

REGULAR MEETING
October 4, 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, 4755 SW Griffith Drive, Beaverton, Oregon, on Monday, October 4, 1999 at 5:45 p.m.

ROLL CALL:

Present were Mayor Drake, Couns. Dennis Doyle, Forrest Soth, and Wes Yuen. Couns. Evelyn Brzezinski and Cathy Stanton were excused. (Coun. Brzezinski arrived later in the meeting as will be indicated in these minutes.) Also present were Chief of Staff Linda Adlard, City Attorney Mark Pilliod, Human Resources Director Sandra Miller, 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 rights and duties of the governing body with regard to litigation or litigation likely to be filed. Coun. Yuen, Doyle and Soth voting AYE, the motion carried unanimously (3-0).

The executive session convened at 5:45 p.m.

The regular session reconvened at 6:29 p.m.

Also present for the regular meeting were Assistant City Attorney Bill Scheiderich, Deputy City Recorder Sue Nelson, Community Development Director Joe Grillo, Engineering Director Tom Ramisch, Operations Director Steve Baker, Assistant Finance Director Shirley Baron-Kelly, Building Official Brad Roast, Utilities Engineer David Winship, Development Services Manager Irish Bunnell, Associate Planner Colin Cooper, Project Engineer Jim Duggan, and Redevelopment Project Manager John Engel.

Mayor Drake clarified that Coun. Stanton would not be available even if the hearing was continued to the following week since she would not be

listening to the tape or reading additional information for the record. He said Coun. Brzezinski would be arriving later that evening.

CITIZEN COMMUNICATION:

Henry Kane, 12077 SW Camden Lane, said he had received letters and telephone calls about rats in the area of Miller Sanitary. He said the people told him they saw rats on their property about the time that Miller started sorting garbage in the open area. He stated that he did not know what the City planned to do, but he had cross-examined the callers and was satisfied that they were speaking from personal experience. He said he had lived in Beaverton since about 1973 and this was the first time he had heard about rats in downtown Beaverton. He reported that he had read stories about rats chewing on infants and he did not want that to happen in Beaverton. He said he would transcribe his notes and copy the letters and get them to the City. He said the City had a health and safety obligation and he assumed the City would take appropriate action.

Mayor Drake said he appreciated the information, and noted that Kane was not the only one who had communications with the citizens. He reported that in his tenure as Mayor, the City had calls about rats in various neighborhoods, and had responded by baiting the neighborhood and storm and sewer drains, and notified other government partners such as Tualatin Hills Park and Recreation District (THPRD). He said if Kane could not get the letters copied he should bring them in immediately and his office would copy them. He said Kane had been in the office in preparation for that evening's hearing and if he had brought the letters to the Mayor's office they would have been copied by staff.

Kane declared that he had never heard of any rats in Beaverton until it was brought to his attention by the citizens.

Coun. Soth asked if any of the people had called the City or the County sanitary health people.

Kane said the people he had talked to were very elderly and not the type of people that had been around, so they called him. He said he would get the letters in by Friday.

Coun. Soth noted that it was a Code Enforcement issue depending on the conditions.

Mayor Drake reported that some of the earlier complaints had been for overflowing dumpsters and some places had been well away from Miller Sanitary, in larger complexes.

Kane said some of the people he talked with were only a stone's throw from Miller Sanitary.

Coun. Yuen said in the future instead of Kane sitting on such issues was there a number at the City that Kane could refer people to call.

Steve Baker, Operations Director, said the number was 526-2444

COUNCIL ITEMS:

Coun. Soth said he had just received the registration packet for the League of Oregon Cities conference in Eugene, November 12-14, and encouraged Council to get their registrations in quickly.

STAFF ITEMS:

Linda Adlard, Chief of Staff, noted that the Red Light Running Program component from the Federal Government had ended. She said as part of that they would see about eight signs in each neighborhood, and noted there was a positive outlook about the campaign. She noted that that Scott Patterson, who had been working on the campaign, had gone to a job in Clark County and Jarred Clark would be responding to information requests.

PROCLAMATIONS:

World Population Awareness Week

Breast Cancer Awareness Month and October 15, 1999 as
Mammography Day

National Arts and Humanities Month

PRESENTATION:

99-302 Oregon Children's Foundation SMART Presentation

Heather Saur and Kate Lamont were there to talk about SMART and recognized the volunteers from City staff.

Saur acknowledged the hard work of the volunteers and explained that SMART (Start Making A Reader Today) was started by Neil Goldsmith, former Governor. She explained that he started this because he saw that many kids were dropping out and work needed to be done to encourage children to continue school, so he created a foundation to help children read. She reviewed their goals, which included increasing the number of students who graduated. She reported that there were currently 167 schools involved and 120,000 books were given away last year. She explained they matched volunteers with students in kindergarten through second grade and they read together, which encouraged the children to learn to read. She noted that many children started school two years behind their peers, and catching them before third grade gave them a better chance. She said they did a study and tracked both children who

did and did not have SMART in their schools and found there was a large difference in their abilities and progress. She said there were 460 volunteers in the Beaverton area, with five elementary schools that participated.

Kate Lamont explained that the schools must have a population of 40% or more kids who qualify for reduced or free lunch to qualify for the SMART Program. She said teachers choose students who should participate based on if they were in the lowest 25% of class, not served by other programs or needed a one-on-one relationship with an adult. She said a key component was the fact that each child was allowed to take home two books per month, which could increase family literacy. She said it was an enjoyable experience to be a volunteer and contributed to the community. She said they needed more volunteers and awareness of the program throughout the community, and they needed corporate volunteer sponsors. She reported that they got the Meyer Memorial Trust grant that would match the funds up to \$500,000. She stressed there were lots of opportunities to help.

Coun. Soth commented that he was recently at the National League of Cities steering committee meeting and those who arrived early were invited to do such a program. He said it was a little different and they listened to the students read. He noted that he had a first grade class and their expertise ranged all over the map. He said some breezed through and others needed help and it was an enjoyable opportunity.

Coun. Doyle asked where citizens could call to volunteer.

Saur said In Washington County people could call 833-4838 or 833-4787. She said they were also online under the Oregon's Children Foundation.

Mayor Drake said the City did support staff volunteering and clarified that City staff made up their time by using their lunch break, so taxpayers got their dollars worth in staff salary. He echoed the comments that children really were excited about taking home a book.

Coun. Doyle asked if the commitment was one hour a week or was there an expectation for the school year.

Saur said it was one hour a week for seven months, and the consistency was important since some children had not had that in their lives. She said there were opportunities to also be a substitute reader or share with a co-worker.

CONSENT AGENDA:

Coun. Soth MOVED, SECONDED by Coun. Doyle that the consent agenda be approved as follows below; with the provision that in AB 99-307, the contract for the Sorrento Pump Station (Hanson Road Well Emergency Generator Replacement) be awarded to the low bidder,

Frahler Electric in the amount of \$108,700, contingent upon acceptance of that bidder, that the liquidated damages incur thirty ones days after December 30, 1999.

99-303 Liquor License Renewal – Annual Renewal: Stars Cabaret & Steakhouse

99-304 Liquor Licenses – New Outlets: Baja Fresh Mexican Grill
Pho Saigon & Specialties

99-305 Boards and Commissions Appointments

99-306 CPA 99-00012/RZ 99-00008 157th Avenue Pechan Property
Comprehensive Plan Map Amendment and Rezone

99-313 Establish Economic Development Manager Classification

Contract Review Board:

99-307 Bid Award – Sorrento Pump Station/Hanson Road Well Emergency
Generator Replacement (Provision to contract in motion.)

99-308 Contract Change Orders for Building Code Plan Review Services and
Transfer Resolution

99-309 Contract Award – Commissioning Agent Services During Construction of
the New City Library

99-310 Rejection of Bid for Architectural Services for the Seismic Upgrade of the
Operations Center

99-300 Intergovernmental Agreement Between the Portland Development
Commission (PDC) and the City of Beaverton for the Management of the
CDBG City Wide Rehabilitation Program (carried from 9/27/99)

Mayor Drake restated the motion, clarifying that the contract for AB 99-307, be award to Frahler Electric as the lowest bidder for \$108,000, with the provision that 31 days after the signed contract, liquidated damages would begin.

Question called on the motion. Coun. Soth, Doyle, and Yuen voting AYE, motion CARRIED unanimously. (3:0)

PUBLIC HEARING:

99-311 (APP 9900014) Appeal of Magnolia Green (BDR 99056)

Mayor Drake read the information on the de novo hearing, appeal of the limited land use decision (statement in record). He stated the rules of

procedure that were found in Beaverton Code, and asked City Attorney Mark Pilliod to explain ex parte contact.

Pilliod noted that ex parte contacts were communications directed to individual Council members from members of the public, but not present to the Council as a group during the public hearing. He said they were required by their rules and under Oregon Law to announce if they had ex-parte contact and reveal what that contact was. He said the purpose of the rule was that all the Councilors were making their decisions on the same set of facts.

Mayor Drake noted that he was on the board for the St. Mary's Home for Boys and the issue of Magnolia Green was on the last agenda. He reported that Fred Gast of Polygon was scheduled to speak, so he called and informed them that he would not attend the meeting so it would remove any doubt of ex parte contact.

Mayor Drake asked if any of the Councilors wished to declare an ex-parte contact, or any abstentions.

There were none.

Mayor Drake asked if there were any objections to the City hearing this matter.

There were none.

Mayor Drake commented that the order for the hearing was laid out in City Code and would be followed. He said he had set some time limits (with concurrence from the City Council). He explained that he would follow the same format as for the Aspen Woods hearing, and would allow 45 minutes for the presentation by the applicant. He clarified that the appellant had appealed this to Council and the jurisdiction had been removed from the Board of Design Review (BDR), and the Council was acting as the BDR, therefore the applicant had the burden of proof. He said he had then allowed 30 minutes for the appellant, but Henry Kane had explained that he only wanted to testify for seven (7) minutes and would release the remaining 23 minutes to five specific people. He called out their names: Tom Hjort, Marvin Doty, Margaret Armstrong, Brenda Novak, and Jack Franklin.

Kane agreed those were the people who would testify during his allotted time.

Franklin said he would speak during the three minutes each allowed for the public.

Mayor Drake clarified that Kane was giving the other four people the remaining 23 minutes.

Kane said that was correct.

Mayor Drake clarified that those who were speaking could only have the 23 minutes at this time, but Pilliod said they could each have three minutes more during the public testimony time.

Staff Report:

Colin Cooper, Associate Planner, explained that the Magnolia Green application by Polygon Northwest for 201 town homes and flats to be constructed as condominiums that would be sold, and a 5000 foot retail pad, was proposed as a both a Design Review Type III and Tree Preservation Plan (TPP). He clarified that the appeal was simply on the Design Review not the TPP. He said staff wrote a report recommending approval based on the review of the approval criteria in the Development Code (Code). He noted that the findings were in the staff report, which was part of the record, and that staff had written a memo to Council that responded to the appeal from Kane. He said staff continued to believe the application met the City's regulations and staff recommended denial of the appeal and approval of BDR's original decision. He said he would be available for questions.

Mayor Drake asked if the Council had any questions and said Jim Duggan, Project Engineer, could also help with clarifications and questions.

Duggan came forward to answer questions.

Coun. Doyle said he assumed Duggan had read the six-inches of material they had received and had reviewed the testimony. He asked if the staff was comfortable with the information from the experts, and asked how they sorted through the information from the variety of experts.

Mayor Drake noted that it was 7:40 p.m., and Coun. Brzezinski had arrived. He reviewed what he had covered at the first of the hearing and asked if she had any ex parte contacts.

Coun. Brzezinski said she did not have any ex parte contact.

Coun. Doyle reiterated that the documents were impressive and detailed and he wondered how staff sorted through the different opinions from various experts.

Duggan noted that it had been difficult to go through a lot of the information, and acknowledged that many of the technical issues could get very complex. He said a lot of the calculations that had been presented did not differ significantly, it was the conclusions you drew from them that were the key. He explained that staff was using the standards compared to the established policies, established engineering standards and the requirements of the Unified Sewerage Agency (USA), as well as the Code. He stated that it was clear that the applicant's engineer had

prepared the necessary studies for staff to recommend approval. He said a lot of the appellant's materials, while on a technical level were very good, from a conclusion or summary standpoint, they argued more toward limiting all development in the Beaverton Creek Watershed, rather than one specific site. He said that reduced the appeal to its most fundamental conclusions.

Mayor Drake noted the Council could come back to staff later.

Mayor Drake said this was the time for the proponent's (applicant) presentation, with up to 45 minutes, and then Kane and his group would have 30 minutes, with three (3) minutes each for public comments after that.

Kane interrupted, and tried to make a motion that both sides should have equal time.

Mayor Drake said Kane was out of order.

Kane declared he made his record.

Mayor Drake noted that Kane made his record in the information he provided earlier.

