was to reduce the maintenance requirements by using native plants and grasses that did not have to be mowed. He said the homeowners owned the property and would have an investment in it, so he thought they would be involved.

Coun. Doyle asked what remedies the City would have 20 years down the road if the homeowners said they didn't care.

Cooper said the City's Code Services office would follow-up on concerns.

Coun. Doyle said he assumed the treatment they were proposing for the trees was going to work, and asked if they had any examples of where it worked.

Gast said they had used the same plan in Portland in Lake Oswego, and they had used the same landscape architect.

Coun. Doyle asked if it had worked in other areas to move a "critter path," and wondered if the animals would adjust and would be able to find the tunnels.

Gast said he would have to ask one of his staff to answer that.

Michelle Wilson, a Natural Resource Specialist with Entranco, said that Coun. Doyle was right that when you change a site, there were issues for the wildlife that would not know where to go or what to do. She explained that the best solution was to try and provide corridors for migration, but realistically they did not want those animals in the development, so you provide a means for them to travel through but not attract them in. She noted that some animals were more adaptive than others, depending on their habitat and range.

Coun. Yuen noted that many good questions had been asked. He expressed his concern about pets and cats, and as an owner of three cats, he thought trying to control cats and cat owners was like trying to catch the wind. He said cats would go pretty much where they wanted, and cat owners tend to believe their cats were cute and cuddly and would not kill birds, etc. He stated that when they let cats out just for a few minutes, they actually did not know what the cat was doing. He stated that he was very concerned about the idea of controlling cats, because no matter how strong their intent was, he did not think they could control cats or their owners.

RECESS: Mayor Drake called for a brief recess at 8:28 p.m.

RECONVENED:

The regular meeting reconvened at 8:38 p.m.

Testimony in Support of Application:

Paulette Furness, from the Archdiocese of Portland, stated that the Archdiocese supported Polygon NW's application and urged approval of the BDR decision. She said Polygon's plan responded to the City's vision of mixed use of land near Light Rail stations and offered a much needed for-sale housing project while being attentive to environmental concerns inherent in development. She noted that during the application process there had been some inaccurate and misleading statements concerning the Archdiocese and the sale of the property. She stated that the Archdiocese would like to provide the Council with correct information and clarify the record. She said in order to move the hearing along, they would submit that information in writing.

Coun. Doyle asked when the clarifications would be available.

Furness said they would be available within the next few days.

Mayor Drake asked if there was anyone else to testify in support of the application. No one came forward.

Appellants:

Mayor Drake said they would now take the appellants presentation and at the next meeting the only testimony they would take would be from those opposed to the application. He noted that Dick Schouten and Jack Franklin were both present, but understood that Franklin would not be making a presentation, but would be making a statement during the time allotted for the public.

Franklin explained that he had been advised by counsel that there was a statement he needed to make: "My name is Jack Franklin, and my appeal is before you and these people are here to present my case. There are two appeals before you and for convenience of City Council they will both be heard at the same time."

Mayor Drake noted that had already been announced earlier and said he understood that Roy Dancer would introduce the speakers who would talk on behalf of the appellants. He clarified that Schouten and Franklin were represented by the group and had 30 minutes to make their presentation.

Roy Dancer said he was a charter member of the West Beaverton NAC and represented that group at Citizens for Community Involvement (CCI). He stated that they had heard Polygon representatives say they had a great development plan for the City, but the NAC maintained that Aspen Woods was the wrong development in the wrong location. He stated that they had six members of their panel that would convince the Council of that.

Dancer said their first contention was that BDR misinterpreted some aspects of the Code, namely 40.10.05. He said 2) - this proposal was not compatible with surrounding properties. He quoted the Code, "...encourage orderly development of a site in a manner that is compatible with surrounding property..." and displayed overheads (in record). He reminded the Council that the Interpretive Center at the Park only opened one year ago. He said 3) – this proposal did not protect the general welfare of the public. He said the Code said they must provide for reasonable development of the City in a manner that would protect the general welfare of the public. He stated that everyone except paid consultants and staff of Polygon, had indicated that they were opposed to the project. He said 4) – Code, 40.10. 15, 3.C. 1.G and 2.G, "so constructed that there is no (and repeated "NO") adverse effect," not a little but NO adverse effect, on the neighboring properties, namely the Park. He introduced the speakers and said they would follow each other with their testimony.

Dick Schouten, President of West Beaverton NAC, said they would first discuss burden of proof, and then the substantive or prejudicial errors that the staff or BDR had committed. He said that those errors should give the Council cause to approve both appeals and overturn both BDR orders.

Schouten stated that the Code said the burden of proof was on Polygon and that was the burden of proof on all criteria. He stated that if there

were unanswered questions about any one of the applicable criterion, or doubts in the Council's minds, about whether they met the applicable criteria, then Polygon had not met the burden of proof, and the Council should and must deny the application.

Schouten said he wanted to discuss the critical errors: 1) BDR and the Council had the power to review technical as well as design standards. He said in this case BDR chose to only consider design standards and ignored 11 standards – there were a total of 19. He said 2) BDR did not consider CC&Rs. He stated that the Assistant City Attorney would find that BDR could invite comments from the proponents on CC&R issues but regulation of those issues was not under the BDR's authority. He reported that his group objected and still did, because CC&R issues were relevant to help BDR and the Council address the requirements of the Code section that required that adequate means are provided to ensure continued maintenance, etc. He said error 3) in the BDR hearing City planner Colin Cooper stated that since Aspen Woods storm water runoff would comply with various standards from USA and the City Engineering Manual, the storm water from Aspen Woods would have no adverse effect on the Park. He declared that the City Design Manual and Code did not allow for that kind of assumption. He reported that in the USA Standards for phosphorus, it was clear that the standards only related to design and construction standards, and were not intended for performance evaluation. He stated that their (Polygon's) civil engineer had told them that Polygon's storm water facilities met and exceeded relevant City standards. He stated that what he (Polygon's engineer) did not tell the Council was that those standards were only construction or design standards, and did not speak on performance as to whether the water was clean. He said error 4) – Board Member Stuart said that “No doesn't really mean no, that it only means it, if it is really no.” He stated the point was that “no” was “no,” and the Council must either decide that there was an adverse effect and they did not approve Aspen Woods, with respect to the various Code provisions, or that there were no adverse effects and approve the project. He said the uses went beyond design issues, which was clear in Code section 40.10.15.2C.2a, and also in Chapter 90. He stated that there were quite a few errors and the full record would show that Polygon had not met the burden of proof, it was not compatible and would have adverse effects on the Park.

