

REGULAR MEETING

March 27, 2000

CALL TO ORDER:

A regular meeting of the Beaverton City Council was called to order by Mayor Rob Drake in the Forrest C. Soth Council Chambers, 4755 SW Griffith Drive, Beaverton, Oregon, on Monday, March 27, 2000 at 6:48 p.m.

ROLL CALL:

Present were Mayor Drake, Couns. Wes Yuen, Evelyn Brzezinski, Dennis Doyle, and Cathy Stanton. Coun. Soth and Chief of Staff Linda Adlard were excused. Also present were City Attorney Mark Pilliod, Human Resources Director Sandra Miller, Finance Director Patrick O'Claire, Community Development Director Joe Grillo, Engineering Director Tom Ramisch, Operations/Maintenance Director Steve Baker, Police Chief David Bishop, Library Director Shirley George, Senior Planner Steve Sparks, Development Services Manager Irish Bunnell, Project Engineer Jim Brink, City Transportation Engineer Randy Wooley, and City Recorder Darleen Cogburn.

CITIZEN COMMUNICATION:

Ira Frankel, 4450 SW 107th Street, addressed Council and said he had attended Council Meetings before and was very impressed with the way Council and staff operated. He read a prepared statement (in record) pertaining to his concern about Photo Radar in Beaverton.

Mayor Drake quoted the Oregon Revised Statutes (ORS) that authorized charges for information research. He pointed out that Frankel had talked to many people in City Hall and stated that City staff were always glad to provide information, and research might take extra staff time, which required reimbursement. He stated that he would not argue with Frankel. He noted that staff would charge anyone for anything beyond basic information, such as information that required research.

Henry Kane, addressed Council and said he had submitted two letters. One letter (dated March 26, 2000 and in record) referred to a proposed resolution concerning *The Round at Beaverton Central*. He said he followed the letter dated March 26, 2000 with another dated March 27, 2000 (in record). He noted that Council would have an executive session at the end of the meeting. He suggested that might be the time for

Council to decide to reject the resolution outright and decide some form of resolution so taxpayers had an idea of what the City's investment and liability were. He said he had learned that numbers could add up or not, depending on how they were computed, and there was no reason the City could not give answers to questions. He said they had a \$78,000 law firm on retainer who should be able advise the City's prospects on getting anything back.

COUNCIL ITEMS:

Coun. Brzezinski said there was an error in agenda bill numbering, which needed to be corrected. She explained that two items had been passed with the same agenda bill number.

Coun. Brzezinski MOVED, SECONDED by Coun. Doyle that the agenda bill for A Final Order Granting A Variance for Construction in the East Side Yard Setback of the McCormick & Schmick's Property; APP 20000-0003, VAR 99-00024 be assigned the number 00-91A.

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

Coun. Brzezinski announced that Coun. Yuen had resigned from his position as City Councilor, effective April 1, 2000. She noted his letter of resignation (in record), cited that his work responsibilities had increased substantially since he first became a City Councilor and he could no longer dedicate the time and energy required. She said she wanted to make sure the record showed how much they appreciated the contribution Coun. Yuen had made to the community.

Coun. Brzezinski informed the audience that during the following week Council would set in motion the procedure to appoint an interim Councilor to take Coun. Yuen's position.

Mayor Drake agreed with Coun. Brzezinski's comments and added that they had appreciated Coun. Yuen's critical viewpoint, as well as his ability to balance the Council in decision-making. He said Council would accept Coun. Yuen's resignation effective April 1, 2000. He complimented Coun. Yuen and said he had left a real mark on the City as Councilor, Planning Commissioner and founding member of the Five Oaks Neighborhood Association.

Coun. Doyle said he had spoken to the press, and had hoped that Coun. Yuen's resignation date of April 1 was an April Fools' joke. He said he appreciated Coun. Yuen's excellent perspective and noted that his heart had always been in his decisions. He noted that he would miss his perspective and appreciated his honesty and integrity.

Coun. Stanton said she would miss Coun. Yuen, and his contributions to Council. She commented that she would not reiterate what the others had said, but agreed with all. She wished him well and encouraged him to participate in his neighborhood association.