Applicant:

Fred Gast, of Polygon Northwest, said they accepted the burden of proof, and they would demonstrate that they met and exceeded the Design Review criteria to even a greater extent than had previously been met in the City. He noted that Polygon projects were not appealed very often because they went beyond the requirements. He stated that he was confused by this appeal, because during an earlier appeal two months ago, they were told that this was the site that should be developed. He said the statement was made that this site should be densified, it would be acceptable for greater density and it was even stated by some whom opposed the other development, that the Sears Tower could be placed on this property.

Gast stated that he was even more baffled by positions taken by opponents who were not a party to this appeal. He said the news media reported that if the storm facilities were as proposed they might not have a problem with Magnolia Green. He stated that they saw that as the opportunity to extend their hand to those who had opposed Magnolia Green in the BDR hearing. He reported that they tried to get together and resolve the issues, but the hand was turned down, and he was disappointed that they missed an opportunity.

Gast stated the he was possibly more disappointed that some of the opponents supported a development right next to this, the one at St. Mary's Home for Boys. He said it was the very fact that these opponents

showed up at that hearing and said that the St. Mary's Home application met the design and technical criteria for BDR and they supported them. He reported that the St. Mary's applicant had a standard water quality facility, not the kind of facility that Polygon was proposing, and that troubled him.

Gast noted that the record for this appeal was dominated by material from Aspen Woods, which was peculiar since this was an application for Magnolia Green. He said they realized that the notion the opponents were trying to advance was that Magnolia Green was Aspen Woods, and it was not. He said if there was someone who knew Aspen Woods, it was he, and declared that Magnolia Green was not Aspen Woods, this was better. He explained that it was better because this property did not have the kind of resources that Aspen Woods had, and better from the standpoint that they learned from their previous adventure with the City and applied that.

Gast said Magnolia Green was a fallow field, an old farm field, not a treed field. He pointed out that Magnolia Green was not surrounded on three sides by the Nature Park (Park), there were no trails or Interpretive Centers from which they needed to buffer their site. He said there was no stewardship plan there because there were not a lot of resources; there were greater and more significant erosion control measures than in Aspen Woods. He stated that they had better erosion control provisions than even the work going on in Beaverton Creek (Creek) currently. He stated that their water quality provisions were second to none and Jim Duggan said at BDR how good they were.

Gast said they had heard much of this before, and their agenda would cover five parts: 1) address the appeal by Kane, 2) discuss the development concept, 3) overview of the site plan, 4) review the water quality provisions, and 5) he would have concluding remarks.

Gast noted that Kane's appeal cited 11 reasons, and said most could be quickly addressed as follows:

- 1) The order violated the purposes and objectives of Design Review. He said staff had appropriately said that purposes and objective statements were not the Design Review criteria on which the decision was based.
- 2) Issue of concerns by Tualatin Valley Fire and Rescue (TVF&R). He noted that a letter had been sent out which clarified TVF&R's position at BDR and that the application did meet their requirements.
- 3) Continued maintenance of non-public facilities – CC&Rs for short – they would address that later.
- 4) Adverse effect (regarding grading, contouring and site drainage) – which they would address.
- 5) Fence. He noted the fence was proposed by THPRD and St. Mary's Home for Boys, and they thought it was a reasonable request so they accepted that and put it in the proposal.
- 6) Magnolia Green needed to consider what was around it, a compatibility issue. He said they would address that.

- 7) A problem with the order itself, not with the application, so they would not address that.
- 8) The purpose, policy and construction. He said those were aspirational statements, not used for Design Review purposes.
- 9) The City Goals. He said that was the same as #8, not a Design Review issue.
- 10) The street connectivity standards. He said those would take effect on October 15, so they did not apply to this application.
- 11) A procedural issue that did not have to do with the application.

Gast noted they had three issues to address: compatibility – giving consideration to their neighbors, adverse effect of water quality and grading. and the continued maintenance of non-public facilities – CC&Rs. He stated that their application and testimony would prove that they had met or exceeded the applicable criteria and prove that staff's recommendation was correct and BDR's unanimous decision was correct and should be upheld.

Gast pointed out that he had discussed with the Council on other occasions Polygon's proactive approach. He said this was not just their consultant team, it was the neighbors, the staff, and they had met with THPRD, St. Mary's Boy's Home, had neighborhood meetings and done outreach. He explained that process helped them develop their plan, and said they had three criteria that influenced the development plan. He stated that their mission was to achieve a balance between the criteria. He the first criteria were the external factors, which were the Park, the Creek, Boy's Home, TV Hwy., and Millikan Way. He clarified that called for Polygon to provide generous buffers and set-backs, have sensitivity to water quality, landscaping with appropriate materials, careful lighting analysis, honoring reasonable neighbor requests and the like.

Gast said the second criteria was to balance the resources they had on site, (the site plan would be covered by Mike Miller), and in essence those resources were the trees, wetlands, habitat, riparian areas, all of which should be built into the site as assents and amenities. He noted that there were not a lot of assets and amenities on the site, but since most of those resources were degraded, they had the opportunity for a preservation enhancement program.

Gast said the third criteria was to have a market with sufficient demand and they would have for-sale attached housing, for which they had demonstrated a demand.

Gast stated their concept was for due consideration and sensitivity to their neighbors, preservation and enhancement of the natural resources, and creation of organizing elements and passive amenities, and their objective was to establish a community of 201 moderately priced town homes and condominiums. He noted that their plan created three distinct neighborhoods within one master planned community, and each neighborhood would consist of a distinct product type that advantageously

corresponds to its surroundings. He stated that these alternative products would offer consumers several different choices.

Gast addressed the first criteria— their neighbors. He said this was a primary consideration in the development plan, and noted that to the south it was easy with TV Hwy., where they had some landscaping and berm. He noted there was some right-of-way (ROW) next to the site and they were required to put in a sidewalk. He said on the east they had Millikan where they would maintain a streetscape that was pedestrian friendly. He pointed out that there was no way to go north or west, and access was prohibited to TV Hwy., so the only access opportunity was on Millikan. He noted that on the north side they had the Creek, the Park and Aspen Woods, and speaking for one of those, he found this to be an excellent development.

Gast said as to the Park, he believed the appellants would tell tales about the development's impact at the Park, but he felt it was most important to see what THPRD had to say. He pointed out that they responded with a letter addressing some of their issues, and he liked the highlight at the end that THPRD did not think that Magnolia Green was Aspen Woods. He reported that their letter addressed 12 issues, not 64 and they had addressed the majority of those issues with the development plan. He clarified there were only two outstanding issues, one was THPRD wanted the commercial component removed, but he felt this was sufficiently far enough away that it would not impact the Park. He corrected staff that this was not a retail pad, they made that a commitment at BDR, it was not a gas station or a convenience store, and clarified that they envisioned a commercial office building as was across the street.

Gast said the other outstanding issue was regarding pets. He said he needed to correct himself, and clarified that the appellants requested that there be no exotic or domestic pets, and the CC&R provisions should have eliminated exotic pets. He noted there were other restrictions such as a leash law and cats inside only. He said he would rather have some provisions which 95% of the people would uphold, than no provisions. He pointed out that the development's distance from the Park and separation from the Creek should provide more protection that was initially proposed.

Gast noted that the other thing they had in conjunction with the Park was the bank enhancement program where they provided drawings and photos to explain it. He pointed out that was not a requirement in any way, but they thought there needed to be a transition between the current work of "re-meandering" of the Creek, and the rest of the development site. He reported they had also offered to dedicate about four acres to the Park.

Gast said the appellant and other opposed would say Polygon's water quality facilities were inadequate, that the wetlands would be filled, the grading would silt-up the Creek, and drainage channels would be cut, from their site through the wetlands to the Creek. He said that was simply not the case, and his experts would clarify what would be the case. He stated

that if in the appellant's minds his site was doing this when he had sophisticated water quality facilities, erosion control measures, etc., but they supported a project (with at-Code water quality measures) closer to the resources the appellants said he would destroy, it begged a question in his mind, and he was confused. He pointed out that Magnolia Green represented less than 1/100 of 1% of the Beaverton Creek basin, so it needed to be put into perspective on how significant the site was in the scope of things. He noted that the setbacks in relation to the Creek were in most cases double the requirements, they had preserved 100% of the wetlands and not even the Interpretive Center could say that. He said the bank enhancement program was not required but they did it, and the erosion control measures were greater than anything proposed in the area.

Mike Miller, Alpha Engineering, representing Polygon Northwest, said he would focus on the site design, the existing site, adjacent uses, Code requirements, and neighborhood and City input. He explained that once they covered the site design influences, he would go into details of the site design details. He reiterated that the Council was acting as the Design Review Board that evening, and the purpose of BDR was not to decide land use issues, but rather design and aesthetic issues such as architecture or landscape architecture including entry monuments, signage, graphics, details such as colors, materials and design character.

Miller said he would first review the existing site and that influence and then he would get into details. He displayed a drawing of the site and told about the topography of the site. He pointed out that to the west was the Boys Home, to the north was the Creek, to the east was Millikan, and to the south was TV Highway, so there were two man-made influences to the east and south that generated a lot of noise, and then some natural qualities on the west and north. He noted that the best part of the site was looking off-site towards the Creek and Aspen Woods. He pointed out that the site fell about 30 feet from an elevation of about 200 to about 170 feet, hardly a ski slope as the appellant claimed. He explained that it was about 1000 feet from one end to the other, which equaled about a 3% slope, comparable to grocery parking lots. He said it was 19 acres with about 40 trees over 10 inches, with substantial evidence that it had been farmed and graded and there was some fill dirt dumped there which had come from NIKE and Millikan.

Miller then displayed another drawing that exhibited the way the project would be laid out to blend with the natural environment. He indicated that the houses would be lower along the edges of the site, all buildings would be painted earth tones, and all the lighting would be downlit. He said there would be a chainlink fence in either black or brown, and there was a natural area of about four acres, which they had offered to the Park. He pointed out that there would be a 5000 square foot commercial building that would likely be an office building.

Miller said the challenge to the site was the sense of entry, and noted they went to great lengths to try and create a focus, sequence and sense of order through the entry. He explained that when you first entered there would be no driveways, the first thing they would see would be the Park with the road facing the Creek, and they had kept the street trees along the open space, so it would feel more like a public space. He said the biggest amenities were the views off site, and with only 30 feet vertically, they had terraced the three housing types. He noted they had exceeded all applicable codes at state, federal and local levels. He said the zone was Station Area Medium Density Residential (SAMDR), and called for 20-30 units per acre and the applicant had chosen to be at the lower end of that, even though it had been suggested that the Sears Tower could be placed there. He said the maximum height limit was 60 feet and they would not be above 35 feet and even less along the edge. He noted they had exceeded all the setbacks, the buildings averaged over 65 feet from the wetlands, and there was 50% open space and only 15% was required. He said one-fifth of the project was proposed to be dedicated as an open space. He reported that for tree preservation only 5% was required and they would increase that to 50% on this site. He said 20 of the 40 trees would be preserved and there would be 945 additional trees planted, so there would be more trees than it started with.

Miller than reviewed the various elevations/drawings of the development. He described the native and ornamental plantings, the various entry monuments, and noted the entries into the various communities would double as the mailbox gazebos, and would be in craftsman style in keeping with the style of the buildings. He displayed a drawing of the fence, and noted that some individual dwellings would have individual entries off Millikan.

Miller reported that they had met with the Nature Conservancy and came up with a plant list that complemented the plant list they were doing in the rivers. He noted that the Wetlands Conservancy was in the area meandering the Creek and Polygon had met with them to incorporate some plantings on the bank that would complement their work in the Creek.

Miller reiterated that staff, Facilities Review and BDR had found that the plan complied with the criteria, in addition to the compatibility standards he had reviewed, and because of the proximity they knew they needed a project that exceeded all standards. He said to demonstrate that there were no adverse effects they had Jerry Palmer present to explain water quality and all the treatments they would institute in the project.

Jerry Palmer, President of Alpha Engineering, said he was a professional engineer, and he was taking Gary Bliss's place that evening. He said he had been in the business 34 years; 23 in the Beaverton area, and had been involved with the City of Portland, Bureau of Environmental Services for the Storm Water Management Policy Committee, comprised of many people. He explained that from that experience he had learned that what

they were faced with that evening, was a policy decision, and the policy was "no adverse effect." He said the policies they would be dealing with were the water quality standards and the storm drainage policies of the City; those were the technical issues. He noted that the City Engineer had said they had exceeded the standards for the project.

Palmer displayed a graphic (in record) and noted that the total watershed of the Creek was 25,000 acres, and 19 acres were Magnolia Green. He noted that the policy decision they would make would affect other properties within the 25,000 acres. He explained that storm drainage (referred to exhibit) was contained in a piping system delivered to a swale system in the back of the units along side the bank. He said the bank swale system was designed for discharge at the enormous rate of one-half foot per second, (he paced it out) which was the speed of discharge to the Creek. He noted that it was hardly a rush of water, and was the design velocity for a 25-year storm in the Creek.

