

REGULAR MEETING
July 19, 1999

CALL TO ORDER:

A regular meeting of the Beaverton City Council was called to order by Mayor Rob Drake in the Third Floor Conference Room, City Hall, 4755 SW Griffith Drive, Beaverton, Oregon, on Monday, July 19, 1999, at 6:00 p.m.

ROLL CALL:

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

EXECUTIVE SESSION:

Coun. Soth MOVED, SECONDED by Coun. Brzezinski that Council move into executive session in accordance with ORS 192.660 (1) (h), to discuss the legal rights and duties of the governing body with regard to litigation or litigation likely to be filed. Couns. Yuen, Brzezinski, Doyle Soth and Stanton Voting AYE, motion CARRIED unanimously. (5:0)

The executive session convened at 6:01 p.m.

The executive session adjourned at 6:33 p.m.

RECESS: Mayor Drake called for a recess at 6:33 p.m.

RECONVENED:

The regular meeting reconvened at 7:00 p.m. in the Council Chambers.

Others present for the regular meeting were: Assistant Finance Director Shirley Baron-Kelly, Human Resources Director Sandra Miller, Operations/Maintenance Director Steve Baker, Library Director Shirley George, Police Chief David Bishop, and Deputy City Recorder Sue Nelson.

Mayor Drake noted that they had received extensive new material, and noted that there would be no duplication of testimony. He clarified that if a

person had turned in a testimony card and had spoken during the last meeting, they would not be allowed to speak again. He noted that the appellant and not the general public could rebut new material. He established that speakers would have a time limit of three minutes and cards from the previous week (from people who did not have an opportunity to speak) would be called first.

Mayor Drake said they would proceed with items on the Agenda and then move on to the Public Hearing.

CITIZEN COMMUNICATION:

There was no one who wished to speak.

COUNCIL ITEMS:

There were none.

STAFF ITEMS:

There were none.

CONSENT AGENDA:

Coun. Soth MOVED, SECONDED by Coun. Yuen that the Council approve the consent agenda as follows:

- 99-220 Traffic Control Board Issues 408, 409, 410 and 412
- 99-221 CPA 99002/RZ990002 Beaver Creek Apartments Comprehensive Plan Map Amendment and Rezone
- 99-222 Gilbert "Expedited" Annexation (ANX 99003) (continued from 7/12/99)
- 99-223 Agreement with Metropolitan Area Communications Commission for PEG (Public Education and Government) Access Funding
- 99-224 Bid Award – Cardlock Fueling Services
- 99-225 HOME Consortium Cooperation Agreement between Washington County and the City of Beaverton

Contract Review Board:

- 99-226 Contract Award for Building Code Plan Review Services

Coun. Stanton thanked staff for answering her questions prior to the meeting that evening.

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

ORDINANCES:

Suspend the Rules:

Coun. Soth MOVED, SECONDED by Coun. Doyle that the rules be suspended, and that the ordinances embodied in AB 99-227 and 99-228 be read for the first time by title only at this meeting, and for the second time by title only at the next regular meeting of the Council. Couns. Yuen, Brzezinski, Doyle, Soth, and Stanton voting AYE, the motion CARRIED unanimously (5:0)

Mark Pilliod read the following ordinances by title only:

First Reading:

- 99-227 An Ordinance Relating to Vehicles and Traffic, Amending Beaverton Code Chapter Six
- 99-228 An Ordinance Amending Ordinance No. 1800, the Comprehensive Plan Map and Ordinance No. 2050, the Zoning Map, To Designate the Property Referred to as the Carlyle Group Annexation; CPA 98027 and RZ 980026 (Carlyle Group)

Second Reading:

Pilliod read the following ordinance by title only:

- 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 167th Place Annexation; CPA 99001 and RZ 990001 (Yamamoto)

Coun. Soth MOVED, SECONDED by Coun. Doyle that the ordinances embodied in AB 99-216, 99-217 and 99-218 now pass. Roll call vote. Couns. Yuen, Brzezinski, Doyle, Soth and Stanton voting AYE, the motion CARRIED unanimously (5:0)

PUBLIC HEARING:

99-215 Appeal of Aspen Woods (BDR 99022 & TPP 99002) (continued from (7/12/99)

Mayor Drake reopened the public hearing, and clarified that the rules and procedures outlined the previous week would apply at this meeting, also. He noted that he felt compelled to proceed slowly and carefully and stated there was disagreement that some material was new. He said it was difficult to work with the 2500 pages of material, and recesses might be necessary, to assure that everyone was treated fairly. He reminded those present that the burden of proof was on the applicant.

Roy Dancer, 6085 SW Glenbrook Rd., noted that the Covenants, Conditions and Restrictions (CC&R) and the Stewardship Plan were an integral part of the success of the environmental aspects of the proposal. He said the burden of proof had not been assumed to prove the Stewardship Plan and the CC&Rs could be enforced. He said he had extensive experience with enforcing CC&Rs and felt they could not be enforced. He stated that the City would not enforce the CC&Rs of a local homeowners association unless there was a violation of a City law. He said as an alternative to enforcement, he had been told they must file a lien on the property, which he had done in the past, and found they had to wait three years or longer to collect the lien when the property was sold.

Dancer said there was no guarantee the covenants in place today would remain the same later on. He explained that covenants could be changed and the covenants submitted at that time might not be in operation in three or four years. He said once Polygon left the development there was no guarantee the 10 million-dollar investment made by the citizens in the Nature Park (Park) would be protected with the current CC&Rs.

Coun. Soth noted the conditions of the development were that the homeowners association be established and be charged with maintenance of the common areas, which had an impact upon the City services as well as the common areas. He noted that how the rules were implemented was an internal issue for the homeowners association. He said if the City tried to enforce all of the CC&Rs, it would take a stack of paper from the floor to the ceiling. He said the only thing Code Enforcement was charged with were those areas required by Beaverton City Code and not by the homeowners' internal mechanisms.

Dancer said his point was that the City could not enforce the regulations of the CC&Rs of all of the homeowners' associations in the City of Beaverton.

Coun. Soth said it would be a civil matter between the homeowners' association and those people who had signed the CC&Rs at the time they moved into the development.

Dancer reiterated that the burden of proof was with the applicant and he had not proved the CC&Rs and the Stewardship Plan could be enforced.

Coun. Stanton referred to the Stewardship Plan on page 11, and asked if herbicides, pesticides, etc. would be avoided in native landscaping areas unless otherwise approved by the homeowners association. She asked if the homeowners group could use anything they wanted as herbicides, etc.

Dancer replied the homeowners association could change things by majority vote.

Coun. Stanton asked if the ecologist was not there, and the Environmental Management Resource Group (EMRG) decided to use herbicides (and considering the fact that the herbicide would go into the wetlands and streams) who would be responsible to monitor the herbicide use.

Mayor Drake suggested that staff should answer.

Jim Duggan, Project Engineer, said the discharge from the site would not be monitored, unless there was a complaint. He noted that Unified Sewerage Agency (USA) would respond if there was a problem reported.

Coun. Stanton said she lived near Greenway Park and if she found an oil filter in the creek, all she could do was take it out because the damage had already been done. She said she had called the Department of Environmental Quality (DEQ) on occasion.

Mayor Drake asked Duggan if that applied to all properties in the City.