Debra Jones, 14165 SW Stallion Drive, said her training was in outdoor recreation and resource management, and she did not represent THPRD on this issue. She said she brought her one and one-half years of experience as a member of the Advisory Committee for the Park. She noted that the appeal application clearly stated the concerns over the Aspen Woods proposal and the effect on the Park. She stated that the Park represented a \$10 million investment that people did not want devalued. She said the Park was the established land use in the area and the Aspen Woods development was not compatible. She pointed out that Polygon said that evening that compatibility was a concern and the zoning should have determined their application was compatible. She stated that

the Code stated that (C.2.a.) location, size, shape and spatial arrangement needed to be compatible with existing surroundings and future uses. She declared that established facilities such as businesses, churches and homes should be protected by land use regulations. She stated that the Park was a successful entity and provided a growing number of programs for education and recreation to the local community and region.

Jones noted that 72,000 visitors came to the Park the first year and they expect it to double by the end of the second year. She said 30-40 full- and part-time staff work there. She read the Park's mission statement (in record). She explained that what made it work was the quality of the plan, the wildlife in the Park, and the continued success of the Park's ecosystem.

Jones pointed out an area on the map that was displayed, and said if that area happened to be a car park or another housing development, then the impact on the environment would not be so devaluating. She stated that the Park was the primary resource, not cars, not people, not computers,; and it was in viewing and studying the resource that the Park would keep in business.

Jones noted that the Code said they needed to look at the shape, placement, the location and the size. She stated that in placing Aspen Woods there in the Park, it was not only in the middle of that greenspace, but also the PGE greenspace, the wetlands and the Creek. She said the fence would undulate into the greenspace surrounding it, and they would have two separate environments and along the margins there would be conflicts and competition between the environments. She said Aspen Woods would be acting in a manner that was not compatible with the maintenance of the ecosystem. She stated that it would be degrading the Park program and devaluating the investment. She concluded that the Code said that not compatible was not acceptable and declared that Aspen Woods should not be approved.

John Griffiths, 10245 SW 153<sup>rd</sup> Ave., said he chaired the Nature Park Advisory Committee until his term ended the previous month, and chaired the Metro Parks and Greenspaces Advisory Committee. He said he also used to work for the National Parks Service. He noted that Jones had given them a good framework to understand what was under threat, and he wanted to give them the set of building blocks to help the Council understand the damage that could happen.

Griffiths said that natural areas contained a diversity of populations which all lived in a vast habitat web, eating with each other, depending upon one another and function in an equilibrium, which is where they get the word "ecosystem." He used overheads to talk about his points (in record). He noted that the ecosystems were so complex that even the best computers could not model them. He reported that they were meant to support an immense amount of life and diversity, and they were very sensitive to

change and the impacts on one area impacted others. He asked if they understood what he was saying. He said natural area populations that were subject to impacts lose population in three ways. He said they lose equilibrium, which meant one population inside the system got the better of another; the numbers decline and the diversity (number of species) decline. He reported that there were over 700 species in the Park, not counting insects. He said his big point was that short-term recovery to significant impact was possible if you got rid of the impact, but long-term recovery was impossible if there was a permanent impact. He stated that urban development was a significant long-term impact. He said the Park had survived by accident, and because of size, since the St. Mary's Woods ecosystem was far bigger than the Park, but the Park was a biologically rich property, surrounded by low-impact development.

Griffith stated that Aspen Woods would pierce the buffer, it landed right in the middle; it would "parachute" right on in and the impacts would radiate 360 degrees into the ecosystem. He stated that it was huge, relative to the ecosystem, with 239 condos, 400-700 people, and it was permanent. He said the expected damage could be quantified. He stated that Aspen Woods would be a significant long-term impact by destroying an enormous amount of existing habitat in the St. Mary's Woods ecosystem, and would permanently reduce animal populations and diversity. He said they needed to be coherent with the Council's responsibility to uphold the Code, specifically not compatible to surrounding properties and no negative impact.

Tom Hjort asked if they were going to get their whole 15 minutes.

Mayor Drake said they would get it if they still had it.

Hjort said he was a Civil Engineer who was licensed in Oregon. He stated that the existing forested site would act like a sponge during precipitation and would retain about 40% of the rainfall. He said the runoff from the surface would be quite slow and dispersed. He stated that the proposed development would include nine acres of asphalt pavement, and nearly all of the water runs off a street. He said there were no detention ponds included in the project, which was required in the Beaverton Engineering Design Manual (Manual), chapter three. He stated that the effect of all of this, based on calculation was that the runoff rate from the developed site would be approximately eight times as much as from the undeveloped site. He noted that was also in conflict with the Manual, which said the pre and post development runoff should be the same or less. He noted that the Manual required a certain standard of the amount of runoff per acre of developed land, and their (Polygon's) case was about 70% greater than required. He explained that about .85 cubic feet per second, was what would runoff during a 25-year design storm. He reported that the requirement was for .5 cubic foot per second. He stated that those were the three conflicts with the Manual.

Hjort explained that when you looked at the layout based on the design, the green areas were the swales that had been discussed and stated that the water would find its way to the Creek and would erode the wetland. He said he heard the argument of the flow being timed to avoid flooding the Creek, but he would say if they had a severe spring or summer storm, there would be a heavy flow down the swales that would cause erosion as it ran into the Creek. He explained that they would see a concentration of the runoff and noted that the swales and catch basins were designed to remove 65% of phosphorus in accordance with USA standards. He noted that meant that 35% of the phosphorus would enter the Creek and maintained that was significant. He reported that he had consulted a table prepared by the Environmental Protection Agency (EPA) that was part of the City of Portland Storm Water Design Manual, which rated swales with an average relates-rate according to pollutant. He reported that according to this table the average swale captures 80% of the phosphorus and various amounts of other chemicals. He said the chemicals would be deposited into the wetlands that would go into the Creek. He said there would be an 18-month construction period and there had been discussion about a temporary facilities such as hay bales, bags, etc. He stated that from his own experience of 35 years in construction, those things did not always work properly. He concluded by saying that there would be negative impacts on the Park.

(Coun. Brzezinski arrived at that time.)

Brenda Novak said she had a BS in Biology, MS in Environmental Education and was presently employed as an educator at the Oregon Museum of Science and Industry (OMSI). She stated that there would be a significant flow into the Creek, and one of the concerns was phosphorus. She explained that phosphorus damaged amphibian eggs, and made them less viable. She noted that some of those effected were listed on Oregon's Sensitive Species List, as being in critical condition, including the red-legged frog and the northern leopard frog. She named the rough-skinned newt, which had a significant population in the Park, but was rare in many areas.