Palmer noted that they did not provide detention for this project; by Ordinance 3434, stormwater detention would be an adverse effect for floating conditions in the Creek. He explained that it was better for the Creek to release the water immediately, so the peak from the site preceded the peak of the Creek, which was a very important concept and policy of Ordinance 3434. He stated that the storm drain system for the site met all the criteria for the 25-year storm release, with very low velocity as well as no detention.

Palmer reviewed the erosion chart/display (in record), and said there were two considerations for erosion, one was during the course of construction, the grading operation, a very critical point, they were going to strip the site and move dirt. He noted that the important concept was a 100 foot buffer, and explained that they would grade that buffer first, then seed, mulch, and cover it with straw, to set a collar that would be bordered by erosion control facilities. He explained that the storm drainage that would come off the site (referring to an exhibit) would be intercepted by a berm that would direct the flows down a sedimentation pond, and then release it to the Creek. He said they were trying to contain the sedimentation within the site, not just having it freely go over the bank and into the Creek. He noted that the erosion control relative to the site once the improvements were in, would be contained in pipes, discharged to a swale, and the swale system would be one-half foot per second velocity.

Palmer explained that the water quality treatment pertained to the first flush, (that was the design criteria), not massive storm events. He said there were three tiers of treatment, the water quality facilities, the catch basin system and the water quality manholes through a storm filter system that discharged to a swale. He reported that the project at St. Mary's Home for Boys had two levels of protection. He explained that when they used these three levels of treatment, they would have removal rates of suspended solids and phosphorus that exceeded the USA standards of 65% phosphorus removal. He reported that they would

achieve 72% phosphorus removal by the three tier, three stage program. He reported that the total suspended solids had a 95% reduction, which was not required.

Palmer referred to a chart/plot from USA (in a handout) "Water Quality Within Beaverton Creek." He said it was 19 months of measurement at 170th and Beaverton Creek, and the Creek resident total suspended solids were 5 milligrams per liter, which was the baseline. He said everything was above that except for one measurement of 3.6, and noted that it averaged 14 mg per liter. He reiterated that this project's discharge would be 5 mg per liter, no adverse effect to the environment of the Creek, given the water quality treatment facilities for this project. He said that Jim Duggan, Project Engineer, stated (as reported in the BDR minutes) that if the facility was constructed as designed it would be the most advanced removal system constructed in the Tualatin River basin. He said Alpha Engineering believed that and were proud to have a client that pushed that quality to protect the natural environment of the Creek.

Paul Fishman, Principal Ecologist and owner of Fishman Environmental Services, representing Polygon, said for the sake of time he would not list his qualifications, but they could ask him about that later if they wished. He noted that he was also prepared to talk about the impacts to amphibians and reptiles, but would also cut that from his presentation. He said he would concentrate on a couple of points which he had seen referenced in the record and which they would probably hear about from the opponents, and that was about fish and water quality in the Creek.

Fishman noted that the opponents had quoted (in their submittals to the record) his 1996 Report and read the quote: "It is important for the maintenance of these species (referring to fish species) to maintain cool water temperatures and prevent siltation and pollution." He noted that the remainder of that paragraph was not included in the submittal (from the opponents) but was in the original report, and read it: "This can be accomplished by protecting and enhancing riparian slope and floodplain communities to provide shade in the stream and prevent hill-slope erosion. It is also important to control potential on-site water pollution by pre-treating storm water runoff from any future development before it enters the stream." He stated that Polygon had incorporated those recommendations into the proposal that was before the Council that evening.

Fishman noted that the issue had also been raised about Coastal Cutthroat Trout, and the statement in the record was: "the Cutthroat found in the middle and lower regions of Beaverton Creek were an Oregon-sensitive critical species." He stated that was not correct. He said the Oregon Department of Fish and Wildlife (ODFW) listed Coastal Cutthroat as sensitive for the anadromous populations in the lower Columbia River and for all populations in the Umpqua River Basin below natural barriers (he offered to provide that documentation if desired). He explained that in the lower Columbia River the fish ODFW listed included those that were in

the Columbia River tributaries with sea-run Cutthroat Trout, which included the Willamette tributaries that were below the falls at Oregon City. He noted that the Creek was a tributary to the Tualatin River that was above the falls, therefore that listing by ODFW did not include fish in the Tualatin Basin. He also pointed out that the National Marine Fisheries Service had not, and was not proposing, listing those Cutthroat Trout above the falls at Oregon City.

Fishman said he also wanted to touch on the notion that the applicant must affirmatively prove that Magnolia Green's grading and storm water facilities would not adversely affect the Park and other neighboring natural resource areas, as stated in the Code. He stated that as a scientist he had some problems with that statement. He explained that affirmatively proving a "no adverse effect" was not scientifically possible. He quoted a project opponent in her submittal to the record because he thought she said it best: "that we do not understand and cannot accurately predict all of the effects or actions, causes us to error on the side of caution." He went on that she further quoted from Brenner 1997, "Scientists are trying to discover how the natural world works with these discoveries can never be absolutely proven, simply because the underlying rules were not manmade. Only manmade systems can be completely understood by man. Absoluteness and proofs are qualities of mathematics, not science." He pointed out that Polygon had erred on the side of caution by designing storm water facilities that exceeded the standards required by the City of Beaverton, Unified Sewerage Agency and Department of Environmental Quality (DEQ).

Fishman reported that Polygon had also volunteered to reestablish the riparian zone by planting and maintaining the trees and shrubs, which was not a requirement but something they recommended and Polygon agreed was an important thing to do.

Fishman asked, "What is adverse effect?" and said unfortunately City Code did not define adverse. He read the definition from *Webster* as "acting against or in a contrary direction opposed or antagonistic." He asked if that meant "zero tolerance," and said he thought that was clearly not the intent of Code. He commented that if that was the intent, then the current meeting probably violated the Code because they all drove their cars, and they should probably all go home and pack, because their homes probably had an adverse effect on the Creek. He stated that it was clearly not a "zero tolerance" thing. He explained that determining an adverse effect, in the work he had done for over 30 years, was one of the most difficult tasks in environmental evaluation. He reported that most state and federal environmental regulations either established thresholds you must meet, exceed or stay below (as the case might be), or they required the applicant to avoid and minimize impacts to the greatest extent possible, and to mitigate those impacts that could not be avoided. He stated that he thought the Beaverton Code really required the applicant to avoid and minimize adverse effects, through project siting and design, using best management practices, while meeting development standards

established in the Code. He stated that he thought Polygon had established those in the Magnolia Green application.

Ruth Walker, Wetlands Program Manager with Fishman Environmental Services, said she was just there to answer questions.

Gast stated that concluded their formal presentation, and they would answer any questions.

RECESS: Mayor Drake called for a brief recess at 8:30 p.m.

RECONVENED:

The regular meeting reconvened at 8:45 p.m.

Coun. Soth noted that the biologist had mentioned that the Cutthroat Trout were not the sea-run fish, and asked for clarification.

Fishman said it was unclear, and there was only a small amount of information from the ODFW that in their study of the Tualatin tributaries a few years earlier, they caught two Cutthroat in what ODFW called the middle-reach of the Creek which was just downstream from Magnolia Green, and two in the lower section. He noted that it was hard to tell if they were resident or migratory, and in his opinion they were most likely resident.

Coun. Soth said Gast indicated that he offered to meet with the water expert Hjort and did not receive a reply, and wondered if that was correct.

Gast said they did received a reply that they were not interested in talking about water quality issues related to Magnolia Green unless Polygon would also discuss Aspen Woods. He reported that his reply was that they would be happy to talk about water quality on Magnolia Green as well as Aspen Woods, but that was the extent of it.

Coun. Soth referred to the chart on the drainage basin, and said it was unclear to him because the chart in the agenda bill had the Beaverton Creek Watershed, and he knew some of the tributaries originated in the West Hills and some come from several locations in that area. He asked where they delineated that watershed.

Palmer said they had just used the natural topographic boundaries from the USA GIS maps and did not go to the full extent of the tributaries, which would increase the total watershed area.

Coun. Soth referred to Exhibit 5, dated 9/24/99, on page 2, it had to do with the sub-service geophysical data, on the question of the existence or non-existence of the gravesites. He noted that it said the GPR was conducted on a wooded area west of St. Mary's, and he wondered if that was correct, or was it east.

Gast said it was east, and it was also east farther down in that material.

Pilliod asked if the applicant would enter the diagrams in the record.

Gast said they would do that and they were already in the exhibits.

Appellants:

Mayor Drake noted that Kane indicated earlier that he would speak about seven (7) minutes and defer the rest of the time to a group of five (5) people from the Make Our Park Whole group. He noted that Ms. Jones would be the timekeeper for their group.

Kane said at the BDR meeting on Magnolia Green, an important document, his prepared testimony and the exhibits were not presented to the BDR, and he found out about it too late. He said at the Aspen Woods Council hearing, they knew what exhibits were submitted to the decision maker, and it was important because only those materials presented at the appeal could be considered by LUBA. He asked that the record be kept open until the City Recorder provided all parties with a list of what the decision-makers/City Council had received.

Kane said he recently learned about the St. Mary's Home redevelopment and the City had a policy about "street stubs" and if St. Mary's property was being developed under the Code, there must be a street stub. He said that was so if St. Mary's was further developed, such as residential, there would be circulation. He said that was an issue the Council should address. He noted that the Council adopted the Transportation Plan Amendment to the Comprehensive Plan, which called for financing of widening TV Hwy. at Millikan to seven (7) lanes and he could not find in the applicant's plans where that space had been allowed.

Kane said the testimony he had heard raised interesting points and thanked Duggan for saying his (Kane's) testimony was good. He said if he had the opportunity to respond to the new material he might get Duggan's admiration again.

Kane stated that they were talking about something the applicant did not want to talk about: no adverse effect, which could not be construed out of existence. He noted that Pilliod could give the Council a list of court cases on that, but if the Council did not like the phrase "no adverse effect" then they could take it out of the Comprehensive Plan.

Kane pointed out that the storm water system had been displayed, and stated there was no such actual system that existed, and there was none that the City could go to and say that it worked. He stated that until they could do that, they were being as speculative as they had been about *The Round* at Beaverton Central. He said one of the aspects that was so bothersome was that the project would further pollute the Creek and the

wetlands and right now there was no pollution, and there would be when it was developed. He said the swales were supposed to catch the water, but they were not linked up. He said he received a letter at 4:00 p.m., which he tried to respond to, and was told that he did not know what he was talking about. He suggested that if they looked at the diagrams they would see nice backyards, but they sloped downhill and even if it was only a 3% grade, the pesticides, etc. would run into the Creek. He stated that if there was a wall or something intervening, so the water would all be caught and then treated, that would be one thing, but they did not have that. He said the result was they would have polluted water that was not treated pouring into the Creek, which violated no adverse effect. He reiterated his request to have the hearing held open so he could respond to materials he had received.

Tom Hjort, 15715 SW Division, Beaverton, OR, reviewed his credentials and said he would start with a discussion of the storm water quality system. He noted that he had marked up the diagram to show the bypass, and described it (in the record). He stated that Alpha had calculated that the described system would result in a 72% efficiency which would allow 28% of the phosphorus to pass the system and said there were other heavy metal pollutants as well which were not calculated. He said Alpha calculated the 72% (which exceeded the 65% required by USA), by using a mathematical equation that simulated the water flowing through the three components. He noted that the catch basins were supposed to remove 15%, the storm filter 53% of what remained and the swale would removed another 29% of what remained. He said that formula was based on tests of the individual components acting alone and not as a whole. He stated that he did not see any reports of tests that had been done on the actual series, to determine the actual amount that was removed. He explained that if it did not work as advertised the actual amount of phosphorus could be higher than the 28% which now would pass it.

Hjort asked the Council to imagine two sieves with the same size of sieve material, and passed a certain amount of material through it, and shook it, the sieve would retain one-half the material and pass the smaller fraction down below. He said you would say that the efficiency of the sieve was 50%, and the other sieve would also retain the 50%. He continued that if you put one sieve on top of the other in a series, and shook them both, you would have 50% in the top one, but the bottom one would pass all of it through, so it's efficiency would be zero. He stated that he was not saying that was exactly what happened there, but they needed more evidence than just the individual efficiencies of the components. He said what they were doing was gambling with the Park if it did not work as advertised.

Hjort stated that this system was designed to handle the so-called water quality storm very low flows, and all of the water in excess of the low flow, was bypassed around the storm filter and would go directly to the swale. He said it was claimed that the system provided water quality for up to the 25-year intensity storm, which was four inches over 24 hours. He stated

that if that happened at the same formula, they would be getting at the 25-year storm, approximately 8% of the water passing through the storm filter and 92% of the water diverting to the catch basin and the swale. He said the efficiency would then drop to about 42%, using exactly the same equations that were used for the first scenario, and 58% of the phosphorus would then be discharged into the wetland. He noted that if the Creek happened to be flooding at that time, the lower portion of the swale would be under water, so they would not get that efficiency. He noted that the applicant had claimed that it worked for the 25-year storm and he (Hjort) just wanted to demonstrate how it would work.