Duggan said USA monitored creek water quality on a monthly basis and they responded to complaints. He referred to the example Coun. Stanton mention about picking up an oil filter in the creek and noted that the City Operations Department would clean up as much as they could if it was reported to them. He noted that in terms of a long-term problem (where the source of the pollution could not be pinpointed) USA investigated on a regular basis.

Coun. Stanton asked how many testing sites USA monitored and if any of the sites were within five miles of Beaverton Creek (Creek).

Duggan said there were three or four sites in the Beaverton area that USA tested monthly with at least one site in the Aloha area.

Ross Tewksbury, PO Box 25594, Portland, said he was in the Raleigh Park Neighborhood Association (NAC) and noted that the Aspen Woods development site was the most significant natural area in Beaverton and asked if they could not save it, then what could they save. He said they needed to save the old growth trees and thought they could be saved in-between developments. He noted a point they needed to consider was the cumulative impacts from all around the site such as Light Rail Transit

(LRT), apartments, etc. and stated that in 30-40 years the Nature Park would be totally surrounded by wall-to-wall buildings and asphalt.

Tewksbury said he had a great deal of respect for the Planning Department, but it was offensive to him, because it sounded like they were advocates for the applicant and they should be neutral and represent the desires of the whole area. He said the people who seemed to be in favor of the development were the developers, the Archdiocese and the Planning Department. He noted it should be easier to protect natural areas and easier to do things when there were so many people who felt the same way. He commented that a vote of the people would show more people opposed to the development than for it.

Coun. Soth asked if Tewksbury had read the staff report in its entirety.

Tewksbury replied that he had not.

Robert Hostetter, 14295 SW Wilson Drive, said he had lived in the Highland Neighborhood for 36 years. He commented that in 1607 there were Englishmen who tried to colonize Jamestown and they were not too successful and half of them died and he thought there was a parallel between Jamestown and the Aspen Woods development, since both were a kind of swampy place, covered with trees. He said he must have been asleep when the area was rezoned before and they should try rezoning again to get it right. He pointed out that it was low lying, swampy and forested and it was home for many animals. He urged Council to refuse to let condominiums be built in the area.

Mayor Drake complimented Hostetter on the work and time he donated to make the Highland Woods area look nice. He explained that the public had tried to buy the land and many people thought it would be nice as a park, but that was not under discussion that evening. He stated they were discussing if the application met the criteria and Council was acting like the Board of Design Review (BDR) and the discussion needed to stay focused on that.

Hostetter noted that his opinion was based on a fifty-year career in natural resource management and land use planning and that parcel of land should be part of the Park. He said Polygon had done a nice job, but the problem was improper zoning.

Coun. Soth commented that the City of Beaverton did not have a zone specifically for institutional use or for parks. He explained that all land in the state had some underlying zoning designation, and that underlying zoning remained there regardless of what use the land had. He said the underlying zone in the park was R-1, but the park use was by Tualatin Hills Park and Recreation District (THPRD).

Walt Gorman, 12230 NW Sunningdale Dr., Portland said he represented the Oregon League of Conservation Voters and this was an important

environmental issue. He asked Council to turn down the application because it was an incompatible land use. He said an example of why it was incompatible was the development had inadequate parking, but the Park had plenty of parking and that parking would be used as overflow parking for residents. He suggested a transfer of development rights to another piece of property and felt Council should look at Metro's riparian areas protection plan.

Coun. Soth asked him what his view was of a compatible use.

Gorman said his view of compatible use was as a park. He said it was inside a park and was unique, and noted there was another similar park in New Hampshire. He explained that the park in New Hampshire was five miles outside of a city and did not get the use the Park was experiencing inside the City.

Elizabeth Court, 934 NW Turnbery Terrace, said she was speaking for herself and she had sent e-mail to Council. She wondered if her e-mail questions had been answered by Polygon. She gave an example of one of her questions about new plantings of trees around the swales, and wanted to know what size the trees would be and whether they would be sufficient to provide shade to keep water cool during the initial year of the project.

Mayor Drake clarified that Polygon was not required to answer her questions, but they might address some of her issues in rebuttal.

Court asked if they could limit the development to adults only, which would eliminate problems with children and vandals. She also wondered what type of native plants would be used and what other property Polygon had developed in the Beaverton area. She said she appreciated the way the City listened to all the presenters.

Mayor Drake noted that he did not think they could restrict children from a housing project. He asked how one could deal with the children who visited the Park.

Court said she would not try to control children visiting the Park, but if there were no children living in the housing project, there might potentially be 100 less children in the Park.

Dick Ballard, 7065 SW Heath Place, said he lived in Beaverton since 1968, was not part of the Make Our Park Whole Committee but did collect signatures for their petition. He said it was easy to get signatures and over 4000 people said that area should be part of the Park. He noted the land was not just next to the Park, but in the Park. He related his experiences as a Park visitor and said other things would impact the Park such as lawn mowers and boom boxes. He related the many different trees, plants and animals he had seen and then said there would be

losses. He urged the Council not allow the development and said to do otherwise would turn Beaverton into a paved pathway to Hillsboro.

Lisa Hamerlynck, 2930 SE 78th Ave., Portland, said she had a Masters Degree in Environmental Education, was an *eco-psychologist* and worked as a park ranger. She displayed a visual aid (a map of the Park) and said she was also a state coordinator for the Pacific Green Party. She said she was a seventh generation Oregonian, and posed the question of why people came to a park. She noted that 95% of an individual's time was spent indoors and collectively, spend less than one day per person per lifetime in tune with the natural world. She said the Park was in the City and was a gem, and unique within the whole Northwest. She pointed out (on the map) a quite place in the Park and said it would be gone with this development. She encouraged Council to listen to the voice of 4000 signatures and charged Council to find another place for the development.

Mayor Drake noted that Hamerlynck's address was on SE 78th, and he asked how she became involved with the issue.

Hamerlynck said she worked in this area, and she enjoyed the Park. She said she saw animals in this Park that she would not see in other parks around the area. She commented that it was a very special place because it was a forested wetland within a city.

Mayor Drake commented that several years ago, he jogged in Washington Park and at that time deer were still present there. He asked her if that was still true.

Hamerlynck replied that the moment you stepped into a forest park you were in a wild place.

Coun. Soth asked Hamerlynck what kind of development would be appropriate for the area.

Hamerlynck said she did not think development was appropriate at all.

Melissa Waggy, 17499 SW Eirwen St. noted that she was a biologist and worked in park and recreation for over seven years. She reviewed her testimony and said the mission of the Park was conservation, preservation, recreation and education. She said Beaverton Building Codes should not allow adverse effects to neighboring properties or should not be incompatible with present use of properties. She listed some possible problems as edge effect and fragmentation, which lead to loss of native diversity and integrity, loss of wildlife corridor, hydrology concerns, fire hazards, domestic pet issues, parking overflow and several others. She said these were adverse effects and they were not compatible with the present use of the Park. She said she hoped the Council had the foresight to maintain the integrity of the natural area in Beaverton by securing its boundaries and hoped they were not afraid to step out and protect the Park's future.

Coun. Soth asked if she read all of the portions of the Development Code she was quoting.

Waggy replied that she had not read them recently.

Mike Brady, 13125 SW Heather Ct., said he was the owner of Sunmark Construction. He commented that Council had heard all the facts and some fiction and said the development would definitely impact the Park. He stated that it came down to money. He pointed out that Council saw the petition signed by over 4000 people from the community and this was Council's chance to leave their grandchildren some open space and save the Park.