Novak reiterated that Hjort had said there were not detention ponds planned for the development, but stated that there would be detention ponds used by Aspen Woods, which were called "Big Pond" and "Lily Pond," located within the Park. She explained that heavy metals could gather there and be picked up by animals and spread throughout the Park as they traveled. She said one of the other effects would be an increase in turbidity, and displayed some samples, including some that she claimed were what the water would be headed to, as the water temperature got warmer and there was less oxygen for animals.

Novak stated that grass swales had not been shown to decrease the temperature of runoff water, the way falling on a natural surface would. She explained that water that fell on an impervious surface would automatically become warmer and as the warmer water entered the

Creek, they would have heat pollution. She said that once the process started, it could not be reversed, and it would lead to the extinction of cold-water species, such as the cutthroat trout, which was listed on the sensitive list and was proposed to be listed as threatened. She said this fish passed through the Creek and would not if this state occurred.

Novak reported that another shocking effect was the "edge effect," and the most effected part was shown on the map (in record) as yellow. She said the rest was what they called edge, and that was where the undesired species could reach, such as blackberries and raccoons. She noted that it was questionable habitat, but made the part in the middle effective. She noted that was the core habitat, the most pristine and valuable to wildlife. She declared that the addition of Aspen Woods would reduce the core, and indicated on overheads (in record) that 35% of the Park would be lost due to Aspen Woods.

Novak said that the Oak Savannah habitat would be lost, and while they were keeping 45% of the trees on the Aspen Woods lot, part of the trees lost were those used by the pileated woodpecker, and the remaining habitat might not be enough to sustain them. She stated they would lose cold-water species, amphibians and certainly birds. She said 18 months of construction would make them lose migratory species, and the reduction of riparian area would reduce the habitat for small animals. She said she would have to examine the corridors of large animals later, because it did not appear that they were large enough either. She stated that the losses experienced by the Park could be considered "adverse effect."

Margaret Armstrong 5205 SW 192<sup>nd</sup>, said she taught science at Merlo Station High School (School), located north of the Park. She listed her credentials. She stated they were alarmed by the impact the development would have on the Park. She stated that the Code clearly stated that they could not have incompatible or negative impacts. She said Aspen Woods would violate the ordinance immediately and the damage would be irreversible. She stated that the Park's mission included conservation, recreation and education. She noted that the School had used the Park since 1993 as their "living laboratory." She said students had served the community with projects such as building boardwalks, habitat restoration and field trips for elementary schools, and now they could add community activism and advocacy for the environment to the list. She noted there had been a long history of use for education by many schools for many years.

Armstrong said THPRD also sponsored activities and those were fee activities and the quality of those activities depended on the quality of the Park. She said those were self-supporting activities. She summarized her comments and asked if education in the Park would end with the development, and answered it would not, but the opportunities would be negatively impacted. She pointed out that the Park was a taxpayer investment and they could not compromise its use. She stated that



people were there listening and waiting to hear the decision about their Park. She said the Code said it was not compatible and asked the Council to honor that.

Mayor Drake noted they had lost about a minute with microphone problems, so Griffiths could have that time to recap.

Griffiths said they were not against development, but good things taken to extremes became destructive. He noted that if there was a vacant lot in downtown Beaverton no one would be there that night. He stated that when you got down to the last 10% of Beaverton being open land, then the race was on to tie it up. He said that in that process poorly thought-out plans emerged and this was a classic example. He said the debate would determine if Beaverton would pursue a policy of development at any cost, specifically at great cost to the community and its cultural and natural environment. He stated that they had heard evidence that it was possible to quantify the impacts of development on natural areas and they had heard evidence that Aspen Woods would reduce the biological footprint of the Park by over 35%. He stated that one more development would wipe out the Park, and noted that they would see another similar development coming forward in the next couple of months. He declared that the pollution and heavy metals would wind up in the Park and Creek.

Griffiths said Polygon's defense for the development was that the land was zoned for this. He pointed out that every piece of land in Beaverton was zoned for something and this one was even zoned for parks. He said Polygon said they met all the requirements and that might be true, but on a macro-level they had not since the compatibility and no negative impact criteria had not been met. He declared that Polygon's efforts would not mitigate the impacts by more than a few percent, and the development was inherently detrimental. He stated that Polygon's efforts "amount to shining the brass on the Titanic." He said the Code writers knew what they were doing when they installed "no adverse effect" and "not compatible to surrounding properties." He stated they did that because they knew that not everything could be brought down to length of timber, or plumbing specifications and things like that. He said they needed to honor the writers of the Code and stay faithful with the intent and the spirit of the Code. He quoted Joni Mitchell, "Don't it always seem to go that you don't know what you got 'til it's gone; they've paved Paradise and put up a parking lot."

Mayor Drake said they would ask questions of the appellant and then move into public testimony.

Coun. Soth noted that what he heard was the direct opposite of what Polygon had said in terms of erosion control, flooding and the 25-year event. He asked Hjort if there was a balance there or if it was a case of professional disagreement, where two equally qualified people could come to diametrically opposed positions.

Hjort said he judged it by what was in the Manual, and the explanation of what he had heard that day, was something that was other than what was in the Manual. He stated that he assumed the criteria he had mentioned were in the Manual for a purpose. He said he did not know why his professional opposite had taken a different tact. He suggested that he projected that if there was a cloudburst, or a quick storm could occur when the Creek was not in a flood stage and could erode the bank just as he had discussed. He said if this was professional difference, then the Council would have to give them both the same ruling, and they would have to chat about it, which he would be pleased to do.

Coun. Soth said the other part of that was they were governed by their agreement with USA as to design specifications, etc. He asked if Hjort disagreed with those.

Hjort said, "Not necessarily." He said the Manual cited the USA Code and the Manual Standards superseded the USA Code. He stated that all he could go by was what was written.

Coun. Stanton asked Dancer if they could have copies of the overheads.

Dancer said they could do that.

Mayor Drake noted that Coun. Brzezinski had arrived a little earlier, and asked her if she had any contacts about this, or had visited the site.

Coun. Brzezinski said she was familiar with the site since she lived near the Park. She reported that she had several voicemail messages, but had not returned the calls.

Coun. Stanton said Novak was talking about a newt and a woodpecker and asked if she understood correctly that they were sensitive species.

Novak said those were not sensitive, but the other amphibians and cold water fish species were listed on the Sensitive List as critical which was one step away from threatened. She explained that meant something needed to be done to keep them off the critical list. She noted that the pileated woodpecker was endangered in places but not in the Park. She stated that with a significant loss of its habitat, it would get there, and the rough-skinned newt was endangered in places but was not on the list. She said the cutthroat trout was on the list and noted that there were photos of these animals in the packet of material.

Coun. Stanton asked, regarding the pileated woodpecker, if the current 22 acres made up 45% of its habitat.