Hjort said, regarding water quality in the Creek, there was testimony on suspended solids and how the concentration of suspended solids that came out of the system would be less than currently existed, therefore the quality would be improved. He reported that he saw in an earlier version of the report the same reasoning applied to phosphorus, and now understood that there were corrections to that report. He noted that there were statements in earlier testimony that 95% efficiency was being achieved with the phosphorus, but that conflicted with the 72%. He stated that, be that as it may, it was difficult for him to understand that discharging polluted water into a creek was better than discharging a lesser volume of unpolluted water into the Creek. He said he was not qualified as an engineer to say whether that impacted the Creek or not, nor did he think the other engineer was qualified.

Hjort said he would talk about increased runoff, and had done some calculations of the runoff from the site for the 25-year storm. He reported that in its current undeveloped condition, the flow rate was approximately 3.4 cubic feet per second, which could vary a little. He said the developed site runoff, through the impervious 9.8 acres had a flow of about 9.8 cubic foot per second, which was concentrated at four points. He stated they currently had the existing flow going off the site to the west and the north, spread out around the perimeter. He stated that it would be concentrated at the four points and discharged directly into the wetlands and would then find its way to the Creek. He said he understood the testimony that flow velocity was low, but the fact was the water would be concentrated at four points and from then on it would flow across a relatively level surface to the Creek. He said there would be channelization and erosion in the wetlands going to the edge of the Creek.

Hjort began to speak about the maintenance requirements, intending to utilize his three minutes of public testimony time.

Mayor Drake asked him to wait to make those comments during that part of the hearing.

Marvin Doty, 7350 SW Wilson Ave., Beaverton, said he was a consultant in mechanical engineering, and reviewed his credentials. He referred to Polygon's supplemental narrative to BDR, dated 3/24/99, page 12 item 6, Grading Plan, and stated that it would be kept to a minimum. He stated

that was not true to the facts. He reported that he and Hjort had identified the existing earth stockpile, excavation of 47 building foundations, buried utilities, excavate and grade for streets, parking lots, swales, etc., and calculated that it would be equivalent to approximately 40,000 cubic yards of earth. He said the estimated dimension of that would be 4000-foot long, 100 feet wide, by 2.7 inches deep. He stated that would cover approximately 400,000 square foot of site, equal to 9.18 acres, or 48% of the original 19.5 acres. He noted that this was certainly far from a minimal grading project, and amounted to extensive earth work adjacent to the Park and Creek. He distributed photographs of the site and conservancy (in record), and corrected that the depth was approximately 2.5 feet in inches.

Doty stated that they had serious concerns for pollution of wetlands in the Creek increasing during construction. He explained that preventing runoff in a heavy rain would be nearly impossible, and silt fences, straw bales, gravel bags, etc., would be ineffective. He pointed out that elevation and slope change to the wetlands at that site would encourage acceleration of runoff of flows. He said he knew from experience that wet seasons caused sediment to continue draining and eventually overwhelm any storm water system, by plugging the filters, etc., due to uncompacted soils. He said the loose fill must be stabilized, and all paving areas should be compacted with engineered soil and aggregate. He stated that a storm water drainage system must be purged prior to installing any filters, the site should first be stabilized.

Doty noted that the storm water maintenance plan had been omitted from their application, with only a reference in a letter from an independent firm had been included. He stated that the storm water management company had advised to budget costs for replacement of filters, sampling, disposal of materials, etc. estimated to be \$4,000 per year. He noted that this could be a significant amount for the CC&Rs, cost to homeowners, a major concern. He stated that he was not confused about the project going into the site, and did not believe a multi-housing project should be set in the natural resource areas. He declared that the Park and the Creek would be subject to perilous impacts of the unwise development. He asked Council to think about what would be gained and lost by the project. He said gambling with the natural resources was not an intelligent plan of action.

Margaret Armstrong, 5205 SW 192nd, Aloha, OR, gave her credentials, and said the biological impact of storm water runoff would be significant and would impact the Creek, Big Pond and Lily Pond, and the mosaic of habitat that was within the Park, because of the immediate proximity of the development. She explained that there was a symbiotic relationship with the water system around the Park, and they were dependent on the water and the water was impacted by their actions. She said they did not understand and could not accurately predict the effects of their actions, so they should err on the side of caution. She stated that natural systems were complex webs and human actions often had unintended

consequences. She noted that biology was not explained by mathematical equations.

Armstrong said that the Creek was a water quality limited stream which must be cleaned up according to the Federal Clean Water Act, and reported that according to a US Geological Survey, it was the most significantly polluted stream in the Tualatin Valley Watershed. She said that meant that they needed to meet higher standards.

Armstrong explained that the Creek was water-quality-limited for nutrients as measured by phosphorus (too much); dissolved oxygen, there was not enough from May to October; the temperature was too high; biological fish communities, based on the variety of species, health of fish and the low numbers; bacteria as measured by the presence of E.Coli. She stated that Magnolia Green would have a negative impact on each of those criteria.

Armstrong reviewed each of the criteria (in record). She said nutrients were measured by phosphorus and if Polygon's numbers were correct, .28mg/liter would be added to the Creek watershed. She explained that the increase of nutrients would allow more plants to grow and when the plants decayed they would reduce dissolved oxygen, the next criteria. She said there was already not enough dissolved oxygen, which was needed for fish to breathe.

Armstrong said, regarding the issue of temperature, the storm water would be running off 9.1 acres of impervious surface through unshaded grass swales, which would increase the temperature.

Armstrong said, regarding bacteria, E.Coli were an indicator species that demonstrated the presence of fecal matter in the Creek, which could be from human and/or animal waste. She stated that pets were bound to get out and pets using the wetlands and the swales would increase the bacteria.

Armstrong explained that regarding biological criteria, any additional sediment in the Creek would be harmful to aquatic species, since fish did not live in turbid water, which clogged their gills. She said that insects and amphibian eggs would also be harmed.

Armstrong noted that heavy metal and organic contaminants in fertilizers and insecticides impacted living systems as toxins and would become more concentrated as they moved up the food chain through bioaccumulation. She explained that meant that the predators at the top of the food chain such as herons, would have increased toxins.

Armstrong commented that in chemical reactions in biological systems which were living chemistry, synergy might be in effect, meaning that 2+2 might equal 6 instead of 4. She explained that in a chemical system reactions were not always additive.

Armstrong stated that the sediments in the Creek were high in PAHs, polyaromatic hydrocarbons, which came from combusted materials in urban areas including cars and gas and oil from roadways and parking lots. She reported that PAHs were known carcinogens and were suspect in the debate on endocrine inhibitors. She declared that added traffic from this development would increase the PAHs.

Armstrong noted that the Magnolia Green project had an extensive landscape plan, where soil would be moved, soil from another development would be spread and many grass and weed species seed would be ready to sprout. She stated that the establishment and maintenance of the initial planting would be labor intensive and it was hard to imagine it being done without chemicals, such as herbicides, pesticides and fertilizers. She said the alternatives to those were labor intensive and expensive.

Armstrong stated there would be runoff into the Creek and wetlands, and that was a negative impact on an adjacent property and on a water quality limited stream which the citizens of the area were mandated to improve. She declared it could not be allowed.

Brenda Novak, gave her credentials and said she was a science educator at OMSI. She remarked that it had been said that Magnolia Green property was only 19.05 acres comprising .076% of the Beaverton Creek Watershed, which she said was correct. She noted that was irrelevant since no one had accused the applicant of attempting to pollute the entire watershed. She explained that it was not a relevant percentage because Magnolia Green was a much higher percentage of the area below the development in the watershed, and that was the area they were most concerned about, and stated that Magnolia Green was 100% of the threat to the Park.

Novak stated that one of the major threats to the Park was the degradation of the Creek and Polygon and their design team had asserted the use of best management practices. She said that term had been used since the beginning of the project, and when forced to they (Polygon) had bested their best management practices, and in fact their best water quality practices had been bested several times in the past few weeks. She stated that tended to devalue the word "best" and led her group to have doubts as to how large a window they left open for improvement to being with, so she wondered what was "best."

Novak reported that the last set of plans she read credited the water quality system with the removal of 95% of total suspended solids and it was suggested that this was an indicator of high water quality. She stated that from a biologist's standpoint, it was not very impressive since wastewater treatment plants removed about 98% of total suspended solids. She reported that if you went to a creek where wastewater was being reintroduced after being cleaned, even at 98% you still had

instances of swarms of warm water insects that gathered there. She explained that what people would expect to find in the Creek was that cold water native fish species existed in conjunction with warm water fish species. She noted that it was mentioned that Cutthroat Trout were not currently listed for the area of the Creek but said they were proposed for listing in an area that would include the Creek. She said they were not required to consider that, but it might come along before the development was completed.

Novak said in past testimony Polygon said their water quality system would produce an affluent containing less phosphorus than was currently present in the Creek and it would actually improve the quality in the Creek. She stated that she thought that was probably an erroneous testimony and since the person who made the statement was not there she would skip more on that. She noted that it was obvious that any pollutants entering the Creek from that point that were not there before would be increasing the pollution in the Creek.

Novak stated that heat pollution was a large threat to the Creek, and the water quality methods they proposed did not account for any way of cooling the water. She said the water being returned to the Creek would be at a warmer temperature and the heat pollution would effect the already limited water quality experienced in the Creek.

Novak said they had not mentioned the pet issue and cats got out and dogs got off leashes, and the mere presence of these animals and the scent of these animals and humans would be a detriment to the animals that used the area, and the wild animals would avoid the area. She noted that the Migratory Bird Protection Act made it illegal for a person to capture or harm any migratory birds, and there was no way to police pets. She said it was brought up that this property was not as ecologically valuable as the north parcel (Aspen Woods), but development on this parcel would still have a significant impact.

Coun. Yuen remarked that Novak stated that wild animals would avoid the area where they could smell pets and humans. He said he thought she was referring to the Park, that the development, and the humans and pets in the development would adversely effect the animals in the Park, and asked if that was her testimony.

Novak said that was correct, but it was not true of all animals, since some would even be attracted by the presence of the other animals. She continued that some of the animals that utilized the area, particularly the area along the Creek, would not come around due to the scent of the other animals.

Coun. Yuen asked if it effected the Park itself or simply animals that inhabited the Magnolia Green property.

Novak said she was referring to the Park, and noted there were very few animals on the Magnolia Green land. She pointed out that one of the main goals of the Park was it was a wildlife sanctuary, and harm to the animals that lived there was harm to the Park.

Coun. Yuen followed up by asking what impact humans would have going through the Park, or walking their dogs through the Park, that would have lesser impact than that of people living several hundred feet away from the Park in a development.

Novak clarified that they could not have dogs in the Park and said there could be effects from humans in the Park, if they had entered the Park for purposes of vandalism, etc. She said the Park was designed with the intent of providing for sanctuaries for the animals where they were not in contact with humans.

Coun. Yuen noted that she had specifically mentioned the animals smelling humans, and it seemed to him that the scent of a human 25-50 feet away from them had to be a greater impact on the animals in the Park than of people in buildings several hundred feet away.

Novak said she did not make it clear that the scent comment was more in regard to animals than people.

Mayor Drake said that now they would move to individual testimony. He said Hjort could now give his three minutes, and then Jack Franklin would be next.

There was then discussion from the audience about who would speak. Mayor Drake said the only one of the earlier speakers from the group that he knew wanted to speak individually was Hjort.

Novak said she also wanted her three minutes.

Mayor Drake said she could and asked her to speak after Hjort.

Supporters:

Hjort said he would continue with his description of the maintenance of the water quality facilities. He said that included numerous catch basins, four storm filters, five grass swales, and noted that Polygon's maintenance plan of 12 pages did not include maintenance of the storm filters. He explained that the catch basins and manholes needed to have the sediment removed at frequent intervals. He said the storm filter had to be cleaned and it required trained personnel and special equipment, and would need to have major maintenance at least once a year and minor at other times. He noted that grass swales would be used and they require active maintenance, etc. and if these various maintenance processes were not done, the Park would suffer.

Coun. Soth asked who Hjort's present employer was.

Hjort said it was US Griner Woodward Clyde, which was a multi-discipline design firm, and was the largest design firm in the US.

Coun. Soth asked if in Hjort's capacity with them, did he try to justify whatever the project might be from the same kind of prospective that he had used there.

Hjort said he did not understand the question.

Coun. Soth clarified and used the analogy of a property appraiser, and noted that there were those appraisers with the MAI following their names which some said meant Made As Instructed. He asked if it wasn't Hjort's job as part of the design team, to accentuate the positive and eliminate the negatives.

Hjort said his job was to follow engineering ethics, do his work objectively, to testify or present his conclusions truthfully. He stated that he thought an engineer had a duty to the public to not take sides too strongly. He agreed that an engineer often had to represent his client's interest but he did not have to suspend his engineering ethics.