Coun. Stanton she said she thought Brady had said this was a chance for them to save the Park, and pointed out that the City did not own the Park or the property, because it was owned by the Archdiocese. She said if the appellant won that evening, then he would get to develop the property or if he was turned down, there would be other things that happened, but the Archdiocese would still own the property. She said the Council would not be saving anything.

Brady said that if Council approved the appeal it would be another chink in the armor.

Coun. Stanton said the best a "no" answer would do, would be to forestall until something else happened. She said that "save," meant to preserve in perpetuity and that was not what Council's decision would do that evening.

Brady said Council should reach down in their souls and vote against it.

Mayor Drake asked what Sunmark Construction did.

Brady replied that it was mostly remodels.

Mark Hereim, PO Box 2144, Beaverton, said he represented the Friends of Beaverton's Johnson Creek. He said it was not an easy issue and they could discard what they heard as from a "bunch of tree huggers," but it was really genuinely heartfelt concern. He said he felt that the appellants gave ample evidence that the Aspen Wood application should be denied. He said the appellants had sited specific items from the Beaverton Development Code, which were not met by the application. He commented they provided a vivid description of the impacts the development would have on the adjacent property, the Park, one of the regions prime assets.

Hereim said the City had been quite generous to Polygon and it seemed like the City staff had been favorable to Polygon. He stated that he was not accusing anyone of doing anything more than their jobs, but pointed out that Polygon had certainly gotten a good deal with the amount of time

allotted to them in the public hearing process. He said he would like the Council to give the same consideration to the citizens they represented. He noted that at the previous meeting there was an absence of citizens who were in support of the Aspen Woods development. He commented that apparently Polygon had done their homework and had staged a polished presentation and had followed a strategy of pre-answering every question and yet not one voice of support had emerged from the people who actually lived in the area. He noted that to the contrary there were over 4000 citizens who signed a petition opposing the development. He commented that Mayor Drake said it best when he said that this parcel should have been a park.

Hereim said he believed there were ways to balance the rights of the property owners and the public investment. He remarked they had heard last week about the second application on the south property and the possibility of a density swap. He asked Council to take a longer view of the application and work to find a creative solution, which met the needs of the property owners, the applicant and the community as a whole. He noted that the results of the decision would be around for a long time and asked Council to make a decision they could all live with.

Coun. Soth asked what development would be appropriate.

Hereim asked why that was significant. He said it seemed to suggest that the burden of proof be on those who opposed the application.

Coun. Soth said he would not debate, but noted Hereim had brought up an entirely different property, and he would consider that property when it came up for review.

Hereim said it was appropriate to look at both parcels together and the best use of the property would be as part of the Park in which it was contained.

Coun. Stanton said she wanted to assure Hereim that they did not "take on" this issue, instead it was thrust on them.

Mayor Drake pointed out that he had worked with Hereim on citizen issues, knew that he had been strong on stream preservation, and Hereim knew the process and how it worked. He reminded him that the burden of proof was on the applicant, so they were given the opportunity to speak first, then the appellant could speak and finally the applicant was allowed rebuttal.

Hereim stated that he did not believe it was a fair process, but knew that was another issue that had to be addressed.

Mayor Drake reiterated that they were not developing the process format specifically for the application that evening, since the process was well established as he had explained earlier.

Jerome Magill, 13820 SW Electric, said he would read Nola Watson's testimony. He read her testimony and related the following points: she had worked on several local issues over the years and had never seen such enthusiasm to sign a petition; people stood in line to sign what she regarded as an opinion poll, she let anyone over 13 years old sign, and noted that tourists and people from surrounding areas had the right to express their love for the Park and their desire to make it whole; people were concerned about pets, the houses closest to the woods were a problem because in case of a fire, people were grateful for the opportunity to protest what they regarded as a devastating intrusion into the place they loved.

Patricia Griffiths, 10245 SW 153rd Ave., said the No Adverse Effect section of the Code was applicable, and was only applied as a basis of rejection one time and that was for the Act III Theaters. She said this was the first time they had the Nature Park and it was a unique and delicate situation. She declared that the intentions of the developer were not enforceable, and the rules about pets were ridiculous. She noted that on the 62 THPRD requirements, the developer only agreed to a few of them and those that they didn't agree to were not limited to the "no lighting at night." She said if the development went through, they should adopt the THPRD requirement of no pets, and noted there was no way of controlling who the tenants were. She added there should be some way to redress damages done to THPRD land due to invasive species (cats and ivy), litter and polluted water. She said intentions would not be able to remedy the adverse impacts and suggested that something be set up in advance.

Coun. Soth asked her about the context of the sprinklers in the buildings.

Griffiths said she did not mention sprinklers, and she thought he might have misunderstood her. She said there were 62 stipulations that THPRD had mentioned and that only a handful were approved and only one of the stipulations had to do with lighting at night, so it wasn't because it was against City law that those stipulations were agreed to.

Terry Moore, member of the THPRD Board of Directors read Mark Knudsen's letter (in record as exhibit No. 114). She said the letter outlined the testimony submitted to the Council in regards to the Aspen Woods Development. She reported that it was the preference of THPRD that the development not take place and also stated Polygon had taken extraordinary steps to preserve the integrity of the Nature Park and had set a high standard for other development projects to match. She noted that Knudsen's letter requested the commercial building be eliminated or moved to a more interior location, and said the additional vehicle traffic would increase danger to visitors to the Nature Park. She said the letter went on to discuss the proposed bio-swales and water run-off from the development. She noted it was THPRD's opinion that if the bio-swales were not maintained, functioned improperly, or did not meet the necessary requirements to maintain good water quality that THPRD be granted the

authority to enter the property and make the necessary repairs. She said the cost of the repairs would then be assessed and collected from the landowners in the development. She summarized the board's position as remaining skeptical that the CC&Rs would be any long-term protection for the Park. She noted THPRD had asked for a professional review by Kurahashi and Associates and the agreements should be conditions of the development, and in their letter to BDR of May 26, 1999, THPRD asked that the protections of the Park be incorporated as conditions. She said she understood the intent behind the Stewardship Plan and the CC&Rs, but when the \$10 million investment was looked at over the long-term there was no protection in those two documents.

Coun. Soth referred to the portion of the letter regarding permission for THPRD to make necessary repairs on the property and said he did not think the City could grant that authority to any other entity. He explained that what would be required would be an agreement by the property owner (or developer) and THPRD. He said it would constitute a civil matter rather than a condition.

Moore said she thought Knudsen tried to say that if Council approved the development, one of the conditions of approval should be that if the maintenance was not done over the long-term, in accordance with the application project proposal, THPRD would have the authority to create the proper situation to rectify any negative impacts. She said it was Knudsen's intention for the City to work with their own attorney to write such a condition.

Mayor Drake requested comment from the attorney or staff.

Mark Pilliod, City Attorney, said the situation could be resolved informally or formally by agreement between the developer and THPRD. He said in his opinion, the standard they would be applying would be in 40.10.15.3.C.1.e and read the material (in record). He explained that Council would have to determine if the application (as submitted without such an agreement) had satisfied the standard, and if it did not, the Council would have to consider alternatives. He noted the CC&Rs and the Stewardship Plan had also been submitted as facts in the record to show that criterion were satisfied. He said those would have to be determined as inadequate before the point could be reached where an agreement would be required where THPRD would have authorization to effect a remedy on someone else's property. He said it might involve issues of *taking*, private property rights, etc. He noted he was most interested in the applicant's responsiveness to the issue and he saw some potential legal hurdles in requiring a condition concerning the issue.