Novak said it was 45% of their prime habitat. She said they liked to have travel space, and with the development, that would be lost.

Coun. Soth asked if any development of any kind would be appropriate for the site.

Griffith said they preferred to not speculate on that because they were only discussing the current development.

Coun. Yuen stated that he had a concern about that, because not only was any development on the site not acceptable, but it sounded to him like (if they extended the conversation), not any development within a much broader notion of the ecosystem would be acceptable either. He noted that one could even argue that the Park itself, with the Interpretive Center and any human existence on the site, was also not compatible. He explained that it appeared that if they wanted to say no adverse effect, they would have to say the existence of the Park itself, was creating an adverse effect. He stated that in many ways he was on the side of trying to protect the Park, but was having some difficulty with the extremity of the language. He explained that if you said, no adverse effect, (and he agreed the Code said that), then on the other hand the Park itself was an effect and having people within the Park was an effect.

Coun. Yuen referred to Novak's statements about heavy metals and asked if that would also not happen from any development, anywhere upstream.

Novak said that was correct.

Coun. Yuen noted that meant that if the development was across the street, it would still have the same effect.

Novak said that was probably correct, if it was upstream.

Coun. Yuen asked if he was correct, that it was not the location of the development, it would be the same for any development in the upstream corridor.

Novak said it depended upon the topography of the land.

Coun. Yuen said, then a similar development anywhere upstream with similar topography would have the same effect.

Novak said it would not be as close to the Park, so the heavy metals would settle out.

Coun. Yuen asked what about it being across the street.

Novak said if it was across the street, it would probably have the same effect or very similar.

Coun. Yuen noted that Novak talked about the "edge" effect, and said he noticed in her chart that it extended across the tracks into the area above.

Novak explained that she extended the core area because of the uses of the surrounding property that were compatible. She said the land that was outside the borders of the Park served to help with the edge effect and provide more core for the Park. She noted that it was accidental that it did that. She clarified that if she did not count that area as being good habitat, then they could say the Aspen Woods development would take away 50% or 60% of the habitat.

Coun. Yuen pointed out that if that was true then there was potential that any development, even outside the boundaries of the Park would have an impact on the core area. He said if anything were to happen on the area up north, then it would depress the core area, and create an edge effect that would extend even beyond the Light Rail tracks. He asked if that was correct.

Novak noted that fortunately, it was a small area that extended up there, so it would reduce the core by 10% to 15%. She noted that was not an argument they had to make that night.

Coun. Yuen explained that one of the things the Council did was make policy, and certainly when they made policy it often effected other things, such as doing something upstream and watching it effect things downstream. He stated that he thought it was the Council's job to try and think that way. He said he was interested in the conversation because he saw that the same argument could be applied to just about everything that was in the greater ecosystem of the Park. He said the Park was a small part of a larger ecosystem.

Schouten interrupted with the legal statement that they were not making law that night; they were applying law, and whether or not there were other impacts caused by other properties near or far away from the Park, it was in a sense not relevant to that development. He stated that what was relevant was whether this development, Aspen Woods, would have storm water runoff and other aspects of the storm detention system would have a negative impact on the Park. He stated that if so, the Council should apply the law and say, "Yes, this development had adverse impacts and should not be approved." He said whether there were other developments nearby, if that was a concern, he would suggest that in the future they make legislative changes. He said that night, he respectfully asked that they apply the law as it was and not write out -- ; he went on that whether or not there were impacts elsewhere, as he said a moment before, was really not relevant. He said if Aspen Woods adversely impacted the Park with the storm water runoff, then it would violate the Code section and that was the end of the story.

Coun. Yuen thanked him, and explained that the reason he was interested was he thought it raised issues for Council. He said one issue was the one of what was "no impact," and what were "negative impacts." He stated that as he listened to this, he thought there was the potential that if someone built a house next to an existing house it could be looked at as

having a negative impact. He said they could have a dog that would bark at night, and realized that was reducto absurdum, but never the less he thought that was of a similar nature, and maybe that was the kind of thing they wanted to do, and maybe it was not. He said the discussion had raised the issue for him and he would strongly consider it.

Griffiths said in response to Coun. Yuen, he (Griffiths) had said that the ecosystem was probably 350 acres and was called an island ecosystem. He said 200 acres of it was the Park, and the rest was made up of the Archdiocese property, power line corridors and Wetland Park across Millikan. He said the richest part was the Park itself and it was the most threatened.

Coun. Doyle noted that the statements had been spoken very quickly; in fact he suggested that one could do the disclaimer ads on the radio! He asked if they could submit the notes and drawings so the Council could get copies to review.

Coun. Doyle noted that he had heard this question asked earlier, and posed the same question of how the applicant could improve this plan to make it acceptable in terms of its impact.

Mayor Drake pointed out that the applicant had included in the material, another plan for a four or five story structure with parking, and asked if the appellants had seen that.

They had not.

Coun. Doyle said he had heard testimony from some that were not on the developer's side that if they changed various things it would be more tolerable and asked if Council could get copies of those ideas. He explained that he was curious if there was any middle ground, or if there was another proposal that was acceptable.

Griffiths reported that there was another development coming, south of the Creek, called Magnolia Green, and his group thought that the most endangered part was the northern parcel. He said there was opportunity for increasing densification on the southern side as a means of preserving the northern parcel.

Coun. Doyle asked what kind of density would be acceptable.

Griffiths stated, "at this point, I would build a Sears Tower there, if it would keep the northern parcel free." He reiterated they wanted to keep the northern parcel safe.

Coun. Doyle asked, if when he was saying keep the northern parcel free, was he saying sacrosanct, non-touched (and noted he was not trying to put words in Griffiths' mouth).

Griffiths said there were certain “pot-holes” he did not want to step in, but their point was that they had to look at the existing application and their judgment was that it caused undo negative impact and was incompatible. He explained that the reason he brought up the southern parcel was he was looking for trade-offs.

Mayor Drake said he had been referring to something, and reported that Jack Orchard had dropped something by his office on July 2, and staff was copying that for Council. He explained that it showed a rendering of a six-story structure that would answer Coun. Doyle’s question. He reported that the structure was shown near Millikan.

Coun. Brzezinski noted they had received that drawing.