Coun. Yuen thanked everyone for his or her kind words and said it was a difficult decision to make, but he knew it was the right decision. He said he had not thought about how long he had been involved until they started talking about it, and then he thought about how long the rest of the Councilors had served on various committees, etc. He said they all shared the same sense of importance about the task they had taken on and they appreciated being known by the citizens. He said citizens deserved the best of the Council and they should get it. He commented he did not think he had been as good a Councilor the past year as he expected himself to be because of time restrictions. He pointed out it was important to select a new Councilor before they got into the budget and it was important to allow that new person to have the opportunity to give their input. He mentioned he knew there were a lot of people who did not want him to leave and he felt badly about that, but he looked forward to the change in perspective. He concluded by saying it did not mean the one who would follow him would not be his equal or superior, and they needed to look forward to the opportunity for change and new dynamics.

Coun. Stanton announced that on Tuesday, April 11, 2000, the Citizens for Community Involvement (CCI) would hold a Voters' Forum, in the Council Chambers. She explained candidates for the legislature, and City races would be attending and there would be information about ballot and bond measures.

Coun. Stanton announced the Mayor's Prayer Breakfast on April 13, 2000 at 7:00 a.m. at the Greenwood Inn. She noted that Buffy Hummel, an Oregon City basketball player would be speaking as well as others.

STAFF ITEMS:

There were none.

PRESENTATION:

00-93 ASR (Aquifer Storage and Recovery) No. 3 at Sterling Park and ASR Well No. 2 at 136th Avenue/Hargis Road

David Winship, City Utilities Engineer, said the presentation was related to AB 00-105, and explained that in November of 1999, Council authorized an agenda bill for drilling at two locations (Hanson Road/Sorrento pumping station). He said that well-drilling was complete and the second location was to do a pilot test core hole, which was on Loon Dr., near Scholls Ferry Road in the Sterling Park Subdivision. He pointed out the presentation would give the Council a better idea of why it

was important to purchase the property. He introduced consultants Larry Eaton and Kanh Wee, both professional engineers from CH2M Hill.

Larry Eaton, said he was from CH2M Hill said he would give an introduction to the program. (Copies of the presentation are contained in the record.) He reviewed each section of the presentation (in record).

Eaton pointed out the core hole had been drilled to a depth of 992 feet and was the deepest core-hole ever drilled in the Tualatin Valley. He said they were all quite excited by the core hole because it gave them a good understanding of the subsurface conditions in the area. He said they were basically able to know exactly where they were within the layer cakes (as he called it). He said the ASR program was interesting because the City of Beaverton was far ahead on the curve, with the Hansen Road Well, the second ASR Well, and also in exploring for a new location for a third well for the City.

Coun. Brzezinski noted that there were implications of having to drill twice as far down as they expected and asked about the costs.

Winship said AB 00-105 included spreadsheets indicating estimated costs and there was a difference in the depth, but it was not as dramatic as one would think.

Coun. Brzezinski said it was clear now that Winship pointed it out.

Winship noted that the static water level in the core hole was higher than in the Hansen Road well, so that would equalize the two sites.

Coun. Brzezinski said this continued to be interesting and something she had no knowledge of prior to similar presentations some time ago.

Coun. Stanton said they were going into a 20-year wet-cycle and asked if they would be able to pump out the water if they didn't need it so it wouldn't stagnate.

Winship said they would continue to need it because the difference between summer and winter water use was almost double. He explained that even with conservation, the water demand would still increase since housing developments were still being built in Beaverton. He noted the advantage of the ASR was to make it possible to postpone transmission and storage costs (in the form of above ground reservoirs) so water could be moved in the wintertime when the demand was lower.

Coun. Stanton said it made perfect sense and was more efficient than rain barrels.

Coun. Brzezinski noted that in looking at the illustration of the core hole it showed it connecting with the water-bearing zone in Sherwood and she wondered if that was the same.

Eaton said they believed it was the same strata that might continue all the way over to the Sherwood area.

Winship explained it was the first layer of volcanic rock over the marine sediments.

Eaton said it was unique when the basalt came out on the surface and explained it was called "pillow basalt." He noted that they believed it was the same as in the Sherwood well because of the elevation, and said it formed 34 million years ago.

Coun. Yuen said because the interflow zones could be quite extensive, were they porous enough they could have underground rivers, he wondered if that would mean if they put water in one area, someone could take it out somewhere else. He wondered if there was a risk that Beaverton water would be pulled out somewhere else.

Eaton explained that based on their understanding, the bubble or reservoir would extend about 500 feet outward from the well. He said the resource water that would be put in could be tapped if someone put a well in that 500 feet, but the City should be able to protect that water by not allowing anyone else to put a well there. He pointed out that when the water went in, it did not travel miles away.

Winship asked Eaton to explain the time of travel in that the water in the aquifer moved extremely slowly.