Moore clarified Pilliod's statement to be that if they had an agreement, they could have it be a condition of the development and it would be enforceable and carry with the land.

Mayor Drake clarified that the City could not enforce the issue just by mandating it from the City's side if there was no agreement.

Moore restated the issue as if there were an agreement and it was incorporated as a development condition of approval, then it would be enforceable when all present players disappeared; the contract would still be valid and would go with the land.

Coun. Soth pointed out that since the City abided by USA's surface water management requirements, he thought they would have to coordinate it with USA for THPRD to enforce it.

Pilliod said assuming the obligation was consistent with the USA maintenance requirements, then he viewed it as an alternative remedy. He explained that there could be an agreement between the property owner and THPRD, but it would only be a conflict if they were attempting to enforce different criteria or in a conflicting regulation.

Coun. Doyle asked if Moore had received a copy of the testimony from Paulette Furness, the Director of Business Affairs for the Archdiocese.

Moore said she had.

Coun. Doyle commented there were some interesting items in the letter.

Mayor Drake asked Moore if the THPRD Land Acquisition Committee for the Bond Measure had discussed the property and decided that it was too expensive.

Moore said she did not attend those meetings, but understood that in some cases cost was the issue, and noted there were a variety of reasons for it to be removed from the table.

Mayor Drake pointed out that there had been Metro Greenspaces funds and he did not hear of anyone going after that property.

Moore reported that in the last two years it had become their highest priority site.

Coun. Doyle remarked that he had served on the THPRD Board and this parcel of land had been under consideration for development by other people at certain times. He said he thought THPRD had always been interested in it, but thought they had not been asked to respond to the Request for Proposal when the property came back on the market. He asked Moore if THPRD had made a bid on the property with the public trust.

Moore explained that she did not know who found out about it first, but when the development prior to this fell through, the Board made it their top priority.

Beth Deal, 6230 SW Chestnut Ave., said she taught Life Science at Merlo Station High School, and would try to answer Coun. Yuen's questions from the previous meeting. She said he had noted his concern about trying to protect animals and plants while still letting people in the Park. She noted that the public owned it and you could not keep people out, which was where park management came in. She commented they had been going to the Park as a school for years and, now that it was formally managed, it was much improved; a developed park was taken care of better. She said the biggest trade-off for a managed park was that people learned more about nature as a whole. She said another concern of Coun. Yuen's was numbers of people, which she said was a big problem with the national parks because so many people wanted in, and if that became a problem, park management could take care of it. She noted that if there were too many people standing in line to get in to parks, then the problem was that there were not enough parks.

Hal Ballard, 14180 SW Allen Blvd. #32, said he represented the Bicycling, Interest, Knowledge and Encouragement (BIKE) Task Force and he asked Council to deny the development. He noted that Mayor Drake took the wind out of his sails when he said testifiers could only talk about what was on the table and not about wanting it to be a park. He said he came to Oregon on his way to Canada in 1972, after a stint in Vietnam. He said he stopped in the City of Astoria and because it was so beautiful he stayed for eight years. He said he would take visitors to the Astoria Column because it was such a unique landmark and it gave them a unique perspective of what Oregon was. He said when he got visitors today he would take them to the Park so they could have a unique experience. He commented that he would like to see the 22 acres become a park.

Cheri Arthur, 5225 SW Lombard, said she respected the position Council was in, was proud to be there that night, and of the comments she had heard that evening. She stated that she hoped she could be proud of the Council and their decision, and hoped they would think of the future. She said she had concerns about the environmental impact of the Aspen Woods development and the transportation impacts of what the new development would do to Millikan Way. She explained there would be a lot more cars and congestion on Millikan way. She said transportation was a serious issue in Beaverton and she hoped they would take it into consideration. She noted it was a wetland area and urged Council to be aware of building in a wetland and near a beautiful park.

RECESS:

Mayor Drake called for a recess at 8:32 p.m.

RECONVENED:

The meeting reconvened at 9:13 p.m.

Mayor Drake apologized for the delay and explained he had needed to confer with the City Attorney.

Debra Marshall, 18120 SW Jay Street, noted that she got a variety of birds near her house and was concerned the animals would move out. She asked Council to stall the project and thought they should be able to save the area as a park. She said she did not want to see the blue herons go away, and did not think Beaverton was ready for the park like area to be turned into another development. She suggested they give schools the assignment to find another use for the land.

Dr. Timme Helzer, 2425 SW 170th Ave., said he had attended several of meetings and was gratified to see the support that had grown for the Park. He reviewed the history of the Park, and said by 1980 approximately 58% of THPRD's voters agreed to tax themselves to buy the Nature Park from the Archdiocese of Portland. He noted they were able to get more funds from the various government agencies and purchased 180 acres for \$7.5 million. He reported that THPRD paid \$41,000 per acre at a time when acreage was being sold elsewhere for \$10,000 per acre. He said as a property owner nearby, he put in a 17-lot subdivision near the Park and gave the Nature Park one-third of his development to use as a buffer zone. He said he had walked the talk and paid his money, and wanted to tell them about the situation. He said in the mid 1970's there were botanical reports by noted international scientists who identified rare species native to St. Mary's Woods in its fragile ecosystem. He said by the late 1970's there had been significant environmental impact studies from the State of Oregon Parks Department that published and cataloged all of the special flora and fauna of the ecosystem in the proposed Park. He said through the 1990s there had been significant environmental impact studies done to report what impact further development would have on the Park. He noted Coun. Soth had asked if they read the entire report and he challenged the Council and asked if they had read the environmental impact studies. He said he doubted seriously if the issue would have gotten as far as it had if people would have done their homework prior to that evening.

Mayor Drake complemented Dr. Helzer on his gracious testimony to the Board and the Council and noted he had been generous in his donation of property, as Polygon appeared to be. He asked if he had gone through the same work to do the kind of analysis that Polygon had. He asked where Dr. Helzer was located.

Dr. Helzer said he was on the west side of 170 Ave. He noted that to qualify for loans during his development process he had to file an R-41C3 that was an environmental impact study. He reported that he went to THPRD and brought up his concerns and acted as a responsible citizen and knew about the research that went on in the Park at that time. He noted that he was well aware of the impact his development might have, and consulted others who assured him the property he donated would be adequate to protect the natural eco-system of that area.

Mayor Drake asked if the land he donated was on the east or west of 170th and asked for clarification on where the buffer was.

Dr. Helzer said the land he donated was along the Creek, west of 170th, contiguous to the Park, and not part of the Park. He explained that it seemed it was the natural part of the ecosystem at that time and he wanted to make sure he was not contributing to its demise.

Mayor Drake said he was trying to better understand what Dr. Helzer had done, and it sounded like he had provided a buffer along the Creek, and wondered how wide it was.

Dr. Helzer said it was a couple of 100 yards at the minimum on each side and it was a significant amount along the 100-year flood plain.

Mayor Drake thanked Dr. Helzer for explaining and said that was significant.

Coun. Doyle said he mentioned that Kurahashi and Associates had conducted environmental impact studies (see record documents), and asked how they defined "The Nature Park." He asked just what THPRD owned.

Dr. Helzer said he thought they were talking to the whole ecosystem of the area of which the Park was only a small part.