Coun. Soth asked what the basis was for not meeting with Gast to talk over some of the issues that separated them.

Hjort stated that he did not feel it was his role, since the stated purpose of the meeting was to help Polygon make their system better, and in his case he was representing another group and he had to understand the system which he thought he did.

Coun. Yuen noted that Hjort was rather hard on the applicant and their proposal, and during his testimony he made some comparisons to an undeveloped site. He asked, given that the property was zoned for SAMDR, and it was the citizens desire (since they went through the public process to change the zoning) to develop that property, he wondered if Hjort foresaw any way that a medium density development could be placed on that site, that would meet the criteria he was trying to establish.

Hjort said he could not make a speculation on that without much more thought.

Coun. Yuen explained that the difficulty for Council as policy-makers was they had a piece of property within the Station Area and it was part of the plan that it be developed as medium density residential, but they kept hearing testimony that was simply, "No you can't build here, it is not acceptable." He noted that it was being compared to an undeveloped site, and that was not what the plan said. He explained that the challenge for them as a City and as policy-makers, was, if this (medium density) was what was going to happen, then how would they accomplish that. He said

if it turned out that could not be accomplished, then they would have to reconsider it, but currently it was on the plan as medium density residential. He pointed out that in the two opportunities they had, all the group had to present was "no, it could not be done." He said it seemed like they ought to have some idea of how it could be done, so he was hopeful that he could tell them how it could be done.

Hjort said he sympathized with the difficulties of being policy-makers, and that was not what he was, he was presenting engineering technical testimony to them. He said there was a competent professional firm with 50 people on their staff presenting testimony to the Council, and they were capable of presenting an acceptable plan that would work.

Novak, testifying for herself, said she was disturbed by the application. She stated that the applicant had mentioned that people were confusing this application with Aspen Woods, and said they were not there to discuss Aspen Woods. She declared that she personally found the Magnolia Green application to be very weak. She said from a scientific standpoint there were a lot of studies that were not done, and information not included, so Polygon could not adequately say it was a development that had considered the environment before making their plans or it would not have come out the way it did.

Novak stated that she had been personally disappointed in the way it had been presented by the applicant in the form of personal attacks on people who had been against it and she felt that was unprofessional, and she was personally disappointed in that.

Novak said it was not that there was no development possible on that space, and she had not heard anyone say it was absolutely not possible. She said there was very little greenspace left in the County and the entire State, for that matter. She stated that they should make every effort to preserve it and the population would increase, so this was an opportunity to maintain a hot spot of biodiversity. She said it was worth consideration. She noted that the changes proposed by this development were more considerable than what was currently in effect. She said it had been said that this was a small development, "it's only roughly 200 homes, children and adults living there," but with a 24-hour a day operation and it would not go unnoticed in the natural area around it.

Jack Franklin, 5025 SW Fairmount, Beaverton, said he was representing himself and the Central Beaverton Neighborhood Association (CB-NAC) which had voted at their August meeting to support all appeals of Aspen Woods and Magnolia Green. He stated that it was felt that both projects would be detrimental to the Park and Creek.

Franklin noted that the issue had been raised about why the NAC had not opposed the St. Mary's Boys Home construction. He reported that he and Marv Doty, Chair of the Highland Park NAC (HP-NAC) went to the Boys Home and saw where they would be building. He described the

construction that was scheduled and said the dormitories would be 400 feet from the Creek, and there was a softball field and wetland area between the Creek and the nearest building. He said the classroom to be constructed was even farther from the Creek. He stated that because of the soil and terrain conditions, it was doubtful the runoff would ever reach the Creek. He noted that there was no light or noise after a certain time of night so it would have no negative impact on the Creek or the Park. He reported that they heartily endorsed the project and that Marv Doty had testified on behalf of the Mark Our Park Whole Committee, in support of the construction.

Franklin noted that in contrast Magnolia Green would cover approximately nine-plus acres of impervious land and be placed as close as possible to the Creek, a mere 50 feet away. He said there would be lights, pets, noise, no curfew, and dumping thousands of gallons of pollution into the Creek. He declared that the bottom line was that the St. Mary's Boys Home project with 50 additional residents and two and a half buildings, was compatible with the Park and would have no negative impacts on the Park or Creek. He declared that Magnolia Green with upwards of 600 residents and 47 buildings was not compatible with the Park and would have a negative impact on the Creek. He said Gast was being disingenuous with his comment on the Sears Tower, and stated that the person who made that comment said he would be willing to accept the Sears Tower on that property if Polygon would walk away from the proposal for Aspen Woods, and he had not heard Gast agree to that. He said that day, Coun. Soth, Jim Duggan, and he were at a Public Affairs Forum where an executive from USA said there was a mandate where they had to remove all phosphorus down to .7 mg per liter of water, and they had just heard testimony that Magnolia Green would discharge 2.8 mg per liter. He reported that the official had said there was a natural background of 3 mg per liter in the Tualatin River at this point and they had to remove it to .7 mg.

Coun. Soth clarified that the figures the General Manager of USA had quoted were for wastewater treatment and not storm water. He said he had served on a committee that looked into some of the pollutants as well as the Sewerage Agency's operations. He noted that he had served on USA's Advisory Committee for several years. He pointed out that Franklin had heard him (Coun. Soth) mention that day that the background phosphorus level along the Tualatin River, including the tributaries, was higher than the EPA required the Tualatin River to be, so there was no way the River itself could meet the standard for wastewater.

Franklin said it did not matter if it was storm water or wastewater, they both ended up in the same river, and they were still talking phosphorus.

Coun. Soth clarified that there were different treatments.

Coun. Doyle noted that Franklin had said the NAC passed a vote or took a position, to support the Boys Home addition, and asked Franklin to repeat that.

Franklin read from his testimony, "the CB-NAC, at its August meeting voted to support all appeals in opposition to Aspen Woods and Magnolia Green. It was felt that both projects would be injurious to the Creek and Nature Park."

Jerome Magill, 9280 NW Cornell Road, Portland, said his main topic was to clarify any misconception in the letter and communication between Hjort and Gast, and noted that much had been clarified already. He said he would submit his comments for the record, and read from the letter. He said Alpha Engineering, according to his group, had refused to discuss any of the wider and important issues with which the community was concerned, hence they did not agree to meet. He said Hjort did not feel it was necessary to notify the Council about that. He noted that nowhere in Hjort's materials would they find that he stated that he wished to prevent all development on the Creek. He stated that he felt that Duggan was out of line to suggest that. He suggested the Council talk more to Hjort.

Magill submitted a signature sheet of 46 people who were opposed to the building Magnolia Green. He said Coun. Yuen said the citizens wanted it developed, but they did not, and noted the signatures were collected the previous Saturday. He said there were plenty of people who did not think it was a good idea. He stated that in the 10 years he had been involved with stream enhancement and development, every development he had been on, had problems with damage to silt fences. He said they were properly installed, but they move in with the equipment and in no time at all someone had backed over the fence in some place, he was not accusing Polygon, but that was just what happened. He asked the Council to make erosion control a condition of the appeal.

Ramona Crocker, 11765 SW Wilkens, Beaverton, read a statement into record on behalf of Dick Schouten (This statement regarding homeowner associations, was submitted earlier in the day and is in the record.)

Barbara Wilson, 12820 SW 20th Court, Beaverton, representing herself, noted that Coun. Yuen mentioned the zone change was made by the people, but said when the change was made the Park District and possibly St. Mary's were the only ones who got a notice of the zone change. She noted that THPRD had been adamant that there be no dogs in the Park. She said she was there to talk about an oak tree that was brought up at the BDR but they never discussed it. She reported that the tree had a 24-inch diameter, which meant it was 100 years old. She pointed out that the tree was due to be removed if the parcel was developed and she wanted to speak for the preservation of the tree. She noted that Polygon said they would replace it with five small oak trees and she objected to BDR ignoring that Polygon wanted to take the tree out.

Wayne Marshall, 18120 SW Jay Street, Aloha, said he went to Merlo Station School and he had spoken at the previous hearing about Aspen Woods. He reported that he found it interesting what people said when he asked why there were building it there, instead of somewhere else, they said it was close to MAX. He noted that it took 25 minutes to get to the MAX and said he did not think there would be many people who would walk that far to a MAX station, since both teachers and students said they would not walk that far. He pointed out that another form of development had not been proposed and a housing development had a 24-hour negative impact on the Park in the form of light and noise pollution. He said it would also involve children and pets, which could cause other damage both directly and indirectly. He gave the example of damage as the destruction of native plants or animals caused by children or pets. He said those were all things that no one could argue were not negative to the Park and there were things that were easily avoided by not building a housing development. He commented that the park was there for rest and recreation as well as for education, and without a doubt there would be negative effects on the Park and Creek. He stated that his own ethic said they should not build anything close to the Park, but he knew that was unrealistic, and it was just as unrealistic to say this type of development was appropriate. He noted there were 24 allowed uses, which included parks schools, communal offices, which were not 24-hour operations, so the pollutants would be less.

Deb Jones, 14165 SW Stallion Dr., said she was the Chair for the Advisory Committee for the Park, but was not representing them. She said the Park and the Creek needed to receive the protection they required as key parts of the environment that sustained them all. She noted that the world was changing so fast and becoming more sophisticated and even the property owner, the Archdiocese had come to understand the impact of their actions. She reported the Archdiocese had identified the need to proactively protect the watersheds of the northwest. She noted that within the Beaverton Code, stating no adverse effects on neighboring properties, the Council had the power to incorporate into municipal decisions the most sophisticated and scientific facts of the impact of human behavior on the ecosystems. She said the Council did not need to know it all, but needed to have a willingness to put their decisions through the test of natural principles. She pointed out that a key scientific principle was that substances produced by society must not systematically increase in nature, otherwise quality would be lost due to the spread of these substances and their accumulation towards often unknown limits, beyond which irreversible changes occur. She stated that Polygon had been making better than best systems to stop the systematic buildup, but they were not there yet. She stated that they had not brought them forward with proof of how they worked. She asked if the pollutants produced by Magnolia Green would outpace their breakdown and integration back into their natural cycles. She suggested that if the answer was "yes," then they should deny the project, and if it was, "no" they should approve it. She said Polygon said there would be more pollutants and therefore the Council should say "no" to the design. She said the City

had the power to protect the natural resources and the economy. She declared that the Council should deny the proposal for Magnolia Green.

Amanda Mayers, 3250 SW 17th Ave., said she was a student of life and participated in many different environmental activities. She said what she wanted to say was for everyone, not just the Council. She stated that she assumed that the Councilors had children or grandchildren, and wanted the best for them, but by approving the Magnolia Green development, they were taking some of that best they wanted for their offspring. She suggested they take a walk in the Park, alone, and enjoy the peacefulness. She said they should forget for a moment that there was traffic, pollution and stress, and imagine that as they sat there that they could hear babies wailing, couples arguing, traffic and other noises. She said by approving the Magnolia Green development they would be taking not only the lives of countless plants and animals, but also the opportunity for their children and the region's right to know, learn and love the environment on a personal level. She said she hoped they would support the appeal and deny the development.

Dave Gil, co-chair of West Beaverton NAC (WB-NAC) reported that they voted unanimously to not have any new buildings, noting they took the NIMBY (not in my backyard) approach, which was not their usual stand. He noted they supported the St. Mary's development, and listed many other developments they had supported. He stated that this project did not meet their high standards. He explained that they wanted to look at the neighborhood as a whole, not one house and then another. He said at the neighborhood meetings that were held by the developer, the neighbors were talked "at," not talked "with." He said in the neighbor's opinions they did not like it and they would not support it. He noted that it was inferred that the Council was acting as the BDR that evening, not the Council, but he considered them his elected officials and his Council.

Mayor Drake noted that Gil did not live in the City but the NAC extended beyond the borders.

Mayor Drake called Roy Dancer and Dick Schouten next.

Coun. Soth pointed out that in as much as they had already been presented with testimony by Schouten, and then it was read into the record, he wondered if it was appropriate that he could testify again. He noted that this was nothing against Schouten, but it appeared that he was getting three shots at testimony.

Mayor Drake explained that it was up to Crocker (who read Schouten's statement) as to how she wanted to spend her time, but it was read into the record. He noted that they had all seen the letter prior to that, and he expected that Schouten would not read the letter again. He said he appreciated Coun. Soth's point, but he would rule that Crocker could use her time as she wanted.