Eaton said they did a study for how long it would take water to travel away from a well, and it would take 10 years for the reservoir water to travel three miles.

Coun. Yuen questioned if the speed of the water would be accelerated under pressure.

Eaton said the amount of pressure they would be putting in there compared to the whole dynamic natural system would be infinitesimally small and would not cause a different dynamic in the aquifer.

Coun. Doyle referred to AB 00-106, which dealt with the land purchase for ASR #3, and asked what type of well would be put in there. He asked if it would be similar to the Hansen Road well.

Eaton said they were planning a similar well to the one at they had just drilled at the Hansen Road site.

Coun. Doyle asked if it would be similar costs to the Hansen well.

Winship said the only difference in cost would be the drilling and the other costs would be approximately the same. He said the bowls of the pump were at the bottom and they had to be at the lowest point.

Eaton said the new well would be setting at 350 feet below ground surface.

Coun. Doyle asked if they were looking at the future budget year or the current year.

Winship said it would be the following budget year.

CONSENT AGENDA:

Coun. Stanton asked to pull AB 00-116 for separate consideration.

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

Minutes of the regular meeting of January 24, 2000

- 00-94 Liquor License Renewals: Annual Renewals
- 00-95 Liquor License: Izzy's Pizza Restaurant – Change of Ownership
- 00-96 Liquor License: Seven-Eleven – Change of Ownership
- 00-97 Liquor License – Pepita Express – Greater Privilege
- 00-98 Liquor License: New Outlet – Pizza Schmizza, Inc.
- 00-99 Traffic Control Board Issues 432 and 433
- 00-100 Authorize an Intergovernmental Agreement with Washington County for Drainage Study and System Improvements in the Area Near Proposed Roadway Improvements to SW Millikan Way Between SW Hocken Street and SW Cedar Hills Boulevard
- 00-101 CUP 99-00025 Jack in the Box Restaurant
- 00-102 CUP 99-00011 First Baptist Church
- 00-103 Waiver of Permit Fees for the City of Beaverton Housing Rehabilitation Program
- 00-104 Traffic Enhancement Program Funding Priorities

00-105 Land Purchase Authorization – ASR (Aquifer Storage and Recovery)
Water Well No. 3 at Sterling Park

00-106 Bid Award - Crack Sealing Project

00-107 Bid Award – Street Surface Slurry Seal Project

00-108 Bid Award – Sidewalk Ramp Construction Project (Including Concrete
Sidewalk and Street Repairs)

00-109 Bid Award – Street Striping Project

00-110 Bid Award – City Park Expansion Project (Carried to next meeting.)

Contract Review Board:

00-111 Bid Award – Rose Biggi Avenue/Henry Street Construction Project (3218)

00-112 Contract Award – Construction Inspection for the Rose Biggi
Avenue/Henry Street Project (3218)

00-113 Waiver of Sealed Bid – Purchase of Two (2) Mobile Data Terminals From
an Existing Bid Award Through the Washington County Consolidated
Communications Agency

00-114 Consultant Contract Award – Engineering and Construction Phase
Services: Quint Court Drainage Improvement Project, Tektronix Trunk
Sewer Line – Flow Control and Telemetry, and Cedar Hills
Blvd./Beaverton Creek Bridge Structural Evaluation

00-115 Ratification of Bid Award – South Central Beaverton Utility Improvements,
Phase 2

00-116 Change Order Authorization – Add New Traffic Signal at SW 3rd Street
and Watson Avenue to the South Central Utility Improvement Phase II
Contract, and Approval of a Funding Source for the New Signal (Pulled
for Separate Consideration.)

Mayor Drake noted that AB 00-110 would be carried to the agenda the
following week and AB 00-116 was pulled for separate consideration.

Coun. Stanton abstained from the minutes of January 24, 2000 because
she was not present at that meeting. She also thanked staff for
answering her questions.

Coun. Yuen stated he had submitted corrections to the minutes to the
City Recorder.

Question called on the motion. Couns. Doyle, Stanton, Yuen and Brzezinski voting AYE, motion CARRIED unanimously. (4:0) (Coun. Stanton abstaining from the minutes of 1/24/00.)

Separate Consideration:

00-116 Change Order Authorization – Add New Traffic Signal as SW 3rd Street and Watson Avenue to the South Central Utility Improvement Phase II Contract, and Approval of a Funding Source for the New Signal

Coun. Stanton said the agenda bill they received had the funding source coming from the Traffic Enhancement Fund and she reviewed the ballot measure. She requested the funding come from State Revenue Sharing.