Coun. Soth asked for clarification if the portion he donated was separated from the Nature Park by 170th, and were there any developments in that same area.

Dr. Helzer clarified that it was separated by 170th, and he had put in 17 single-family homes there. He said he thought Johnson was the next street over with homes developed about 40 years ago.

Winefred McBride, 13570 SW Electric, referred to the letter from the Archdiocese from July 15, 1999. She said THPRD thought they were getting 220 acres and finally got 180 acres for the \$7.5 million that was available. She noted that Furness said the other 40 acres were on the market for many years, and commented that if the property was for sale for 20 years, (with the law of supply and demand) then obviously the price was unreasonably high. She noted that no property stayed on the market for 20 years in this area if it was priced somewhat close to the market value. She referred to other statements from Furness's letter and noted she had written there had been no public opposition to residential development at the site. She stated the only property owners who had to be notified (because of the 1997 City required notification radius) were the Archdiocese and THPRD. She said the deal was a private one between the Archdiocese and Polygon, and as soon as the NACs became aware of Polygon's plan they formed the Make Our Park Whole Committee (MOPW) and began work on the issue. She said there were a number of

uses allowed under the current zoning and if designed properly would be acceptable to the Citizens of Beaverton. She said the property was priced too high to meet any of the other acceptable uses. She asked Council to throw out the Aspen Woods application and said they all needed to get back to the drawing table to help the Archdiocese achieve their goal of how to best serve the community.

Mayor Drake noted that McBride worked with the Police Department as a volunteer.

Elizabeth Callison, 2115 SE Morrison, said she was the Director-at-Large of the West Multnomah Soil and Water Conservation District and was opposed to the proposed Aspen Woods development. She said she supported the work of MOPW and thought there was sufficient public funds available for a park purchase. She described three areas in which the application fell short as: the property's current relative value as a Goal 5 natural resource area; the Developer's Stewardship Plan, and the hydrological assessment and drainage plan. She commented that the site had Goal 5 natural resource values and the value was rising and the last remaining marshlands and creeks had gained in importance to quality of life. She noted that population had increased, the amount of impervious surface had increased, and thus the need for publicly owned openspace had also increased. She questioned the Stewardship Plan because there was no monitoring or enforcement included and it was unclear who would have the liability should public or private properties later suffer damage.

Mayor Drake said he was intrigued with her statement that there was plenty of money available to purchase the property. He asked if she was involved in the discussions with THPRD and the Trust for Public Lands.

Callison said it depended on the Archdiocese's willingness to sell. She noted she was not involved in discussion with THPRD and the Trust for Public lands. She reported that she had been very active with the greenspaces efforts of Metro and through her Water District work she thought she could give him some ideas about where they could get the money.

Mayor Drake said it seemed that she was involved, and he asked where she was when the discussions were going on.

Callison said she lived in Portland, and she knew people on the Washington County Water Quality Project. She explained she was primarily in flooding problems and water quality problems as well as density issues in relation to the natural resource base.

Mayor Drake expressed his surprise that she made the comment that the money was available. He explained that it seemed her monetary comments were cavalier since everyone would like to have the funds available to purchase the site. He commented that she implied there was a housing overbuild and a shortage on jobs, and said he strongly

disagreed because there was a strong need for housing and a strong abundance of jobs. He said the issue currently was trying to figure out the jobs/housing balance, because people were coming from other parts of the region to work in Washington County. He said he did not know if there was too much multiple family housing and he was concerned that she was inaccurate in her statement about available money. He suggested that she tell THPRD if she knew where funding was available.

Callison said regarding the money, the Archdiocese had to be willing to sell. She stated that she understood there were jobs in Hillsboro, but there were no jobs in Beaverton, and called the Beaverton area a housing glut market.

Mayor Drake said he did not agree.

Dave Gil, 15225 SW Jaylee, said he thought Polygon was putting too much stock in the CC&Rs as a solution to damage to the surrounding Park area. He said he had been involved in the Shadowbrook Homeowners Association and there had been problems. He said when he put out reminders about parking regulations in Shadowbrook, in return he got death threats and general disquiet in the neighborhood. He referred to Polygon's CC&Rs and noted they were the same unenforceable rules that most homeowners associations adopted and they could be revoked or changed at any time.

Sandra Camley, PO Box 1953, related that on July 4, she was sitting in her home listening to the loud fireworks her neighbors were setting off. She said she was concerned that people in the proposed development would shoot off fireworks and scare the animals in the Park. She commented the noise would invade the natural habitat of animal species and there would be nowhere for them to go. She contended that this was another adverse effect and the cumulative effects would be even greater. She urged Council to deny the application.

Mayor Drake asked if there was anyone else who wished to testify in opposition of the project.

REBUTTAL:

Fred Gast, said he represented Polygon Northwest and would try to respond to information from both public hearings. He commented he was empathetic for what people said and was a believer in parks. He explained that he grew up in Portland, across the street from a park and was a third generation Oregonian. He remarked he was proud of the application his team put together, they had gone to extraordinary measures and challenging issues to make it as great as they could. He said he was not in the area during the history of the site and did not know the way things were done at that time. He noted he was there as an applicant on a property zoned for multiple-family use and they had tried to balance the needs and objectives talked about at the meeting the previous

week. He said they had been sensitive to the Park itself and use of resources as assets within their development. He reported he would be glad to have his team come up and review the project, but he felt it had been covered that evening by the staff report and information submitted in to the record.

Gast emphasized that he had never been more proud of a development application, and had done several in Beaverton. He noted there was not much property left (and this carried over to schools, parks, and public buildings, etc.) and they tried to work with agencies to balance the objectives. He said he thought they had met the burden of proof, staff had prepared significant findings, and the record showed staff thought very highly of the proposal. He said BDR had given unanimous approval, and many of the issues discussed at the Council public hearings had been discussed there as well. He said many of those BDR members had been on the Board for many years and they had a good understanding of design and technical standards. He quoted from a statement from the minutes, which had been made by Board members (in the record).

Gast reported what they heard throughout the process was that no development could be on the site other than a park. He said there were 21 permitted uses for the site and 20 were developments and only one was a park. He said he had worked with THPRD, it was a great organization and they had worked openly and honestly. He noted that some issues were raised by THPRD during both public hearings, and one of those was cats. He said there had been a lot of dialog about cats, it was a significant concern, and said Polygon was prepared to exclude cats from the development.

Gast noted that with the commercial building, staff had indicated they would like to have a mixed use. He noted Polygon had not wanted a fast food business or a bar, but had thought more along the lines of an office building. He stated Polygon would exclude a commercial building from the development.

Gast said Polygon's concept and intent was to minimize the impact to the Park and Beaverton Creek, and he did not know what the details of the solution would be, but knew they could sit down and create a reasonable solution to the issues. He said he believed they could have a good development and they wanted to meet with THPRD to solve maintenance issues. He emphasized that in essence, Polygon had developed a magnificent proposal that exceeded all of the requirements.

Coun. Soth said THPRD would like to see the commercial area moved further back on the property and asked if they could do that in the current scenario.

Gast explained that they took it under consideration, but had decided to take it out of the development all together.

Coun. Soth asked if they would have any objection to prohibiting a convenience store.

Mayor Drake clarified that Polygon would exclude a commercial area from the development.