Opposed to the Development:

Mike Houck, 5151 NW Cornell Road, Portland, said he was representing the Audubon Society of Portland, and noted that he had just sat through one of the most substantive presentations by citizens in 20 years. He declared that the speakers were right on and this was the wrong development in the wrong place. He said there were cumulative impacts that need to be taken into consideration, and there needed to be substantive policy changes at the regional and local level to reverse those impacts. He stated that this was where the City should start to reverse the impacts on the natural environment. He said this region and the City had already made the decision to stay inside the UGB, and increase density inside the UGB, with the quid pro quo that they would protect areas like this. He stated that it was not acceptable to develop areas like this and this was a regionally significant site, not just for the City. He pointed out that he was familiar with the site since he was involved, early on when THPRD acquired the site, and had done the wildlife habitat inventory in 1984. He commented on the statement made by Bunnell earlier, and stated that he did not think the information the City received was “fuzzy” in the least. He declared that he made it abundantly clear that this site, Jenkins Woods and some other sites were significant wildlife habitats. He stated that the only reason, in his opinion, they were declared as “other significant,” was not on a biological basis at all; it was a purely political decision because they were privately owned. He said in his opinion the City decided in 1984 that they did not want to take the heat, to recognize the site for the value it represented in the community. He reported that one of the points he raised at the last hearing was that he thought the applicants were disingenuous. He explained that if they cared about the site, and the Archdiocese cared about the site, they would have brought in both the north and south sites together, and talked about how they could have done a transfer of density. He said they could have altered the use on the north site, increased the density on the south side of the Creek, and come in with a real plan that actually addressed the negative impacts on the site.

Mayor Drake pointed out that there had been numerous applications on the property including an auto mall, a Walmart store, and some other things, and he did not recall that Houck had testified regarding any of the other applications. He stated that concerned him a bit, and secondly, he was not sure if Houck was aware of it, but the Long Range Facilities Committee for THPRD, discussed this in 1996. He noted that Barbara Wilson and John Griffiths were part of the group that looked at that. He said they discussed it, and rightfully this should have been part of the Park, no doubt about that, and the City championed that and the recent discussions for acquisition. He noted that it did not happen; the public was not the highest bidder and he wondered why Houck had not made any comment at that point, when the Committee said it had value but was too expensive.

Houck said he did not pretend to be omniscient, he did not pretend to have unlimited resources. He stated that he had been participating at Metro on a number of committees, trying to address these issues at the regional level. He said the reason he did that was he gave up the local level in 1988. He stated that was why the Greenspaces Initiative got started: they got fed up with the local jurisdictions who were not protecting natural resources and said, "let's take a different tact, let's establish an acquisition fund at a regional level." He reported that they got opposition to the Initiative from jurisdictions in Washington County, but they did it anyway and were successful. He said they worked with the local park providers to buy the property and now they were back, 10 years later. He stated that if he had known there was a request to rezone the site from commercial/industrial to residential, he would have been there. He stated that he thought "THPRD blew it." He said there was a major mistake made when the site was declared to be "other significant."

Mayor Drake explained that he was not arguing with Houck, he was agreeing about how valuable the property was, and said his concern was that Houck said many Audubon Society members lived in this area, but no one had approached the City about buying this property with Greenspaces funds. He expressed his hope that Wilson would address that when she spoke.

Houck said it was very unfortunate that many people were not involved and stated that he did not know anyone who was involved in the rezone. He said if people did not show up to testify it was tragic.

Coun. Soth commented that Houck would recall that he (Coun. Soth) had been a part of the review committee and recall the discussions they had about the criteria that the committee used to look at to evaluate each of the designated sites. He clarified that it was the committee and not a political decision that determined whether or not any of those sites was designated important or significant.

Houck clarified that he did not mean to use the word (political) in a pejorative way; all politics are local, and of course it came down to a policy

decision that was a political one, and he had no problem with that. He explained that he was trying to point out was that there were not biological reasons, from a professional biologist's perspective, for those designations. He declared that what happened there had happened in many jurisdictions and he hoped they could remedy it at the regional level and now back here. He clarified that the site could not be demonstrated to have the kind of wetlands, and they (the Council) had heard that they could build a perched wetland, it was not demonstrated that it had wetlands that would come under the Division of State Lands and the Corps of Engineers purview. He said that took a lot of courage on the part of local jurisdictions to go out on a limb and go further in protecting the resource when the State and Feds were not backing them. He said he hoped they would reverse that with the Endangered Species Act.

Pilliod noted that Houck had given him about four or five pages of written materials, and asked if he meant them to be part of the record.

Houck said he did, and in fact he was representing himself and the Audubon Society, not the appellants, and actually appended to that, some suggestions, and referenced them at the last hearing.

Pilliod said for those in the audience, it was most important for the City Recorder to receive those, and he would see that she did.

Ralph Cook, Jr., 1375 SW 192<sup>nd</sup> Ave. Aloha, said he was speaking as a citizen rather than a technical person. He noted that in the 1970's he wrote some of the nations first environmental public relations, pointing out that the earth was a limited support system, just like a spacecraft. He said if we did not take care of it, it will be lost forever. He noted that he was also the chairman of a group to acquire a park that is now called St. Marys' Woods, and also Whispering Woods and Chantel Village Park. He asked that they consider his perspective when weighing the decision to allow Aspen Woods to be built on a 22-acre parcel with three sides bordering the Park. He read his testimony (in record). He reviewed the process to gain the property for the Park and the history of the development of the Park. He said the Park was there as a testimony to the efforts and the support of the citizens for the bond issue. He said they tried to acquire 222 acres, but were only able to acquire approximately 200 acres and the other 22 acres had remained conspicuous for all to see, with three sides touching the Park. He said if the approval of the development was a correct decision, then the addition of the 239 dwelling units along the Light Rail along with the thousands of other newly built and thousands to be built in the next 19 years, was a wise and necessary decision. He stated that if the approval of the development was a correct decision then the placing of these 239 dwelling units in the middle of the Park would be compatible with the Park and was a wise and critically necessary decision. He stated that he thought the answer to both of those questions was an obvious "no." He noted that if turning down the development was a correct decision, and albeit a courageous decision, then 19 years from now the Park would even be more splendid and a



credit to the community. He said based on the 19 years past, this was likely to be the case, so their decision and the Park would be a greater credit to the community if they turned down the development.

Coun. Doyle asked why the other 22 acres were not acquired 19 years ago.

Cook related that his vivid memories were that the Archdiocese announced they wanted to sell some of the land for commercial purposes as they had stated that evening. He reported that he worked with some other people to obtain property for the home office of Floating Point Systems. He said the THPRD meetings at the same time were talking about acquiring 250 acres, and as the negotiations went with the Archdiocese, there was continual adjustment of the asking price and reassessment of the market values, so what the citizens could afford was what they currently had.