Mayor Drake said the contingency would have \$858,000 in State Revenue Funding.

Patrick O'Claire, Finance Director said that figure was correct.

Coun. Brzezinski asked why Coun. Stanton wanted to take it from State Revenue Sharing rather than somewhere else.

Coun. Stanton explained that when they did the new tax base in 1996 they rolled over the police serial levy as well as added the component for a three-year funding program to improve traffic light signalization and timing and to provide neighborhood traffic congestion relief. She said adding new lights, was not part of traffic light signalization and timing. She noted that so far the only light that had come up (in terms of neighborhood traffic congestion relief) was the light at Sixth and Murray and that came from requests from the Central and West Beaverton Neighborhoods Associations (NACs). She explained that it went through the process of Traffic Calming through the Traffic Commission. She said she had thought about the Street Fund and the Finance Director said he took a very narrow interpretation of using Traffic Impact Fees (TIF) funds for that particular program. She said State Revenue Sharing were funds that the citizens gave the State through state income tax, that they gave back to citizens, and the City had been very careful not to use those funds for general City use. She recounted they had contingency there.

Coun. Brzezinski expressed her concern that they had kept a substantial contingency fund in the State Revenue Sharing because it could go away at any time. She explained that fund was used to pay for things like the Arts Commission, Sister Cities Foundation and Social Services Funding (not things that were not part of the regular on-going business of the City). She said she did not feel comfortable taking a quarter of the contingency and putting it into a traffic signal.

Coun. Stanton said the Street Fund would be an optional fund to use. She pointed out that the contingency for the Street Fund was working at a very low level, but they were substantially in the hole for the contingency for the Street Fund. She noted that there was a better level of funding in the State Revenue Sharing Fund.

Mayor Drake said they were not in the hole, but if they used it they would have less than \$100,000 left in the fund for unforeseen circumstances and that was too tight considering the overall budget for the department.

Coun. Stanton clarified that if they took it out of that fund, they would leave a big gap in the Street Fund contingency.

O'Claire said if Council was looking at the State Revenue Fund for funding the signal, he wanted the authority to bring to the Budget Committee the appropriate supplemental budget transfer for providing funding from the State Revenue Fund to the Capital Improvement Fund for funding the signal.

Coun. Brzezinski said she wasn't ready to do that yet and asked if they could take it from the General Fund contingency.

O'Claire said they could.

Coun. Brzezinski asked why Coun. Stanton did not want to take it from the General Fund contingency.

Coun. Stanton said they used that for General Fund issues.

Mayor Drake pointed out it would be Council's decision and both funds had sufficient funds. He said if Coun. Stanton was looking for a funding source other than the Traffic Enhancement Fund and Coun. Brzezinski was looking for something other than State Shared Revenues, then that left the Contingency Fund and maybe common ground could be found among the members of Council to make a decision.

Coun. Stanton said she did not care if they took it out of the General Fund contingency if that was comfortable for everyone.

Mayor Drake suggested the money be taken out of the General Contingency Fund, if everyone approved.

Coun. Yuen noted that it occurred to him that the contingency had always been an issue that had been discussed at every budget meeting, and he would be comfortable if it came out of State Revenue Share. He said he appreciated Coun. Stanton's dedication to the Traffic Enhancement Fund and the research she had done.

Coun. Doyle stated that he thought the traffic signal would be advancement for the neighborhood and he would support the General Fund Contingency rather than the State Revenue Sharing funds. He said he thought it would be a benefit to the neighborhood and he could support a blend of funding.

Mayor Drake suggested a motion to use the General Fund.

Coun. Stanton MOVED, SECONDED by Coun. Brzezinski, to approve AB 00-116 and approve the use of \$190,000 from the General Fund Contingency for the new traffic signal at SW Third Street and Watson Ave.; authorize staff to negotiate a future change order (after the reengineering plans and specifications were completed) to the South Central Utility Improvements Phase II Contract to purchase and install the new traffic signal at SW Third Street and Watson Avenue in an amount now estimated at \$190,000, and authorize the Finance Director to transfer funds from the General Fund Contingency to the Capital Improvement Fund for the project in the next Supplemental Budget.

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

RECESS:

Mayor Drake called for a recess at 7:50 p.m.

RECONVENED:

The regular meeting reconvened at 8:06 p.m.