Roy Dancer, 6085 SW Glenbrook Rd. Beaverton, said he would make some comments and react to the Magnolia Green Community Association paper of 9/30/99, from the Management Group, Inc., and make some regarding his disagreement with that paper. He reported that he had served for six years as part of the closely knit Sorensen Estates group and had helped organize it and had been their president. He noted that he had also had experience with other groups such as the Magnolia Green development. He referred to the letter he submitted earlier in the day (in record), and read from the letter from the Management Group (also in record). He said he would disagree completely with the letter from the Management Group, and noted their letter said there was a difference in an association of single units and that of condo owners, with the last being more close knit. He noted that Four Seasons where he currently lived, had both types, and the problem remained the same and that was recruitment. He said the paper from the Management Group said that it was easier for condo owners to see the way they affect the physical value and the quiet enjoyment of the entire property, they were more inclined to get involved. He stated that he had not found that to be the case, and saw no examples or proof. He said he had found it was more difficult to police a group when you were policing your neighbor. He reported that with the homeowners and board of directors being close knit, it was difficult to get people to vote for a policy or a fine or assessment for the neighbor living in the other half of the building. He reiterated that he would disagree with the letter.

Dancer noted that the letter also said it would be good to have people who were retired, serve on the groups, but most of the retired people in West Beaverton were busy traveling and not foolish enough to spend time volunteering. He reported that they had trouble retaining leaders.

Dick Schouten, 6105 SW 148th Ave., Beaverton, noted that he was the attorney for the Make Our Park Whole group, and would be telling them that Polygon had not met its burden of proof. He stated that Polygon had not proven that Magnolia Green had no adverse effect on the Park, and this was an appropriate set of circumstances to deny both the design and tree applications.

Schouten stated that Polygon had the burden of proof on all criteria, and must prove that it met each and every criterion of governing standards. He said if they failed to meet the burden of proof, then Council must overturn the Type III application, and by operation of law effectively overturn both the tree and design ordinances. He noted that the pertinent Beaverton Code indicated that the grading and contouring of the site, site surface drainage, and surface water storage should be structured so it had no adverse effect on the neighboring properties. He noted that section was one of the governing standards of review and Polygon had failed to prove that Magnolia Green's grading, contouring and storm water releases would not have an adverse effect on the neighboring Park. He stated that Polygon had failed to rebut credible evidence from his group's engineers and biologists/scientists, that its proposed grading, contouring

and storm water discharge from Magnolia Green would adversely effect the Park.

Schouten declared that a civil engineer was not trained to determine what effect given levels of pollutants would have on the aquatic plant and animal life found in the Park. He noted that no where in the record had Polygon rebutted the scientific evidence about the adverse effect of Magnolia Green's storm water, contouring and grading on the Park. He stated that they were not talking about phantoms, they were talking about real adverse effects. He said Council must deny Polygon's application. He stated that decision was most appropriate and reminded the Council that they were dealing with the most polluted creek in the Tualatin watershed, and they were dealing with some critical sensitive listed species, fighting for their survival. He said they were talking about species that had little or no tolerance for pollutants, and they were all found in the Park. He reminded the Council that the Park's official mission was, among other things, to promote the conservation of natural resources. He said the Park was a City designated natural resource area, and the Code required the Council to protect the Park to the maximum extent possible. He declared that Polygon had not met its burden of proof and the Council must deny the applications for Magnolia Green.

Mayor Drake commented that he knew that Schouten did not live there in 1980 when the Park bond was approved, but he and several others in the room did work on it, including Coun. Soth. He said they were talking about no adverse impact, and asked if Schouten thought the asphalt trails or the development of the Interpretive Center and parking lot had any impact with the way drainage went through the soils, and the runoff. He asked if Schouten thought that had any impact on the Park. He said when he worked on the pond he was excited about the ability to preserve the land, even though he did not know as much about development issues then as he now did. He explained that he was just hopeful they could preserve a little greenspace knowing that someday it would urbanize. He clarified that he never thought there would not be some impact on the Park, and did not think they could preserve the Park (as it was when they were working on it) forever with urbanization, and people going into it. He noted that they had heard during the Aspen Woods issue that, give or take a few, there were 400 users per day. He asked if Schouten thought that usage had an impact or would have an adverse impact on the park. He said this was not a trick question, it was something he had thought about a lot recently.

Schouten stated that he had not spent a bunch of time focusing on that question, and had focused on what was relevant and that was not. He said what was relevant was the grading, contouring and storm water that would come from Magnolia Green, and those issues were very similar to Aspen Woods. He said whether they (those opposed) were newcomers or had been around a long time, they all shared a love for the Park and wanted it to be protected. He said that was also true for those who lived in or outside of the City.

Mayor Drake pointed out that Schouten did not have to defend Dave Gil, (who had testified and lived outside the City), since he had needed Gil for years to annex his neighborhood into the City. He noted that could not miss the opportunity, but he had not yet seen Dave with an annexation petition.

Coun. Soth asked Dancer when the Four Seasons was developed was a condition of development and establishment of a homeowners association.

Dancer said he did not know, but he assumed that was the case.

Coun. Soth asked what the purpose was of such an association in regard to those amenities required by the condition of development. He clarified that he was talking about the public types of things such as a detention pond, which would be part of the homeowners' association duties.

Dancer said the dues of the association should take care of those things, but they were not sufficient to handle such things. He pointed out that the Council had heard Hjort and Gil talk about what the costs would be for the maintenance on this project.

Coun. Soth explained that the point was the association was formed to take responsibility and accountability for those kinds of amenities.

Dancer said it was very difficult to enforce those things, but they also had the responsibility in Four Seasons to see that the dogs are all on leashes.

Coun. Soth noted that was an internal CC&R, and did not have to do with what he was talking about (conditions of approval).

Dancer stated that the fact that the association had the responsibility to take care of those things, and that they would take care of them, were two different things. He said the enforcement was another issue.

Coun. Soth stated that was what he was talking about. He noted that enforcement was a Code issue and not a CC&R issue. He explained that if the City had to go in and clean something up which by condition of development had been the responsibility of the association, then by Code Enforcement, the City could send the association a bill and how they paid it was up to them.

Dancer said if it was a Code thing, then it would be the responsibility of the association, and they would have to assess the homeowners, and put a lien on the property if necessary.

Coun. Soth clarified that the association was subject to the legal remedies of any Code citations.

JoAnn Eden, 1180 NW Weybridge Way, Chair of Five Oaks/Triple Creek NAC noted that the NAC was in the process of rejuvenating itself. She said she was representing herself that evening and was a user of the Park. She stated that her opinion was from her use and enjoyment of the Park, and noted that her child had taken a watercolor class at the Park and enjoyed the experience. She expressed her hope that he would be able to enjoy it in the future as it currently existed. She stated that she was opposed to the development because of the impact on the Park.

John Griffiths, 10245 SW 153rd Ave., said he had planned to read the letter from THPRD which had been written by the Board Chair, but he thought they had all seen it. He said he would address a few items in the letter, as a Board member. He explained that THPRD was trying to understand if most of the items on the list on pages 49-50 of the packet were going to be met, either through the BDR order, or what other negotiations might take place between THPRD and Polygon, assuming the development was approved.

Griffiths noted there were a few items that Gast had mentioned that were specific open concerns. He said one was the building and if it was the case that the building was to be commercial, THPRD would not have a problem; it was retail they had a problem with.

Gast verified from his seat that it was to be a commercial office building.

Griffiths stated the other issue was pets, exotic and domestic. He noted that the development was right on the boundary of the Park, and related that the three cats (that belonged to his neighbors) that patrolled his backyard, certainly did not obey property lines, and could be vicious predators. He said just as Polygon agreed to not have pets, either exotic or domestic, in the Aspen Woods development, THPRD would ask the same for this development. He noted that the other issues were in the material, and his only other request was that if they did approve the development, they include these items in the final order.

Griffiths stated, testifying personally, that the Sears Tower quote was his but was not quoted correctly. He clarified that what he had said was that in his opinion he would be willing to see the Sears Tower, (and in this case the Kuala Lumpur Tower) on this particular property if it saved the northern parcel from development, and he still felt that way. He explained that there were water quality issues that were important and the City of Chicago did not allow the Sears Tower to pollute Lake Michigan, as far as he knew it was an office building, not open 24 hours and did not have pets. He asked the Council to keep all that in mind in the context of what he was quoting. He said the larger issue was that in approving a development they tended to wrap themselves in USA regulations and whatever the Development Code said about water quality, but noted that the federal government had just issued a report showing that the Creek was miserably polluted and highly contaminated. He stated that in the face of all the regulations they

were all (meaning everyone involved) still doing a lousy job, and they should do something to change that or they might lose local control.

Mayor Drake noted there were no cards in favor of the project and asked if there was anyone who wanted to speak in support. He pointed out that they had received a letter of support from St. Mary's Boys Home.

Opposed to the Appeal:

Mayor Drake noted that the Archdiocese had written in favor of the project and asked Ms. Furness, with the Archdiocese, to speak.

Paulette Furness said the Archdiocese did not submit a written statement and noted that they were supportive of the project as they were of the Aspen Woods development, and she would respond to questions.

Mayor Drake clarified that the way the process worked, there would now be rebuttal testimony, and if the applicant did not offer new testimony, but only countered what had been said by the other side, then there would be no rebuttal of the rebuttal. He said if there was new information, the appellant (only) would be allowed to respond.

Rebuttal:

Gast stated that he thought the hearing had been a replay of Aspen, and what he had heard was that the site should be preserved and Magnolia Green should not be built, but there had been no recommendation of how to improve the plan. He pointed out that THPRD had not come forward and said this was their number one acquisition priority. He said there was a list of 12 items of concern, not 62 items, and clearly THPRD thought there was a difference between this property and Aspen Woods. He noted there had been some talk about the Boys Home and the reasons it received the support of the opposition, but this project did not. He pointed out that they left out any discussion of the water quality with the St. Mary's project, and never said where that storm water would be going. He stated that the storm water from the St. Mary's project would be going the same place as the Magnolia Green storm water. He noted they had not ever talked about what method of release would be used for the storm water, or ever talked about what would be happening with the existing school, whether or not it had storm water facilities. He said they did not talk about erosion control for that project and reported that it was currently a stripped site. He said that was neither here nor there, they had obviously elected to support some development, but not other development and that brought an interesting point: why was Polygon being isolated and held to greater standards.

Gast noted that the opponents did not come forward and say that Polygon had not met the applicable standards the City had held other developments to over the years. He stated that the opponents had merely said that what Polygon had done was not good enough and there must be

something better; they did not know what it was, but there must be something better.

Palmer said he wanted to talk about the water quality and make some things more clear. He pointed out that they had not designed their system to the design standards of USA; they were not depending upon those design standards, they were raising the bar. He stated that the only design standard required by USA was 65% phosphorus removal, and in addition to that standard they had adopted the removal of total suspended solids, also. He reported that they had gone to performance standards that were verified by field measurements of bio-swale systems in the Northwest; systems that were tested in the lab and in the field with storm filter systems.

Gast stated they were using the best management practices. He said they were using systems that were tested as early as last summer; they were using systems that were being tested for the filter media, as early as the first of 1999. He declared that the results were outstanding. He said the design standards required from USA did not satisfy them (Alpha) for the phosphorus removal. He reported that when they looked at bio-swale test results that came out of a grant program in Washington, they found the standards did not satisfy them (Alpha), and said they needed to pre-treat. He explained that was why they selected the storm filter system, that media provided them with the pre-treatment that assured them they could achieve the 65% and exceed it to 72% phosphorus removal. He stated that was very important and when they applied those same standards through bio-swales, they could not assure you would get more than 29%, USA said 50%, but they did not believe it so they went to performance standards, lab and field tests. He reiterated that they had raised the bar.

Palmer clarified that this was not like two identical sieves in line; but two independent systems, it was like a sieve and a filter, so they could achieve additive reductions. He said they were not treating a 25-year storm; but treating water quality standards for the performance for the low flow first flush flows from storms that would occur at the current time of year (October). He said there presently was a high concentrate of pollutants on the streets and yards, and the lowest flows had the highest pollutant rates, which would be what they were sending to the treatment system. He noted that once those were washed away with the continuous winter storms the pollutant levels would be much lower. He explained that they were not trying to achieve the same kind of treatment for the continuous 25-year storm system, only for the first flush flow.

Palmer stated that the removal rate of phosphorus had been misquoted during the testimony of the opponents, and clarified that it was not .28 mg/liter, it was 28% of the phosphorus that entered the system. He said it was erroneously reported as milligrams per liter when it actually was a percentage reduction: 100% of phosphorus going in, and 28% on the effluent end; that was what they were achieving. He said if you looked at

the Creek it was about .15 mg/liter, and if they were able to achieve the percent reduction, they would be less than that per liter. He pointed out that they were going beyond the old USA policies, and using the most up-to-date best management policies. He noted they wanted a system that could be monitored, and this system could be segregated and monitored. He said they hoped the system would be a model, for testing to see what the results were.

Palmer explained that they had separated their storm flow into five systems, which they did purposely instead of just in one, so they would have the least effect with the lower flow rates, instead of accumulating into one massive flow. He said they had designed the system so it high flows or overtops and would go into the drainage course so the flow rates were down. He pointed out that they were very sensitive to the effects on the Creek.