Mayor Drake said by his calculations, 400 people per day enter the Park, 12,000 per month, 144,000 per year as outlined by Deb Jones. He noted that was quite an impact, and pointed out that he grudgingly supported the bond in 1996, not that he did not support THPRD since he did, strongly. He explained that having worked on the bond in 1980, it concerned him about opening up the Park. He pointed out that Cook was talking about 19 years in the future, and with urbanization going on around it, he did not know if they could keep doubling people each year, but Metro stated that there would be 500,000 more people in the region in the next 20 years. He noted that some of those people would spill over into the Park on a daily basis, whether this was built or not. He asked Cook what he thought would happen to the Park now that it was open.

Cook said he needed to make a re-statement, and explained that he had come as a citizen, and now the Mayor was asking him for information he did not have as a citizen. He stated that the Park was designed specifically to control the number of people using it, and to create a certain kind of environment. He explained that the number of trails and the area left separate for habitat was carefully selected; the size of the parking lot was planned for the amount of human impact that would be done. He stated that the notion that existed currently was that the human impact, through the trail system, the number of people using the park could be controlled and be acceptable. He said they recognized that there had to be trade-offs and they hoped they would be acceptable.

Mayor Drake noted that NIKE had 74 undeveloped acres, which had been the subject of conversation for the last couple of years and he assumed the two ecosystems were somewhat tied together and at some point NIKE or their successor would want to develop it. He said he thought they all understood that, but thought that Coun. Yuen's question was relevant in the exchange he had with Schouten and Griffiths, and agreed that the two ecosystems did link up. He stated that as policymakers, he thought Coun. Yuen was asking the right question. He said long-term, with NIKE

developing the property and it also having the potential for mixed-use development and a fairly intensive campus, whether Polygon developed their property or not (and it ended up in the public's hands), what would happen 19 years down the road to the Park.

Cook said he believed that the regional environment was unique, because while the individual parks in some cases, were not large enough to support wildlife habitat, most of them were linked with power line and creek corridors. He noted that he was struck by the graphic that showed the edge effect, and said he had been doing research for some time to try and ascertain the edge effect. He said he noticed that where the edge effect went to the north, it was a protected Creek corridor, up to the point where you reached Reser's property, but when you cross the Light Rail tracks, that wetland was now property of THPRD. He stated that probably much of the Creek corridor was protected for the cutthroat trout, etc., so it was fairly sacrosanct from development.

Mayor Drake asked if anyone had caught cutthroat trout there.

Cook said his son caught them a few years ago, when he was in his teens. He reported that three years ago he saw kids with fish poles, and one had caught a cutthroat trout in the Creek.

Peter Fry, 2153 SW Main, #104, Portland, said he had served on a planning commission for nine years and said he would explain some of the peculiarities of the City's Code, and why the development was deniable. He noted that the Code was not a strict "Euclidean" Code, which meant a use was permitted outright, except for single-family houses that were permitted outright. He went on that a single-family house would not have to go through the strict standards of review that this development had to go through. He noted that the zone permitted 21 uses, but it did not mean they were permitted outright. He said a development proposal was permissible, meaning they could issue permits on it, if it met or exceeded the criteria in the Code. He said citizens and experts had identified a number of flaws with the particular proposal saying it was not permissible. He gave two examples, the fence and the area compatibility. He said the fence fenced the Park out, not the development in. He said the Code allowed flexibility on access to protect natural resources, and in this case they had chosen to sprinkle the buildings rather than provide good access. He stated that sprinkling the buildings would protect the buildings not the Park. He said this was a quasi-judicial decision and they had the right to deny it based upon the criteria and standards in the Code. He said the existing and future uses around the development should shape and limit the development of a particular property and noted the Code was specifically designed that way to prevent a "taking." He stated that the City had no open space zone, and the logic of the question before them was "how," not "if" and all of the City could be developed to the maximum density of a particular zone. He said that logic, "how, not if" was not appropriate according to the construct of the zone. He stated this was not the way the Code was set up and not the way it had been applied. He

noted they had limited development, they did limit them and what a developer could do as it met or did not meet the Code standards. He said the Code was designed to create a community, not isolated development. He said he was dying to answer their questions.

Coun. Stanton asked what question he wanted her to ask.

Fry said the question about natural area and trying to create an extreme of a wilderness area, therefore no development could go next to it. He supposed that if the Park were a wilderness area, like was up in the Cascades, the standards of what could go near it would be extremely high, compared to this human park. He said to go to an extreme was inappropriate, they had to deal with what was around it.

Jerome Magill, 9280 NW Cornell Road, Portland, presented a petition with 4,010 signatures, who were citizens of the Beaverton area who opposed the development of Aspen Woods. He added that they had on file, exhibit 61, a statement from CPOs 3 and 6, and a statement that had been voted upon by all eight NACs who were opposed to the development. He quoted from the Code 40.10.5 (in record). He then reviewed the Council Goals, and stated that this development would be extremely damaging to the Park. He said testimony told the Council that Aspen Woods would not improve anything, they had heard that the change would be extremely damaging to the Park. He said all of those people were opposed and were incensed at the idea that this was even happening, that it had gotten that far. He asked if they were going to "foster civic pride" if they allowed this development to damage the Park. He said they had collected signatures and people commented that they thought it was already part of the park and stated that they were opposed. He stated that they had entrusted their signatures as a commitment to opposing the development in that location.

Coun. Soth asked what the specific objection was to what the Council was charged with in the hearing, which was an appeal on the decision of the BDR, in the type of approval, with conditions that they made their decision. He asked, specifically, what the objection was besides what he had stated, which was, very bluntly, the 4,000 signatures he obtained, simply do not want it.

Magill said they thought it did not uphold the Design Code, 40.15.05, paragraph 9, for one thing.

Mayor Drake said he had a question for Magill, and noted that he had indicated that 4,000 people in the Beaverton area were opposed to Design Review Standards. He asked exactly what Magill said to the people he approached in the Park, did he list the Standards, or what. He noted that in the packet there was a sample of a page or two, and he had noticed addresses from SE Portland, Scapoose, some from Hillsboro, etc.

Magill interjected that there were some from New York, England, and stated they had a regional asset there.

Mayor Drake said what he was asking was what they said to the folks that signed.

Magill said he asked people to sign the petition, and they wanted to know what it was about. He said he told them that they were trying to stop the development of 239 condominiums right there, and noted they were standing in front of the Interpretive Center where the tallest tree was. He said they usually said they would sign it. He said if they said anything more, they usually said they thought it was already part of the Park. He said he would explain that it was zoned for other things, also.

Coun. Stanton asked if all the signatures were collected at the Park.

Magill said they were also collected by the Audubon Society, friends took them to their neighbors, they were collected at schools, etc.