PUBLIC HEARING:

00-117 Appeal of Planning Commission Decision Upholding Planning Director's Interpretation on Appeal, as Memorialized in Land Use Order No. 1295

Mayor Drake read the announcement (in record) of the procedures for the public hearing.

Mark Pilliod, City Attorney, explained that the Council was authorized to hear a land use hearing, and could hear it if they have had ex parte contact as long as they announced that contact. He said the idea was to provide the appellant and all parties with an impartial decision-maker.

Mayor Drake asked if there were any abstentions by any members of the Council.

There were none.

Irish Bunnell, Development Services Manager, handed out a memo dated March 27, 2000 (in record as exhibit No. 4) containing seven main points he said he would make in the presentation. He reviewed the memo. He said out of the 635 pages in the Development Code (which was an ordinance or law) there was no permission in the sign regulations of the Development Code (Code) for signs on awnings or canopies. He explained that several years ago the Planning Department was struggling with the influx of signs for awnings and a Planning Director decided that if a portion of the structures was defined as a wall, then it could qualify as a wall sign. He noted they had followed that general interpretation ever since.

Bunnell pointed out that number 4 in the memo said roof signs were prohibited and were defined as "...displayed above the eaves of a building." He noted that roof signs were further defined in the Code as a sign that was above portions of the roof, a flat roof when there was a flat roof and the eaves of the roof when there was a sloped roof.

Bunnell pointed out in No. 4 the definition of a structure as anything which was "constructed, erected or built and located on or under the ground, or attached to something fixed to the ground." He said the City maintained that when they looked at a canopy or awning that had a wall, they were looking at a structure which was in turn attached to another structure, which was fixed to the ground.

Bunnell talked about No. 5 regarding the definition of "roof line" and said that in the Code it had nothing to do with the prohibition of roof signs or the location of wall signs. He said it was merely a definition, which stood alone and described the outer silhouette of the roof as the roofline, which was different regarding where roof signs could be attached. He said roof signs needed to be below the eaves or below a flat roof.

Bunnell said point No. 6 referred to the definition of wall signs as "...attached to, erected against or painted on a wall of a building or structure." He said wall signs were permitted. He reiterated that roof signs were prohibited, and wall signs were permitted.

Bunnell referred to point No. 7 and said wall signs were further regulated in that they must be "in a plane approximately parallel to the face of said wall and not projecting more than twelve (12) inches."

Bunnell concluded that the only way a sign could be considered for an awning or canopy, that was a roof-like structure, was if it was a wall sign.

Bunnell showed the drawings he had displayed and explained that the way they had interpreted it for many years was when a structure had two roofs, a flat roof and a sloped roof, a wall and the point where the sloped roof met was determined to be the eaves. He reported that was the substance and background for the Planning Director' Interpretation (PDI). He said roof signs were those that projected above the eaves or above a

flat roof and those were prohibited. He explained that wall signs were permitted and must be below the eaves or below the flat roof and they must be on a wall. He drew another diagram and showed where they could place the sign on the front wall of an awning. He reiterated that this was the basis for the decision and the practice they had used for many years.

Coun. Brzezinski said she wanted clarification regarding if a structure had a roof of varying heights, the roof that should be paid attention to in a sign issue, was the roof the sign was attached to.

Bunnell said that was correct and drew another diagram and showed how there could be multiple roofs and multiple walls.

Mayor Drake asked what the harm would be in a sign (he was not sign specific) painted on the overhang or something affixed to the overhang that did not go above the eaves. He explained that he felt the issue was going above a roofline and visual clutter above the top of a building. He asked what the harm was of a sign on an inset based on the Planning Director's Interpretation.

Bunnell said they had to go back to the Comprehensive Plan to determine where the Development Code came from and they were also talking about City esthetics and community appearance. He said previous City Councils had adopted Development Code consistent with the Comprehensive Plan and that Development Code language placed signs in an area where they believed the signs would not create visual clutter. He noted that with the sign in question, if one looked at it from a location besides straight on, then one would see a sign sticking up in the air that was really separated visually from the building it was on.

Mayor Drake said it seemed to be a community value and noted that the report was very lengthy and clear and asked when that community value was established.

Bunnell said he it had been established in the 1980's.

Mayor Drake commented that since he had been on the Council and as Mayor, this had been an issue of extreme grief for businesses and their applicants, generally the sign companies.

Bunnell noted that in some instances the language was not clear, and in others it was confusing. He said staff wanted to fix the Sign Code language.