Coun. Soth noted he had mentioned a proposal to exclude pets and cats and asked if that was that part of the CC&Rs

Gast said that was correct.

Coun. Soth referred to Gast's letter (date stamped July 16, 1999, in record) and said it addressed the concept of the adverse impact statement and asked if Gast had any thing to add.

Gast said he had nothing to add.

Coun. Stanton referred to the CC&Rs and the Stewardship Plan on the water quality-monitoring program and said she would like to ask further questions about it. She also asked what they would put in the commercial spaces.

Gast said the commercial area would be landscaped openspace.

Coun. Stanton referred to page 12 of the Stewardship Plan, 43E, and read from the material (in record). She referred to page 5 of the CC&Rs, and read from it, and asked if the EMRG (under the Stewardship Plan) monitored the program and the neighborhood association implemented it, then who created the program.

Michelle Wilson, Environmental Services Manager for Entranco, Inc., 8910 SW Gemini Dr., said the actual water quality-monitoring program would be developed by the ecologist in consultation with the EMRG, and it was a working, open document. She explained it had not been determined where the monitoring stations would be; that would be developed.

Coun. Stanton referred to page 15 of the CC&Rs and read from it. She questioned if the common area was destroyed, would it be replaced if the majority of property owners agreed to not rebuild it.

Gast said those external portions of the property were not dedicated to THPRD. He explained that if THPRD elected to take the buffer area it would be the wetland and finger wetlands that were considered common area. He explained common area was also the front areas, roads, and signage.

Coun. Stanton said if 75% of the people said they did not want to pay for the common area, what would happen to the water quality monitoring.

Gast replied that one thing that had been picked up on was that CC&Rs could be changed. He said those requirements were more stringent than most were, and he was speculating that it was difficult for a homeowners association to agree to do nothing. He noted that the Stewardship Plan was an extraordinary effort on their part, and was set up to be more difficult to change.

Coun. Stanton commented that Polygon had done a good job.

Coun. Stanton referred to the Stewardship Plan, on page 20, section 5511 and read from it. She asked if the ecologist's authority (to remove vegetation in buffer zone) was just during construction.

Wilson replied it was meant to be primarily during construction, but they could not exclude emergency repairs from being made.

Coun. Stanton noted it did not say anything about repairing the property.

Wilson responded that somewhere it said it had to be replaced or restored to preexisting conditions. She explained that the onsite ecologist would inspect and assess the situation, develop a restoration plan and then go to the EMRG and the homeowners association for consideration.

Coun. Stanton questioned if the ecologist plan was binding.

Wilson said the ecologist plan would be advisory. She said the EMRG had representatives from outside the housing development.

Gast explained that these measures went far beyond what anyone had proposed, and Polygon did not want to set up a situation where those who lived there had their lives run by someone outside their community, but they did want to provide an opportunity for those folks that wanted to provide some type of direction to have an advisory type of role.

Coun. Stanton referred to 543E and asked if it allowed the EMRG to make a decision with an ecologist.

Wilson clarified that the intent of that provision was to provide a situation when the ecologist was not available.

Coun. Stanton said she was concerned they would not consult the ecologist and would not do what was appropriate. She pointed out that some of the language in the document was questionable.

Wilson commented that it was important to understand the philosophy behind the plan. She noted that it was not to set up an adversarial role between the ecologist and the homeowners association. She said they intended to have an educational process ongoing where the residents would buy-in to a certain environmental lifestyle.

Coun. Stanton asked if potential new owners could not sign the title until they signed the CC&Rs.

Gast said any prospective purchaser would be given the information, and information would be given again at the signing and the walk through.

Coun. Stanton said the Stewardship Plan was a wonderful goal, but for her it was fraught with peril. She gave an example and said as a parent she could make a list and put it on the wall and make an agreement but in reality it would not happen.

Coun. Soth noted THPRD had submitted 62 proposals and wanted to know if they had included the majority within the proposal and design.

Gast said they had, and actually it was more than the 62. He explained that they had included the overwhelming majority of THPRD's concerns in one form or another in the development.

Coun. Soth said it was his understanding from the staff report, that it was THPRD's suggestion for the fence.

Gast replied that was correct.

Coun. Soth asked what color the fence would be.

Gast said THPRD requested black, and City staff asked for it to be brown, so it would be brown.

Coun. Soth asked if, once the buffered areas were dedicated to THPRD, would the fence remain in or out the THPRD boundaries.

Gast said THPRD requested they own and maintain the fence.

Coun. Soth asked if the Park boundaries would be enlarged.

Gast replied they would be enlarged, provided THPRD accepted it.

Coun. Stanton referred to the 33 feet of buffer between the development and the Park and asked if the fence would go in 1 foot or 33 feet or somewhere in-between.

Gast said it would be only 6 –12 inches, just enough to accommodate the fence area.

Coun. Stanton asked if they would maintain the buffer.

Gast said the buffer varied, but Aspen Woods would maintain the buffer in back of the buildings to the fence. He said the other side of the fence constituted THPRD property and maintenance.

Coun. Soth commented that a lot of questions had been raised about enforceability issues, but the conditions (if approved) would be subject to City Code Enforcement, as would complaints about jurisdiction of USA.

Gast stated that was understood. He said he believed they were conditioned to prepare the Stewardship Plan and have it reviewed by the City Attorney and staff before adoption. He said if that were not the case, they would be happy to allow the City to take a look at the document.

Coun. Doyle asked, given the process they had gone through and all they had heard from the community, why was building the project so important where it was. He asked if there was anything besides the normal business process driving it.

Gast asked if Coun. Doyle was asking if they had thought about picking up the development and putting it someplace else.

Coun. Doyle said that was his question.

Gast pointed out that there was a great demand for property in Beaverton and not enough land available. He said there was not a tremendous amount of supply for the kind of development they wanted to build, which appealed to single families, older and younger couples and older singles. He said there were sites but they were few and far between. He commented they would like to take all the sites they could find because there was such a shortage of them. He pointed out that was why there were eight prospective purchasers for the property.

Coun. Stanton asked why they banned wood stoves but not barbecues.

Gast said they banned wood stoves and would be glad to say only gas barbecues would be allowed.

Mayor Drake asked if that would include propane.

Gast said it would.

Mayor Drake said they had requested for rebuttal to the rebuttal. He had talked to the City Attorney and staff on specificity of issues and as Chair he reserved the right to rule. He said there was a request made by the appellant and reference was made to a July 16, 1999 letter from Alpha Engineering's Gary Bliss, on page 3 of a reference made by Dr. Horner. He specified the appellant could have five minutes to respond.

Mayor Drake said a second request was made on page two, number two of a report by Michelle Wilson dated July 15, 1999, referring to biomagnification analysis, which he believed was in response to a statement by Brenda Novak. He said he would not allow rebuttal on that issue.

Mayor Drake said there was a letter written by Henry Kane submitted after the meeting opened which made very broad reference to new rebuttal material presented at the July 12, 1999 hearing. He said it was too broad and needed to be more specific and he would not honor that request for rebuttal to the rebuttal.

Mayor Drake said Dick Schouten reported that Tom Hjort would respond to the Dr. Horner comments.

Dick Schouten, 6105 SW 148th Ave., said he was one of the appellants, and would yield his time to Mr. Hjort.