Jack Franklin, 5025 SW Fairmount Drive, said he wanted to address Metro's Resolution 97-2562B. He stated that some of them (the Council), the BDR, the applicant and the owner of the property were leaning on the Metro 2040 housing goals as justification for going forward with this development. He reported that on September 25, 1997, Metro passed Resolution 97-2562B, which totally and clearly eliminated that crutch. He distributed a copy of the resolution to the Council so they could follow along, as he would quote from selected phrases of the document. He stated that he was assuring them that none of his testimony could be construed as taken out of context and proceeded to read his testimony (much of which was the resolution, and all of which was in the record). He quoted Coun. Stanton as saying at another meeting that "We need some Beaverton people to come forward to make this happen." He stated that the community and the region were united in their opposition to the project, and listed various entities, which had submitted letters and signatures of opposition. He asked, on behalf of the groups he had listed, that the Council implement the Metro Resolution, and deny the application. He stated that he had a lot of answers if they asked the right questions.

Coun. Stanton said his quote of hers was correct, but it was in another context and clarified that her statement was from a totally different context. She said she made the statement when people from Aloha, Hillsboro, Portland, and other areas wanted the City to implement a no-smoking ordinance, and she wanted to hear that from City residents. She said the only phone calls she had on that issue, were from those outside Beaverton. She said she always expected people at public hearings on appeals.

Franklin asked if that night she did not want to hear from people in Beaverton.

Coun. Stanton said that again Franklin was not listening, she did not say that. She reiterated that her statement was specific to the no-smoking issue. She noted that she expected even more people that evening.

Marv Doty, 7350 SW Wilson Ave. said they had lived there for 31 years. He stated that he was the Highland NAC Chair, and represented the 20 board members and the neighbors in the community. He said they supported all of the statements made by the Make Our Parks Whole Committee. He stressed that their NAC members and area neighbors had spent many hours of study and analysis relative to the pros and cons of this project; they had not just signed on with the West and Central Beaverton NACs; they had worked hard as well. He reiterated that he was representing the neighbors and they had been privy to all of the data; had received all of the letters and understood what was going on. He stated that the opposition by the neighbors was in support of what had been said there. He noted that the development had alarmed all of their neighbors and all of the people he had talked to; 100% of their people were in disapproval of any further development of the project. He stated that the reason was the human element and the concentration of pets, forced into the area by these new people.

Doty reported that the past Sunday morning he visited the Park and the adjacent areas between Murray Blvd., and west of the Park along Millikan, and south of the Park along TV Highway. He said there were presently hundreds of apartments and new houses in those areas; the expansion was tremendous and would be felt by all of them. He reported that in his neighborhood they had approximately 15,000 cars per day, traveling east and west on Hart Road, and asked where it would all end; there would be gridlock.

Doty said he had wondered what he might say to express the message from his people. He stated that they had been the supporting citizens of City government for many years, managed by you (the Council) for the citizens, and they expected equal fairness and consideration in return. He and asked that the Council listen to their voices and advice relative to the appeals they were pushing forward that evening. He said they wanted to continue to ensure a happy community for the future.

Dr. Nia Hansen, 5240 SW 18<sup>th</sup> Drive, Portland, said she practiced veterinary medicine at SW Animal Hospital and exotic animal referral practice at Murray and Allen in Beaverton. She reported that their practice was unique in that they saw 60% exotic animals, 23% were cats and 17% were dogs. She said she thought that was a shift in population interest and demographics; people were working more, and there were more two wage earners per family. She said there was more interest in smaller animals that were "house bound." She explained that she thought that kind of population reflected the type of population that Polygon NW was looking at for their town homes, with entry-level prices, small square footage, and probably would not appeal to people that had three large dogs.

Hansen noted that cats and exotic pets were the kinds of pets that would impact the Park. She pointed out that there was a boundary fence that would be put up around the development, and the cats and exotic pets were the type that could get over or under that cyclone type of fencing. She said this was the first time she had heard about the CC&Rs having bells on cats or having them indoors only, and no exotics. She expressed her concern because she did not know how that could be policed. She wondered if they were going to have people go into the town homes and check for exotic animals. She stated that there was no such thing as an indoor cat, because they were more than happy to get out and could easily jump a 6-foot fence.

Hansen related that they see 138 exotics of 30 different species on a monthly basis. She said some are more common such as ferrets, but they also see more exotic things such as Sugar Gliders and coatimundi, etc., and they were capable of having a negative impact on the Park as predators and competitors for habitat. She said the top of the list were domestic or feral cats as predators, since they were skillful, intense and not discriminating. She noted they cause heavy predation on the small mammal population, birds, waterfowl, even amphibian, including the rough-skinned newt and the red-legged frog. She reported that ferrets were skillful hunters and they prey on small mammals, get through the three-inch fencing and under the space that had been asked for to maintain the corridors for the wildlife. She said, in her opinion, it would not keep the existing wildlife away from the development, and it certainly would not keep a number of species such as ferrets, hedgehogs, prairie dogs, cats or reptiles, all which can cause heavy predation, out.

Coun. Soth asked, from her professional standpoint, if a prohibition on any pets in the development would be appropriate, which could be done through CC&Rs.

Hansen said she thought prohibition of domestic animals would be appropriate. She noted that would not completely solve the situation because she sees three or four cats that are foundlings on a monthly basis, as well as ferrets and hedgehogs. She said she also saw people moving and leaving their animals, as well as leaving their animals at such places as the Park.

Coun. Soth said this was in terms of the prohibition of pets on this specific development, because he thought the feral cats and others that she mentioned would always be out there.

Hansen said because of the delicate mosaic of the ecosystem, these kinds of animals could have a serious impact, so she thought the prohibition would help.

Brook Herold, 7860 SW Hall Blvd. #17, Beaverton, said she was a student at Merlo Station High School, and was concerned about the fire issue.

She noted that the Park already had underbrush, and she thought it would be difficult to evacuate 600 people in the Aspen Woods development in case of a fire. She said she was concerned that the people would smoke and start a fire and also noted that one person could throw one match and start a fire that would destroy the Park. She said she thought there were many things that needed to be considered and she did not need to repeat all that had been said, and urged the Council to not allow the development.

Josh Seidel, 1875 SW 198<sup>th</sup>, Aloha, said he wanted to address the educational aspect of the Park and noted that the School had been using it for a number of years to teach their students as well as many students from elementary schools, about what is out there. He stated that the web of life effected everyone, there was no one above or beyond it, and any building inside the area could rock the entire ecosystem, and possibly destroy it. He closed with a quote: "we are a system of government created of the people, by the people and for the people," and he knew the Councilors had been elected because of their skills in debate and such, and said he prayed they would do the right thing.

Coun. Stanton said that was the Gettysburg Address and he got it almost right.

Michael Poe, 19250 SW Blanton St., Aloha, said he was a student at the School, also, and was against the building of Aspen Woods. He said he would like to ask the audience to join him in saying "no."