Mayor Drake said confusing language seemed to be the problem rather than the 32-feet per square face on free standing signs, and now most (if not all) of the signs had been *grandfathered*. He noted that the *grandfathering* had gone away, and virtually every sign (unless they had a variance) was now in conformance.

Bunnell stated that was correct for the freestanding signs.

Coun. Yuen noted that in the packet they received and with the photos they received that evening, there were quite a few examples of signs that did not appear to be in conformance with the Planning Director's decision, and wondered what the City's position was with those signs. ing. He wondered if they were permitted or had been allowed some kind of variance.

Bunnell reported that they saw many of the photographs at the Planning Commission (PC) hearing and had seen more that evening. He noted some may not be in Beaverton. He explained that some of them would be permitted and some he recognized as not being permitted under the interpretation of the Code.

Coun. Yuen asked what the City would do about them.

Bunnell explained that the signs that were in the City would continue to be non-conforming and could continue to do face changes, but they could not create a new sign that was non-conforming.

Coun. Yuen asked how the signs were originally permitted if the sign ordinance had been interpreted since the 1980s.

Bunnell reiterated that some of the signs in the photos were not in Beaverton that he was aware of, and many were permissible. He said the signs could have been up for a long time and some signs could be up without permits.

Mayor Drake asked about the Pollo Rey restaurant sign, which he said had been existence for approximately three years.

Bunnell noted that was one staff made a mistake on.

Mayor Drake asked what the harm was to a community value on the Pollo Rey sign being on the angled roof.

Bunnell said each one of them would have a different answer and his answer would be a Code answer. He reiterated that sign should not have been permitted.

Mayor Drake asked about the history of the Safeway sign at Murray and Allen (photograph in record).

Bunnell said it would not be allowed under the current directive, because the sign was above the eaves.

Mayor Drake asked about the Murray Hill Thriftway sign (in record).

Bunnell said that would be allowed.

Mayor Drake asked about the Checks Cashed sign (in record).

Bunnell said he could not see it clearly, so he was unsure.

Coun. Yuen said that from looking at the photographs in the agenda bill exhibits it appeared there was an uneven application of the sign ordinance. He said he was trying to think about this in a common sense way and if the City made a differentiation in what would be considered a temporary structure and a permanent structure. He noted the applicant tried to make a good point by saying if the awning was torn down or wasn't there the sign could be put up and no one would complain about it. He pointed out that they had the awning to protect those on the sidewalk from rain so it seemed like they were being penalized by not being able to put up a sign on the awning instead directly on the building. He commented that as government they needed to be careful that their rules did not get in the way of common sense.

Bunnell talked about signs meeting percentage requirements and formatting requirements. He clarified that it was not that advertising was not allowed, but it was how that advertising was placed. He specified that no one was being penalized for the fact that they put up a structure called an awning since signage could still be placed on the awning.

Mayor Drake said they were talking about a specific sign, and asked if it was 32 squares.

Bunnell replied that it was longer than 32 squares; it was more like 20 feet long and 7 feet high.

Coun. Yuen commented that he understood the situation Bunnell had described on the drawings, and most people would have understood that, but if they were talking about an awning, he thought that was a temporary structure, and he wondered if the Code made any differentiation between temporary and permanent.

Bunnell said the Code did not differentiate between permanent and temporary structures. He drew Council's attention back to point No. 1 on his memo, and noted they were struggling with a decision made by the Code and the way they had been using it. He pointed out that if the sign in question was an awning, then there was no permission in the Code for a sign on an awning. He said another way to look at it was that roof signs were prohibited and wall signs were permitted. He said awning signs were not permitted.

Coun. Doyle referred to the color photo on page one and suggested that if whoever owned the center took the awning straight out from the top line, the current code interpretation would allow a sign to be hung from that as a legal sign.

Bunnell said that basically one needed a wall as big as the height of the sign to put the sign on. Bunnell drew a line indicating where a roof extension would be.

Coun. Doyle referred to Bunnell's comment about signs not permitted on awnings and said he could go anywhere in Beaverton and see signs on awnings.

Bunnell pointed out that Code language was not perfect and there was no permission in the Code language for signs on awnings. He noted that staff had processed many sign permits as wall signs, which were permitted instead of roof signs, which were not permitted when the sign pertained to an awning.

Coun. Doyle inquired if further discussion would ensue in the next six months pertaining to the Sign Code.

Bunnell replied that the discussion would continue.

Coun. Doyle asked if interpretations of the Code were ever changed as time marched on to reflect new practices, and new acceptance.