Tom Hjort, 15715 SW Division, said he was limited to discussing the Horner reference and read from the material from Gary Bliss, (in record). He said he took issue with Dr. Horner's statement and was familiar with Dr. Horner's work. He noted he had a report by Dr. Horner, co-author, reviewer, and a participant in biofiltration swale performance recommendations and design considerations done by the City of Seattle and would copy the report if Council wanted. He said it included test reports on swales, and he would not want to say the swales were exactly the same as the ones being proposed by the applicant. He gave the pollutants listed and levels of pollutants, and said what they saw was that it was not an exact science but they could get a range of values. He said the swales were meant to remove phosphorus, but they would not remove all of it. He explained that even if they were longer, it was not the same as saying it was compliance. He said he agreed with the statement that swales were a good solution, but they were dealing with the Park and there was data showing that there was a substantial amount of pollutants that would get through the swales and into the Park.

Mayor Drake asked if Hjort had ever made comments about the USA standards, noted that he and the Council had read everything they had available to them, and it appeared that the applicant had met all the requirements. He said they were picking at this one project and he understood why, but it appeared Polygon had met or exceeded all the requirements. He asked if Hjort had ever commented to USA that their standards were inadequate.

Hjort said his practice had not been in Washington County and he had not done a lot of work with USA, which was why he referenced City of Portland. He stated he was not confused about what standard applied.

Mayor Drake said he had made those comments and he was curious if he had made comments about any other project concerning swales.

Hjort said he had not made comments to USA. He noted that USA had qualifying language and he believed the applicant had met the qualifying standards. He said that language further in the document showed there was some doubt about compliance determination of the storm water

control facility installed. He questioned how much doubt they wanted to embrace in the Park situation.

Mayor Drake asked Jim Duggan to respond.

Jim Duggan, Project Engineer, said in reviewing the storm water analysis, he would consider the numbers well within good engineering practice. He explained that it was the conclusions that were drawn from those numbers that was the issue between the applicant and the appellant. He reported that in regard to the storm water detention issue and the water quality issue, it was apparent that the applicant had met or exceeded City and USA requirements.

Coun. Soth read from the Alpha Engineering document of July 16, 1999 (in record), and asked Hjort what had been the difference between a swale (as characterized as a roadside ditch) rather than an engineered swale on a soil condition, which was sandy, or rocky, verses that of Washington County clay.

Hjort explained that the table where those comments were made, was done by another organization, and there was no evidence in the table that it was limited to certain types of soils or a certain location. He said there were nine different references in the table and it appeared to be a broad based selection. He said it would depend on a lot of things, but a more porous material, should get an improved performance of the swale.

Mayor Drake said he did not hear anything new to offer an additional rebuttal.

Mayor Drake closed the hearing.

Mayor Drake said he thought it would be beneficial for Council to ask questions of staff and enter into a dialogue, and their obligation was to address the criteria. He reminded them they were acting as Design Review Board that night.

RECESS:

Mayor Drake called for a recess at 10:45 p.m.

RECONVENED:

The meeting reconvened at 10:55 p.m.

Mayor Drake asked if Council had any questions.

Coun. Yuen noted there had been a lot of interest in the City using this occasion to overrule previous zoning on the property. He asked if there had been a request on the part of the participants (in August of 1997 when the zoning rule come through) regarding what zoning they preferred.

Irish Bunnell, Development Services Manager said the station area zoning was the only one that allowed a park as an outright use and was put in place in January of 1997.

Coun. Yuen said he thought the citizens were wondering how they could get a park without owning it and without buying it outright.

Bunnell said through the development process, the way to establish a park was to have the property owner be in agreement and make the application for the park. He said there were other purchase methods such as Greenspaces funds.

Mayor Drake noted that agencies like the City, THPRD and USA could condemn the property. He asked for clarification if Metro could condemn property with Greenspaces funds.

Bunnell said that was correct.

Coun. Yuen said he was trying to bring out that even if the City had wanted to make it a park, short of buying it outright, they could not make it a park.

Coun. Doyle MOVED, SECONDED by Coun. Brzezinski to grant the appeal.

Coun. Yuen said he did not think it was a proper motion, and they needed to deny the application.

Pilliod said the motion would get the ball rolling, and they were a far cry from the reasons for the decision. He said whether the decision was to approve or deny the appeal, or if the decision would deny the application, because it was de novo, he could deal with the nomenclature, but he clarified the reasons were important to state.

Mayor Drake said that traditionally since there was an appeal, what they were doing was responding to the request by the appellants to grant relief from the project. He said he would accept Coun. Doyle's motion to grant the appeal seconded by Coun. Brzezinski.

Coun. Soth said he would not support the motion, because they were looking at two things. He said they had heard very little about the Tree Preservation Plan (TPP) and most of what they heard was the desire for a park. He explained that Council could not make that decision because they lacked the authority and power under the current rules. He stated they could not require the Archdiocese to sell to anyone if they did not want to. He noted the appellants had not shown the adverse effects they tried to show, and the applicant had gone way beyond what was required to address the requirements and requests of the various organizations. He said the applicant had done a much better job of proving and showing the development was a good one for the area. He pointed out that Polygon had gone to great length to make the proposed project blend in

with the area and had responded well to the concerns of THPRD. He quoted information relating to storm drainage issues and said site development was different from construction. He stated it complied with the Site Development Code and was to be contained within the property, including the runoff that would be no more after construction than before construction. He said he did not argue with the concerns about wildlife, but any development on the site would pose the same problems and as the Park use increased, the property would be degraded simply through use.

Coun. Brzezinski said she would support the motion. She commented that she had been impressed with Polygon and Gast, and if she could find land for them, she would. She suggested that the general public thought Council had more power than they actually had. She noted that when Councilors were elected they agreed to uphold the laws of the State of Oregon and the City of Beaverton. She explained that Council could not just say they wished the property were a park and deny the application. She said they had to find information in City laws (in this case, the Development Code) that allowed them to say that it did not meet the requirements. She pointed out it was not as simple as everyone thought. She said no one would like Council to have the power to say his or her neighbor's lot was commercial and would be a McDonalds.

Coun. Brzezinski said she had found three things in the Development Code that she would use as the basis for supporting the motion. She named Development Code Section 40.10.15.3.C.1.g (Adverse Effect) and said she saw it as not as broad as they were interpreting it. She explained that it was not related to wildlife or fireworks, but was only about drainage and water quality. She said she was not an engineer and had been provided with information from several engineers (all credible but with different conclusions) and her problem was that if Hjort was correct, then the Park would be damaged irreparably. She emphasized that she did not have enough knowledge to say he was wrong or right and she had faith in the City engineers. She noted that Hjort's documents had raised reasonable doubt and part of her support for the motion was based on that doubt.

Coun. Brzezinski referred to Development Code Section 40.10.15.3.C.2.a (Design Standards) and said that because of what the surrounding area was they had to hold things to a higher standard and she was having trouble seeing how something that used so much of the lot could be considered compatible.

Coun. Brzezinski referred again to the Design Standards, (40.10.15.3.C.2.g) and said the aesthetic design of walls, fences, berms, etc., was such that they served their intended purposes. She noted that it was closely related to the last paragraph about compatibility, and all of a sudden what visitors saw as they walked on unpaved paths in the Park was landscaped areas (instead of the natural park) and that was an adverse effect on an abutting land use.