Mayor Drake interjected that it was not a debate that evening, and that was inappropriate.

Poe asked the Council to deny it.

Tricia Kelly, 6925 SW 168<sup>th</sup> Place, Beaverton, said she also attended Merlo Station. She said if Aspen Woods was built, she felt sure it would look nice in the beginning, but its appearance would go downhill in time and in 20 years it would look bad. She said the nice earth-tone paint would fade, weeds and other unwanted plants would grow, and trash and waste would start to pile up. She said it would not be an attractive building over time and would not add anything to the community. She said they needed to think of the future in their decision, and stated that the effect would go on and on. She asked the Council to deny the project for the future of the City.

Kelly then read from a letter from Amanda Meyers. She wrote that she came to them as a citizen of the US and a fellow child of the earth, to speak about tomorrow. She said that yesterday when the Councilors were the future, they had an abundance of natural space in most parts of Oregon; all they had to do to find green space was to step out into their yards or walk a few blocks. She said that times had changed, and gave the example that when her grandma was young Trilliums were abundant, and today there was a \$1,000 fine to pick a Trillium. She stated that the

Councilors had their nature to frolic in and asked if they thought future children deserved any less than they had, she said she did not think so. She said it was harder to find places where nature lived in its full glory, and if they allowed the development, they would kill the best natural green space in the Portland Metro area that was open to the public. She asked on behalf of the future and the future's future, that they not allow the 230 units to be built. She stated that this cancerous growth would be inserted into a healthy ecosystem that was a special and beneficial place for the caretakers of the planet. She asked them to not think of the money because a natural area was priceless, and said the future was in the Council's hands and the choice was theirs.

Wayne Marshall, 18120 SW Jay Street, Beaverton, said he was a Merlo Station senior, and said he planned to be a zoologist. He reported that he had done various things such as teaching sixth-grade students about the environment and ecosystems, been a Zoo intern and employee, and a Scout. He said he was curious and interested about the environment and the world around him. He said he spoken at the BDR and summarized about the how the ecosystem of the Park could be dangerous to people that lived in the apartments. He said he had talked about the rough-skinned newt, each which had enough nerve toxin to kill 20,000 lab rats, which was a big point. He said he was now focusing on how kids could damage the Park. He said he thought he would still be considered a kid since he was not 18 years old yet, and stated that things kids could do in their backyards, would be not good for the park. He said in growing up he played in a forest, and played ball, and a fence would not stop a ball that went over it. He said it would damage the Park for kids to go looking for the ball, and they would take their pets and no one would know if they let them off their leashes. He mentioned things he did as a kid such as building a fort and camping, and said he could imagine how destructive it could be to a fragile ecosystem as the Park. He said his point was that kids could do a lot of damage, and living next to it would increase the chance of damage. He said it was a bad idea.

Coun. Soth thanked him and the other students for appearing and expressing their concerns, which he said was a good thing and a tribute to their school. He said, on the other hand, he had a question, and asked Marshall where he supposed the kids' parents would be.

Marshall said with parents working or busy they could not watch them every second of the day, and they might even encourage their kids to go out and play especially in good weather.

Coun. Doyle also thanked them for being there and encouraging the Councilors to think back on past times.

Barbara Wilson, 12820 SW 20<sup>th</sup> Ct., Beaverton, said she would not repeat what everyone had already said. She stated that she wanted to make it clear to the Council that there was a Land Acquisition Committee formed after the 1994 Bond Measure and the Committee wanted those 22 acres.



She said the Committee was told that it was not available to THPRD because the Archdiocese was negotiating over the Walmart store. She reported that THPRD management was very firm in closing the issue and the Committee was told not to discuss it. She said that each member of the Committee got a terse letter from Rod Adams, the attorney for THPRD, indicating that the Committee was to stop discussing that property. She said there was an indication that THPRD might be put in a position of being sued, so they had to shut down discussion of the 22 acres.

Wilson reported that in 1976 and 1977, she was on the St. Mary's Woods Committee and they tried to get the 22 acres included in the original purchase. She said the Archdiocese said they had their own plan for that 22 acres and would not discuss it, it was off the table. She said for those two periods of time when THPRD had money, and could have talked about it, the door was slammed and they were stopped. She asked the Council to understand that the wildlife currently on the 22 acres, including the 10-15 deer, would not have a place to go, so they should not think they could build on the property and the wildlife would be OK, because they would not. She stated that the animals currently in the Park had staked out their territory, and the land was for habitat and food and it was at capacity. She declared that if they developed the land, everything that presently used it would be pushed out into the street, literally, and would die.

Henry Kane, 12077 SW Camden Lane, Beaverton, said the past week he reviewed the file and concluded that the application violated the Comprehensive Plan and the Code and a number of state and federal statutes. He declared that when the Comprehensive Plan and the Code, those two elements of land use law, were taken into account and given equal weight, he submitted that the application should be denied because the applicant had not met its burden of proof. He stated that all the scientific evidence was on the side of the opponent. He said as he watched the people speak in opposition, he thought that any city would be proud to have as citizens, the caliber of volunteers who were speaking. He said they had been told that BDR did not have jurisdiction to consider the questions, and he disagreed. He said that was a moot issue because the Council had the power to consider everything. He stated that he hoped someone would look into the federal requirements because it was not enough for Mr. Cooper to say that it met all state and federal regulations. He reported that he had sued developers and collected money from them.

Coun. Doyle asked Kane to get his material into them earlier than the end of the day on Mondays, so they had time to read through it.

Kane said he meant to get it in at 8:00 a.m. that morning, but he had been trying to cite the laws.

Mark Hereim, from the audience, asked about those who came but did not get to speak that evening.

Mayor Drake explained that the hearing would be continued to the next week and told him that prior to his (Hereim's) arrival, he had announced that they would go to 10:30 – 11:00 p.m. that night. He noted that good decisions were not made late at night and when they set up the hearing, they set it up for two meetings. He clarified that he had about 15 people who had not testified, noted that Hereim was one of them, and said they would testify the following week, July 19. He stated that Council would make a decision the following week, there was no meeting on July 26, and the final order would be before the Council on August 2, 1999.

Coun. Soth MOVED, SECONDED by Coun. Doyle, to continue the public hearing to July 19, 1999, at 6:30 p.m. Couns. Soth, Doyle, Brzezinski, Yuen and Stanton, voting AYE, motion CARRIED, unanimously. (5:0)

ADJOURNMENT:

There being no further business to come before the Council at this time, the meeting was adjourned at 10:55 p.m.

---

Darleen Cogburn, City Recorder

APPROVAL:

Approved this 24<sup>th</sup> day of January 2000

---

Rob Drake, Mayor