Bunnell said if the Council found a different interpretation than what the Planning Director had found, that would change the direction. He noted that this was the first time they had formally put it in writing to make it official.

Mayor Drake asked Peggy Hennessy, Attorney for Linda Peplinski, the appellant, if 20 minutes would be a reasonable response time.

Hennessy replied that it would.

APPELLANT:

Peggy Hennessy, P.O. Box 86100, Portland 97286, said she represented Reeves, Kahn & Eder, Attorneys for the appellants, CMR/Columbia, Inc., dba Columbia Neon and the Oregon Electric Sign Association and Linda Peplinski, 1820 East Burnside, Portland, representing Columbia Neon. She explained that the issue was whether or not they were going to penalize the store owner for putting up protection for the pedestrians by making them put up a lower sign. She said there had been no consistency with the City when sign companies came in with applications.

Hennessy said in February 1998 Columbia Neon sought approval for the Hong Kong Market Place wall sign and as staff had indicated wall signs were permitted and roof signs were prohibited. She noted the sign met the dimensional requirements for a wall sign if the sign was located on the wall of the building where the business was run. She said the building had a flat roof, which was 18 feet high, and the top of the

proposed sign would be 16 ½ feet, well below the 18-foot height. She noted that because of the awning, the Planning Director decided the relevant roof was the awning and was an independent structure and disregarded the building. She said they believed the interpretation was not consistent with the ordinary meaning of the word "roof", moreover it was not consistent with the City's prior interpretation of roof signs. She said the 1998 PDI was in verbatim identical to the current interpretation and defined what a roof sign was. She read from the PDI regarding the definition of roof signs. She said the language said that if they had a building with a flat roof, they could not go above the flat roof, but where there was an awning, printing had been allowed on the vertical portion of the awning. She commented that she did not know how that could be interpreted as a wall other than it had to be so indicated to fit within the Code. She concluded that they could not have it be a wall for some purposes and not for others and an applicant came in never knowing what to expect.

Linda Peplinski, 1820 East Burnside, Portland, said she worked with Columbia Neon, and wanted to clarify the Planning Staff's historical perspectives that were inaccurate. She said her initial application was accepted as complete on February 19, 1998. She said she had consultation with City Planners Scott Polzin and Suzanne Savin. She noted that Polzin was concerned about the size of the sign, but acknowledged that it met the criteria and accepted the fees. She said until recently the applications had always had stamped on the corner *allow four days to process*. She said she had no further communication with planning staff until three weeks later and since there had not been any objection within a week (as the norm) they felt it was going ahead and they created the actual sign.

Peplinski said when she got communication she responded immediately and there was discussion about a parapet wall, and not an awning. She said in earlier information it sounded like about six contacts and it was really 40. She related that on Friday, July 10, 1998, Bunnell said there was not a clear-cut definition in Code and he would discuss it at the staff meeting. She said she received a call from Polzin on July 15, 1998 indicating Planning considered it a roof sign and not a wall sign. She said that was the day that the PDI 98-001 was issued. She said that interpretation was never mentioned to her in any of her contacts. She noted that there was one interpretation signed in 1998 and one in 1999, so they were not very commonly processed. She stated that she requested in writing a definition of roof and eave line and did not get a response until two months later on September 10, 1998. She said the definition came out of Webster's Dictionary. She noted that Polzin had said she could pursue a site-specific interpretation, which she submitted in October of 1998. She reported that Bunnell denied it and said that the PDI rendered on July 19, 1998, applied. She explained that PDI dealt with flat roof verses parapet walls. She said as a consequence of that, she tried to come to some kind of voicing of her situation and allowed it to go to court prosecution. She noted that the historical information said it

resulted in a court order to remove the sign, and that was not true. She pointed out that the court order dictated a fine and from there she dealt more with Code Enforcement, and the Planning Department to come to resolution on the issue. She commented that they discovered the citation was directed to the building owner and her sign company did not have appeal rights. She reported that in June of 1999 she re-filed the sign application, which was denied, and she re-filed again, with the idea that the sign would go below the sloped portion of the roof. She said when she photographed many signs in the Beaverton area there were very prominent examples of signs hanging below the canopy overhang. She pointed out the Nature's Northwest sign hung in free space and other signs were so prominent that a permit had to have been issued. She commented that she could testify that all the signs were in the City of Beaverton.