Coun. Doyle referred to the compatibility condition and said the entire piece of property would work in some cases, but the buffer was inadequate, considering the surrounding Park and its history. He said the land was zoned for the use close to what the applicant had proposed and in an effort to keep from building so high, the developer had used the whole parcel of land and he found that a much less desirable design. He said because the buffer was inadequate, it would damage the transition area. He asked citizens to not forget that the land was zoned in a certain way and the proposal in general and the idea behind it was a permitted use. He said the content of the public hearing that evening was a good attempt at trying to mitigate things that were not desirable. He commented that it was a tough issue to sort through and he appreciated Coun. Brzezinski's comments.

Coun. Stanton said she would support the motion. She said she had made it clear in the applicants rebuttal that Development Code sections she would be using for justification to support her vote in support of the motion were 40.10.15.3 C 1 e and 3 C 1 g. She commented she was quite concerned regarding the CC&R's and the Stewardship Plan's ability to do what they said. She stated her concern about the abutting usage issue with the site next to the Park. She noted that while the CC&Rs and the Stewardship plan were commendable, they were not adequate means since they could be changed in the future. She said she liked Alternative A from the July 2, 1999, letter from the applicant (in record) and she felt it was acceptable to have six stories on Millikan Way.

Coun. Yuen said they needed to be careful of the fact that in 1997 the City went through a process that zoned the area for permitted uses and the application was a permitted use. He commented that they had to be very careful they established a precedent where they would take property from the landowner, because they would continue to refuse any development on the site besides a park. He said they had to be willing to say they were accepting zoning for a certain use and be willing to say what an acceptable development design would be. He said if they didn't do that, it might be considered a *taking* with possible legal action ensuing. He noted it was part of two issues and the other issue was the Tree Preservation Plan. He asked the motion maker (Coun. Doyle) if the motion included both elements.

Coun. Doyle said it did include both elements.

Mayor Drake commented that he understood it to mean both elements.

Coun. Yuen said as the process had gone along, he had struggled with his decision, and would have signed the petition for the site to be a park if he was not a City Councilor. He explained that it was beyond the Council's ability to make it a park and they could not control what the owners did with it. He commented he regretted deeply that THPRD did not have the land and that it might never become a park and Coun. Stanton had just

given them the suggestions for a potential future development. He said Council could not turn it down without the developer asking what it would take for the City to own up to the zoning that existed on the property.

Coun. Yuen said since it was going to pass, his vote was not as important as it once was, so he wanted to focus on principle. He said Roy Dancer, Jack Franklin, and Mark Hereim were all involved with issues long before he became involved in the mid 1980s. He recalled coming in as a NAC chair, making a speech to not have some apartments built and finding that the land was zoned correctly and the BDR hearing was not to discuss zoning issues. He said the BDR discussed landscaping, lighting issues, etc., which was their function as Design Review Board. He said throughout his time as a citizen activist, that had been the key, the BDR did not zone, they implemented the zone. He commented that what they were doing was crossing the line and making BDR a land use hearing body.

Coun. Yuen said he thought they needed to be careful about what their decision said to future development. He said the Archdiocese was told that the one remaining piece of property they still owned could not be developed as it was zoned and no one had challenged the zoning. He said it was not enough that they sold almost all their property to THPRD, they had wanted it all. He said it might discourage property owners from selling part of their greenspace property to jurisdictions in the future because if they had a remnant property they might be prevented from subsequent development for a different purpose, even though everyone agreed it could be for that purpose. He said he would hold to the principals of their land use process and vote "No." He explained he wanted it to be a park, but could not compel it to be a park.

Coun. Doyle referred to Coun. Yuen's point regarding the fact that in no way his motion, and his thoughts, should imply that they could not develop the property. He clarified that it could be done better and the transition could be done smoother, but at no time had he said it could not be done. He said they could not stop doing what folks had asked them to do.

Coun. Yuen asked Council that if they made the applicant go back through the process again, that Council might want to consider waiving fees. He said the process was costly and it would be unfair to drag the applicant through it again. He commented that basically what they were telling them was try it again and if Council liked it they would approve it and if they didn't like it the applicant could try again.

Coun. Soth said the BDR or the Council was not telling any developer how their design should be. He said sometimes people expected the Council to design the project and that was not the function of the Council or the BDR.

Pilliod asked for clarification of Council's reasons. He said it sounded as though Council was enforcing a reasonable doubt standard for the

quantum (quality) of the evidence. He said he thought he would have trouble enforcing that stand before the Land Use Board of Appeals (LUBA) and the applicable standard was substantial, or credible evidence in the whole record. He noted either the standard had been satisfied or it hadn't been satisfied. He said he did not want to be argumentative, but he was concerned, because he knew Council expected him to do the best job in trying to defend the decision.

Coun. Brzezinski responded by saying her understanding was that the applicant had the burden of proof, and even though evidence had been provided it had not been sufficient to overcome the questions presented by Hjort. She said therefore the burden of proof had not been achieved in her mind and that was what she had meant by a reasonable doubt.

Pilliod referred to the design standard on compatibility and said Coun. Brzezinski hinted that the surrounding area, because it was a park, required a higher level of scrutiny, or a more intense focus and too much of the lot was being developed. He got the impression from Coun. Doyle's comments that they would rather mask the structures rather than spread them out. He asked what it was about the standard that Council preferred or thought would be more compatible in the relationship to the surrounding area in future allowed uses.

Coun. Brzezinski replied that she was not sure how to say it differently than she had already said it. She said the issue was not the location of the buildings, the size given where the location was, but it was the visual arrangement of the structures not being compatible with how the surrounding property was used.

Pilliod asked if terms of the adequacy of the means to provide continued maintenance, was it the fact that the CC&Rs were subject to being modified by people who lived in the project or was it something else about them that was objectionable.

Coun. Stanton explained that the CC&Rs could not be modified, but the Stewardship Plan could be modified.

Mayor Drake disagreed and said that CC&Rs could be modified by vote of the successors.

Coun. Stanton said she looked at Section e regarding the statement about "adequate means provided," and suggested that the word *adequate* did not apply and the applicant had not met that burden of proof. She went on to explain that *adequate means* meant *provided to ensure...*

Pilliod asked if there was something the applicant could do to assure that kind of adequacy. He questioned if Council was telling this applicant there was something else they needed to do that would satisfy the standard. He said Council was not in the business of designing the project, but it was

imperative to identify precisely in what way the proposal failed to satisfy the requirement.

Coun. Stanton said in the discussion of herbicides and pesticides, it was the ecologist, the EMRG (with or without the ecologist) anybody who thought they needed to use the herbicides could do so. She noted that in allowing for all contingencies, they allowed for everything, and so adequate means were not provided to ensure continued maintenance and necessary and normal replacement of private common areas. She pointed out there was a whole section where they could vote to not maintain the common areas.

Pilliod asked if this was the standard that they would require of all developments.

Coun. Stanton said it was not, because those were the standards Polygon had brought to the Council. She said it was what they had said they would do to comply with City standards and she suggested it was not compliance but setting up a plan that would not work.

Mayor Drake restated Coun. Doyle's motion to grant the appeal, seconded by Coun. Brzezinski.

Question called on the motion. Couns. Doyle, Stanton, and Brzezinski voting AYE. Couns. Soth and Yuen voting NAY. Motion CARRIED. (3:2)

ADJOURNMENT:

There being no further business to come before the Council at this time, the meeting was adjourned at 11:38 p.m.

Darleen Cogburn, City Recorder

APPROVAL:

Approved this 5th day of June, 2000

Rob Drake, Mayor