Palmer referred to the earthwork and grading operation, and expressed his agreement with the opponents that what they needed to do was stabilize the site, and said that was exactly what their erosion control plan was all about. He clarified that they wanted to stabilize the parameter (the collar) of the site, they wanted to go to the bank (the first 100 feet) along Beaverton Creek, and stabilize that area before they would grade the site. He said stabilization of the grading operations and erosion control were extraordinarily important, they were trying to divert the flows away and into sedimentation ponds after the collar was stabilized.

Fishman reviewed his qualifications, which he had not given when he first spoke. He noted that he was also a certified environmental professional in Environmental Assessment by the Academy of Board Certified Environmental Professionals. He stated that he had struggled with "no adverse effect," and read the testimony from the opponents and listened to them that evening, but he still didn't know what an adverse effect was as it appeared in the Code, for it was undefined. He said it was suggested from the opponents that adverse effect was something like: "an effect that results in the decline of sensitive or native species of fish and wildlife." He said Schouten referred to species in the Park that had little or no tolerance to pollution that were using the Creek, and that was what they were trying to protect. He pointed out that the Magnolia Green application was also trying to protect the Creek and the wildlife.

Fishman said they had been told that the opponent was not rebutting the scientific evidence, but stated that he had not found a lot of scientific evidence, he had found a lot of generalizations. He stated that there had been no hard and fast evidence put into the record. He said the opponents had introduced into the record a 1995 Report from ODFW for USA that looked at fish populations in the tributaries to the Tualatin River. He said in Beaverton Creek the data found 14 species of fish, of the 14, two were considered to be sensitive (the Cutthroat Trout and the Rainbow Trout) to the impacts of pollution. He reported that seven of the fish species were "tolerant" species (tolerant to pollution), and five species

were intermediate. He concluded that "adverse effect" had already happened in the Creek.

Fishman said the same ODFW report identified stream reaches that would benefit from habitat restoration, but did not talk about water quality. He said they talked about physical habitat such as placing rocks and wood in the stream for habitat, and about planting trees and plants to provide shade. He said the lower section of the Creek was rated by ODFW as a high priority, and the middle section, nearer this project was rated as one of the bottom priorities as a site that would benefit from restoration. He asked Martha Walker, wetlands scientist to talk about turtles and frogs.

Martha Walker said red-legged frogs had been noticed north of the Creek in the Park and also on the Aspen Woods site. She explained that for their life-cycle they used seasonal ponds to lay eggs in late winter and early spring, (usually in February), and then the juvenile frogs disperse to moist upland forests outside of the breeding season. She continued that they then return to moist areas near ponds and dry banks along streams during the summer. She noted that the egg-laying phase was the most sensitive part of the cycle, and pointed out that most streams were at the higher level and any suspended solids would be most diluted at that time. She stated that she did not see, professionally, how properly treated stormwater could have a negative effect on the red-legged frog using the ponds in the Park.

Walker reported that western painted turtles had also been sighted at the Big Pond in the Park, but the Park ponds did not provide the most ideal habitat for turtles. She explained that the ponds were becoming smaller due to the forest encroachment and shade; on the other hand it was good since it was reducing bullfrog habitat, a predator of native amphibians and reptiles. She said turtles were tolerant of poor water conditions, but were declining due to poor habitat more than pollution.

Mayor Drake asked Fishman if his professional qualifications were listed in the report.

Fishman said he did not think so.

Mayor Drake said that was the only thing new he had heard and was concerned that this might be a new issue. He asked Pilliod if this was relevant on rebuttal.

Fishman explained that he had reviewed his qualifications because there had been reference to expert opinions, and some of the opponents gave their qualifications as experts, so he wanted Council to be aware of his qualifications.

Pilliod explained that since there was an indication of whether there was quality of testimony by experts on either side of the issue, this person's qualifications were certainly relevant. He said since it had not been

previously testified to, the appellant might offer disputing evidence as to this person's qualifications, if he had it.

Mayor Drake said this was the only thing he would offer any rebuttal to, and he would allow Kane to do that later.

Gast referred to the continued maintenance of the non-public facility, the CC&R issue, and clarified that the homeowners' association was required by the State of Oregon, for multi-family attached condominiums and other attached dwellings. He said he had learned that recently and noted that CC&Rs were a real aspect of what they were dealing with and frankly he did not know of anything better. He stated that he could not talk about small associations where the housing was mixed, his only experience was with the larger groups, such as greater than 70 units which had a larger budget because they had more people. He said with more people you could do more things, including getting people to be on the board and play an active role. He said in this situation there would be 201 units and if the opposition would give him the benefit of the doubt and say there would be 350-400 people, then they ought to be able to find three people out of that number to participate.

Gast reported that the Management Group represented over 4200 units, including one of the areas' largest master planned communities, they had been doing it for a long time and had figured out how to do it.

Gast reported they did not have a stewardship plan, and if THPRD accepted the four-plus acres, they would not have a natural area for a homeowners' association to maintain, so any maintenance provision would be eradicated, and what remained was the standard situation. He clarified that there was a difference with what they were proposing and what they had experience with, and what he had heard from other folks.

Coun. Soth directed his question to Palmer, and noted that they had heard from Hjort that the filter systems they were proposing were untested, that there was no empirical evidence to support the use of them. He asked Palmer for a response.

Palmer pointed out that in the material Council had received, there was a specific project and test results for a project that was already in place. He said in addition to that it was for a specific filter media, which was tested in the Vancouver area. He noted that the other test results were lab tests for a different mix of media that better suited this project. He explained that this it would additionally provide ion treatment through different treatment media additions. He said in addition to those tests, Storm Water Management had been testing different media throughout Washington County, on County projects. He stated that what their company had provided was field-tested media they had proposed to use and lab tests for additional media.

Coun. Soth recalled they heard a lot about erosion controls and those types of things. He noted that he had served on a State DEQ task force that dealt with storm water control and erosion, and recalled hearing Palmer describe silt fences and other means they intended to control erosion, and heard from the opponent that they would not work. He asked what steps they would propose to take to alleviate the type of problem where people drove over the facilities.

Palmer reported that in practicing in Washington County with USA, there was a heightened concern about erosion control facilities and it was required that they be in place prior to storm events, maintained during the course of storm events, factors of a lively business of erosion control maintenance in Washington County. He noted there were firms that had been created just to do that, and they had prospered. He said within the USA monitoring jurisdiction, within their supervisory roles they had, through the erosion control permit process, safeguards policing each of the sites, which happened day-in and day-out. He explained that if they went to one of his projects that were under construction, they had to get the silt fences and all erosion control systems in place before the first storm hit. He pointed out that there were enormous fines that had been imposed, and no one wanted those fines, plus the headlines. He said USA was requiring the contractors to employ all due diligence, and to have maintenance facilities and a contractor on board to maintain all of the facilities.

Gast added that they did not have a single silt fence, they had several silt fences and several areas that would catch runoff and a pond area for sediment control. He pointed out that those were not standard procedures, and most sites had one silt fence and that was it.

Coun. Soth directed his question to Fishman as the expert on stream habitat. He noted that he had served on a committee of Beaverton Creek having to do with exactly the kinds of things that had been discussed in terms of shade, in-stream hiding places, etc. He said he did not know if they had seen that report but it was available at USA. He asked if he had seen the report.

Fishman said he thought he had seen the report. He noted that they had worked with the consultants doing the work to re-meander the stream in the Park. He explained that they met with those consultants to make sure what they were planning for Magnolia Green coordinated with what they were doing in terms of riparian planting, in terms of the species list, the density, etc. to make sure it would be one system.

Coun. Doyle said, regarding the homeowner associations, in the larger developments they talked about, he wondered if they every hired a person to take care of the issues.

Gast said that was absolutely the way they did that, to not do that was ludicrous. He explained that the Management Group was one of those companies, that was what they did, they sent out notices, collected dues, did all sorts of maintenance and took the day-to-day operation out of the homeowners hands.

Coun. Doyle asked if they had discussed the oak tree mentioned by Barbara Wilson.

Gast reported that they addressed it with THPRD folks and had commented that there were only five listed to be planted, and had taken it onto themselves to add more. He noted that the question was whether five for one was a good deal, and said he looked at it a little differently. He explained that he had 950 new trees going in and was taking out 20. He stated they were clearly improving the community by minimizing the amount they took out and adding many more, and said the opponents could point to that one and say maybe they should not have removed it.

Miller suggested that maybe more than five of the trees should be oak.

Coun. Doyle noted that those present would not be around when the new trees were 100 years old.

Coun. Brzezinski said Griffith had talked about the THPRD 9/1/99 letter and referred to the two issues of the commercial components and the pets. She noted that he had reminded them that during the hearing on Aspen Woods, Gast agreed to have something in the CC&Rs about domestic pets, and she had not seen that agreed to in this case. She asked why he would do it for Aspen Woods but not for this.

Gast explained that they had something for domestic pets which was a leash law and cats inside.

Coun. Brzezinski noted that they had said in the Aspen Woods hearing that they would put in the CC&Rs that they would be prohibited.

Gast acknowledged that was correct, and explained that Aspen Woods was a different situation and was surrounded on three sides by the Park. He noted that all of the development on the west side of 170th did not have pet restrictions of any kind, the apartment complex next to the Park did not have pet restrictions that he was aware of, but it might as an apartment unit. He reported that he did not know of any multi-family units around the station area that had pet restrictions, and said it was a significant gesture on Polygon's part to have restrictions on pets, as most communities did not. He clarified that since the Aspen Woods site was in closer proximity to the heart of the Park it was a good gesture on Polygon's part to exclude pets entirely. He explained that the proximity of Magnolia Green to the Park was extensive, plus they had the Creek splitting the two, so they did not think it was the same scenario.

There were no further questions.

Mayor Drake ruled that the qualification issue he had raised earlier, only confirmed the professional status of Fishman and the quality of consultants that had appeared that evening. He said he did not see it as new information.

Council agreed.

Mayor Drake stated that he did not hear anything new that would allow rebuttal testimony from Kane.

Coun. Brzezinski said she thought all she heard were comments on what they had read or heard in earlier testimony.

RECESS: Mayor Drake called for a brief recess at 11:10 p.m.

RECONVENED:

The regular meeting reconvened at 11:20 p.m.

Colin Cooper said staff had no comments, but were available for questions.

Mayor Drake asked if the Council had any questions. There were none.

Mayor Drake closed the public hearing.

Coun. Soth MOVED, SECONDED by Coun. Yuen, that the appeal of Magnolia Green be denied, and the order of the Board of Design Review be upheld.

Mayor Drake said before he accepted the motion, he would re-open the hearing, to be sure and include a list of all the documents that had been presented to the City via the City Recorder, or at that meeting.

Mayor Drake re-opened the hearing.

Mayor Drake asked Darleen Cogburn, City Recorder, to go through each one of the documents and identify them by a title and/or a date.

Cogburn asked if he wanted her to include what had been delivered that evening.

Mayor Drake said she should also include the items from that evening.

Kane asked if he could have the opportunity to check the list and inform the City Recorder if any documents that should have been listed were not on the list.

Mayor Drake said that the City Recorder had everything she had received and she would be the official source for documents within the City. He asked Pilliod to correct him if he was wrong.

Pilliod said as he understood it, the Council had the obligation to make the final decision including a final written order prior to October 28, 1999, in order to satisfy State law. He explained that the Council was under no obligation to accede to Kane's request for a continuance unless the applicant concurred with that request and he had not heard that concurrence. He noted that Kane began his presentation that evening by requesting that the Council continue the matter so that a list of documents could be prepared for him to compare his notes with. He said unless Council was prepared to grant Kane's request for extension, this was his opportunity to compare what had been received by the City Recorder with what he had intended to present. He stated that although the Council was free to continue the matter, they were under no obligation to do so. He said there was no obligation to prepare such a list, and he thought the recitation of the items received by the City Recorder was a reasonable alternative to a continuance.

Mayor Drake explained that State law required that on any land use process, everything must be completed within 120 days from having a completed application. He noted that included the required neighborhood meeting prior to receiving an application and declaring it complete. He said the City had the obligation to complete the process and have a final order adopted by the Council within the 120 days, or the developer, Polygon, could go to court and ask for a writ of mandamus. He explained that would require the City to prove why it should not issue a development permit, which would take the process out of the City's hands. He noted that was why the City had attempted to move it along so they had enough time to properly hear the case and move it forward, so the policy-makers could make the decision and not the court.

Coun. Brzezinski asked Pilliod for clarification, and said she thought Kane asked that the record be kept open, and asked if that was, for all intents and purposes the same thing as a continuance.

Pilliod said he believed it was, although the continuance of keeping the record open would presumably allow Kane to submit additional documentation and afford the applicant additional opportunities to rebut new evidence that was submitted. He explained that continuance could also mean a continuance by the Council for further deliberation with a closed record. He said he would consider continuance to be a broader topic than just keeping the record open, which focused on the receipt of

additional evidence and argument from the parties. He clarified that they were slightly different concepts.

Coun. Brzezinski said if the purpose of keeping the record open was to simply say that they had not put in a specific letter, and the City agreed that was correct, but it was added to the record, did that mean the Council had to return and listen to all of it again. She asked if this was just about the list of the documents that had been presented, if something was left out, or did the mere allowing the list to be made, mandate that other things could be put in that were not there before.

Pilliod explained that this was not just an exercise that acted on the benefit of the appellant, but the applicant could benefit as well. He said it depended upon whether or not the document which was later offered, but which was not currently in the City Recorder's hands, was properly offered while the record was open. He said that might require them to examine the circumstances, even the tapes to determine if it was even in this room if it was so offered. He said if it was not then properly listed, it was not part of the record. He said if it was properly offered it should be part of the record and this was the effort to determine if that was the case.

Pilliod stated that he had personally seen documents waved in the air and referred to, but he had not idea whether they were offered, or intended to be offered, or were merely blank pieces of paper waved in the air. He said this was the effort to identify what would be part of the written record if it should be appealed to the Land Use Board of Appeals (LUBA). He noted that it was the responsibility of the City to prepare the record on appeal. He said he wished they would make a list on every issue.

Mayor Drake explained that it was very difficult with the way information came in. He said staff required people to supply enough copies for the record and for him and the Councilors. He said that was not always the case, and noted that day that Schouten brought by one copy of the document that Crocker read that night. He reported that Kane brought a large document the past Friday, at about 4:55 or 4:59 p.m., and the difficulty with that was he did not bring enough copies. He stated that he thought what people should be doing was bringing enough copies for everyone. He said that document was quite large and staff printed it so Council had it, however it was not printed until Monday morning because Kane brought it so late in the day. He said his staff was not expected to stay late to produce material when Kane had been advised of that before. He reported that was about \$60 of printing done on Kane's behalf, and it made it difficult when materials kept coming in at all hours all afternoon. He noted that some people did supply enough copies.

Cogburn read the list of documents that were submitted that evening:

5 sheets of petitions from the Make Our Park Whole
6 sheets of overheads from Make Our Park Whole
Letter from Margaret Armstrong

Copies overheads regarding water quality
2 bound books: *Water Quality in the Willamette Basin and Selected Elements and Organic Chemicals in Bed Sediment and Fish Tissue of the Tualatin River Basin, Oregon 1992-96*
Magnolia Green slides for oral testimony, 3 pages from Dick Schouten
Previously received documents with added notes from Mr. Fishman for Recorder's references
Letter from Mr. Hostetter,
Letter from Jerome Magill,
Letter from Jack Franklin
Addendum to a report filed 9/27/99 from Margaret Armstrong,
Appendix 5 to Henry Kane's notice of appeal filed that evening
Copy of the final land use order finalizing the BDR decision for St. Mary's Home for Boys (submitted by Polygon)
1 photo from Jerome Magill
2 photos submitted by Marvin Doty
9 over-sized drawings

Cogburn noted that for the record when she received information prior to hearing, as it came in she attached a cover sheet and noted who it was distributed to. She said the following documents were not in order because people had been going through them.

10/4/99 from Roy Dancer – rebuttal to the Management Group Inc. memo CC&Rs regarding Magnolia Green
10/4/99 from Dick Schouten – subject: Reality in the Trenches at an Attached Dwelling Homeowners Association
10/4/99 from Henry Kane – Appendix 4 to appellant's notice to appeal of 9/17/99
10/4/99 from St. Mary's Home for Boys, letter to Colin Cooper
10/4/99 from Alpha Engineering letter to Mayor Drake/Council re: Magnolia Green rebuttal to opponent's submittals
10/1/99 from Henry Kane – regarding motion to grant appellant the right to open and close, and allowing appellant and other opponents equal time or the same amount of time to testify as applicant, Polygon Northwest
9/30/99 from Management Group letter- Subject Magnolia Green Community Association,
9/30/99 from Henry Kane letter re: prepared testimony of appellant for 10/4/99 – Appendix 2 to letter of appeal of 9/17/99
9/30/99 from Henry Kane a book *THPRD Tualatin Hills Nature Park: A Biological Survey*, plus a letter labeled Appendix 3.
9/13/99 from Henry Kane letter, re: Objection to tentative 10/4/99 City Council Public Hearing in event of an appeal

9/13/99 from Henry Kane letter regarding mediation Polygon Northwest C. vs. City of Beaverton
Record copy of BDR Minutes 9/2/99 – draft copy
9/29/99 Letter to Henry Kane from Adam DeBast regarding Magnolia Green
9/27/99 Testimony of Tom Hjort

9/20/99 from Henry Kane letter re: BDR Order Approving Magnolia Green with conditions Kane appealed 9/17/99
9/20/99 from Henry Kane letter re: Public Hearing
9/21/99 from Henry Kane letter re: Public Records Law request for documents
9/24/99 from Henry Kane to Jack Orchard, marked "Time Sensitive"
9/23/99 from Henry Kane – appendix to appellant Kane's notice of appeal
9/27/99 from Margaret Armstrong
9/27/99 memorandum to Mayor Drake from Colin Cooper
9/27/99 from Roy Dancer – Homeowner Association Problems
9/28/99 filed brief from Dick Schouten
9/28/99 from Marvin Doty
9/24/99 Report & Contents list to Colin Cooper from Alpha Engineering Agenda Bill and attachments

Dick Schouten asked if Cogburn had received written testimony from Brenda Novak.

Cogburn said she had not.

Mayor Drake closed the hearing.

Coun. Soth MOVED, SECONDED by Coun. Yuen, that Council deny the appeal and uphold the Board of Design Review decision on Magnolia Green (BDR 99056).

Coun. Soth noted that this had been a very difficult and lengthy proceeding, but through all the testimony he had heard no legal reason to uphold the appeal. He explained that they were dealing with a number of technical issues that had to do with various environmental issues such as flooding or the lack thereof, the storm water run-off, riparian issues, etc. He said there had been very good testimony by both sides who were professionally qualified and gave their views. He said he believed that Polygon had fulfilled all the requirements of the Code regarding the project of Magnolia Green. He noted that one thing was the issue of maintenance of wetlands, bio-swales, filtration, etc., and conditions 23 and 25 of the BDR order addressed those. He read part of 23: "the applicant and homeowners' association shall provide for sampling and testing, of storm water, etc." He read from 25: "THPRD with USA, with the concerns of City staff, or the City acting alone, shall be allowed to enter Magnolia Green development site for inspection and maintenance of the proper operation of the on-site storm water quality system, including bio-swales and filters." He stated that those were Code Enforcement issues since they were conditions of development rather than conditions of CC&R operations.

Coun. Soth said they heard a good deal about runoff and whether the USA standards were good, bad or indifferent, and referred to page 795 of the agenda bill materials, (which had not been challenged) which indicated that Magnolia Green, in the total suspended solids, was below the USA

standards, and quite a bit below other projects on that same chart. He read from page 803, paragraph 2.2, and page 804, paragraph 4.1, (in record) and said these were Code issues and the City had the authority to enforce those Codes as conditions of development.

Coun. Soth said the developer as part of the Facilities Review (and read item 19 on page 902), was required to submit the erosion control permit to the City prior to the issuance of permits. He stated that with the erosion control measures the applicant was proposing, and which he (Coun. Soth) expected him to live up to, was going way beyond what had been prescribed in ordinary development. He commented that in his view this was a tribute to the way in which this project had been designed. He said they had heard about other items such as #33, and #31 having to do with FEMA, and the question was raised by Kane about the level on which the ground floor of the buildings would be built. He reported that Kane had said in one of his publications, that the ground floor would be below the FEMA standard, however #31 on Facilities Review indicated that they were required to raise it at least one foot above the floodplain level, which was standard with Code.

Coun. Soth said the public access easements and the homeowners' association required the maintenance and replacement of those private facilities (page 938). He stated that in his view it was a well-designed development and met or exceeded all of the standards including those of DEQ. He noted that one that had been mentioned was the best management practices, and agreed that they did change from time to time with experience, new technologies, etc. He stated that the applicant had done an outstanding job and the only red herring was the homeowners' issue.

Coun. Yuen said he supported the motion and noted that it was somewhat like Aspen Woods. He pointed out that the issues were technical and for the most part far beyond what a normal human being would have an interest in. He said for him this was in many ways a battle of the experts, and noted that Coun. Soth had touched on many issues. He explained that in some ways it was "whose experts do you believe," and said he had thought about this after the Aspen Woods hearing. He noted that in that case the Council in a majority vote chose to believe the appellants experts, but it occurred to him that the City paid the staff to look at these issues and give the Council their advice. He related that in his experiences on the Planning Commission and as Councilor, the vast majority of the time he agreed with the City's experts and he thought the decisions were pretty good and he had confidence in the City's expert. He said he had not heard anything that evening that made him think otherwise, the project appeared to meet the Code, to meet applicable, reasonable standards and whether or not he liked it, was not the issue.

Coun. Yuen pointed out that the law said it was zoned for a certain use and the fact was this development was an allowed use. He noted that in a BDR hearing the question was if a development met the design

standards, and there was nothing that had been presented that evening that told him it did not meet the standards. He recalled that Palmer had an interesting comment that summarized something he (Coun. Yuen) had been feeling during the hearing, and paraphrased it as "whatever they (Polygon) had done it wasn't good enough." He said he thought that was kind of the game they were in, that the developer was being asked to uphold a higher standard than was currently required, and whatever it was they did to achieve it was not quite good enough. He recalled that when he asked Hjort what he would suggest could be done to achieve his standards, he replied that he did not know. He said maybe that was a fair answer, but maybe it was not. He noted that he thought it was like, "what do you want for dinner," well I don't know," and you could play this game with 20 questions or a 1000 questions and it seemed to him that was not fair to the applicant and not fair to the process. He reiterated that it was an allowed use, it met the standards and he supported the motion.

Coun. Brzezinski noted that the two Councilors who had just spoken were in favor of the Aspen Woods application so it was not surprising to her that they were in favor of this application. She stated that she had opposed the Aspen Woods proposal, but she would vote for this motion.

Coun. Brzezinski explained that her decision on Aspen Woods was related to the visual impact on the surrounding property, since the buildings were so spread out on the property that she thought you might be walking around in the Park and be aware of the buildings. She said in this case there was not that sort of concern, it was so far from the walking trails that the visual impact was not a concern for her.

Coun. Brzezinski noted that the other concern she based her decision on for Aspen Woods was the water quality issue, and as Coun. Yuen said, it was a battle of the experts. She said she did not know if it was a different mix of the experts then, but it was also the case that she thought more had been done with the water quality issue for Magnolia Green.

Coun. Brzezinski commented that as everyone else, she wished the property could have been part of the Park, but it wasn't, and she had not ignored what Marshall had asked regarding if they had thought of something else on the property. She noted that unfortunately the system was that with private ownership of property the private owner was allowed to sell property to whomever he chose. She reminded them that several years ago they had an application for a Walmart store on the property and they chose not to provide the zoning change that would have allowed that. She noted that was one of the four or five things she was most proud of on this Council. She said it would have been nice to have it part of the Park but it was not part of the Park, so she would vote in favor of the motion. She asked that the City do their best job of monitoring the development to make sure that the conditions that had been put on the development were followed, so they could be as sure as possible that it would not negatively impact the Park.

Coun. Doyle commented that he could not add too much, and said it had been interesting to listen to the testimony from both sides and the linkages that surrounded the two developments. He said it was hard to figure what they had gained, but he thought the citizen involvement in this was good. He stated that it struck him that the testimony in support of the appeal had some good ideas, and it was unfortunate that some of those who were offering a different viewpoint, could not have worked closer on the project. He commented that there was talent everywhere in this town, and when people talked, things got resolved. He said he would support the motion. He noted that he hoped if there was any further action on this that it was done for the right reasons. He said there were other things that needed to be accomplished and they needed to focus on what was best for the community. He stated that the folks that appealed had not lost.

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

ORDINANCES:

Suspend Rules:

Coun. Soth MOVED, SECONDED by Coun. Doyle that the rules be suspended, and that the ordinance embodied in AB 99-312 be read for the first time by title only at this meeting, and for the second time by title only at the next regular meeting of the Council. Couns. Brzezinski, Doyle, Soth, and Yuen voting AYE, the motion CARRIED unanimously (4:0)

First Reading:

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

99-312 An Ordinance Annexing 0.02 Acres of Land Lying Generally Outside of the Existing City Limits to the City of Beaverton; ANX 99-00006, (Edgewood Downs)

OTHER BUSINESS:

Coun. Soth MOVED, SECONDED by Coun. Doyle, that Council authorize the City Attorney to move to settle the property rights acquisition as discussed in executive session.

Coun. Brzezinski said she would abstain since she was not at the executive session.

Question called on the motion. Couns. Soth, Doyle and Yuen voting AYE, motion CARRIED. (3:0:1)

ADJOURNMENT:

There being no further business to come before the Council at this time,
the meeting was adjourned at 12:05 a.m.

Darleen Cogburn, City Recorder

APPROVAL:

Approved this 13th day of December, 1999

Rob Drake, Mayor