Peplinski noted that the correspondence that Peggy Hennessy received on July 28, 1999, said that the awning was the line of demarcation as compared to the original PDI, which defined only flat roof versus parapet. She said she had a letter from Code Enforcement that had acknowledged that the interpretation of the sign code was discussed a year or two ago and she challenged that this had been a long-standing policy. She said they could have made some modifications to satisfy the apparent restrictions and one of the modifications Bunnell had mentioned that evening. She pointed out that she had submitted a revised sign permit application approximately two and one half weeks prior to this hearing, showing a modification of the roof line, because Bunnell had acknowledged entertainment of that idea. She said they had no definitive response from Planning at that time.

Peggy Hennessy commented that it sounded like it would pass that evening.

Peplinski said that a modified sign placement would in fact satisfy the underlying problem, which she perceived to be an inequitable application of the planning codes. She did not feel after two years that she was any closer to a clear definition of wall signs and in fact they had changed even more with the most recent PDI. She said the ordinance had been in effect for 20 years and past practice clearly showed how it had been applied. She said past practice was commonly referred to by the planners, except when it was pointed out as an example against their position, then it was given no credibility.

Peplinski said it was not possible to have their cake and eat it too, and gave an example of staff's past practices. She said past practices were sufficient in some instances, and one of the specific instances pointed out was relationship to the 20 percent wall allocation. She noted that staff had said if the 20 percent was divided by two walls, it became 10/10 or divided between three walls it became 6.66 on each wall, an even split rather than 15 percent on one wall and 5 percent on another.

Mayor Drake pointed out that they were not dealing with that issue that evening and asked that they focus on the sign issue.

Peplinski said when planners issued a permit they defined that the sign would not extend above the roofline, which was the Code definition. She said to define the line of an awning, which was not structural, seemed to be an arbitrary stretch of definition. She noted that a structure was not a single plane object, but was a multiple planed object and there was not just one wall and one roof, but there was also a back wall and sides.

Peplinski said she included a section of an industry magazine that discussed rigid awnings. She noted that in the awing industry there was not a standard that called out an awning wall or roof and awnings were referred to as framing members and faces. She said a Planning Commission member asked her why she did not design to the standard and said it was not possible when the standard kept changing and they had been given three different standards on the same proposal. She said she would like to be able to explain to her client why a sign could or could not be erected. She commented that it was fair to be able to depend on the common definitions, and the definitions not conflict within the scope of the written Code. She suggested the regulations must evolve through the public process with public input and should be reasonably and equitably applied. She pointed out that she had only applied for one variance in 15 years, but could not have any reasonable assurance that any one particular submittal would be accepted without problems.

Hennessy explained that they respected the City's right to prohibit roof signs, but they felt they were entitled to a definition of what a roof was, and in the Code they specifically adopted Webster's definition and noted that they did not feel that extended to the awning. She stated the City needed clear and definitive standards. She said before this decision, it was clear that the roof signs meant that a sign on a flat roof or above the eaves, but now the definition had been strained to extend it to an awning and basically disregarded the building to which it was attached. She commented that was not consistent and it was not fair to applicants. She concluded by saying that after the first PDI that stated anything above a flat roof was a roof sign, then suddenly there was another slope and another basis for denial.

Coun. Yuen said he hoped the staff would take Peplinski up on her offer to help rewrite the Code. He said her presentation brought out some information and he was dismayed with the many examples of non-conformance. He said it would be easier to look the other way with some large companies and noted that he thought that wouldn't happen, but sometimes details were overlooked. He noted that some signs that Peplinski had pointed out had been adjusted or redesigned so a roof-like structure was around the sign, which took care of the problem. He noted

Peplinski had mentioned signs had to be attached to the wall. He said she said had given Council and staff many things to think about when the sign ordinance was reviewed.

Coun. Yuen commented that staff was the defender of the Code and he thought Bunnell was right in that there was a sense of community esthetics in Beaverton. He noted Beaverton had one of the strictest Sign Codes in the region. He said the PDI specified that Beaverton did not want the free standing type of sign and if there was a sign proposed that was so large it would stick up above an awning, then it should be integrated into the building design and he would challenge Peplinski with that. He commented that the City was struggling to understand what the community esthetic was and write Code to reflect the City's focus. He reiterated that a sign similar to the one in question should be integrated into the design of the building instead of simply attached to the front. He commented that idea was not written into the Code, but suggested that was the conclusion of the discussion that evening.

Hennessy said their problem was that it was not in the Code and if a sign was not above the roofline, then it was not a roof sign. She pointed out they had a flat roofed building.

Coun. Yuen said the City was trying to define the Code. He noted the ordinance might say if the sign protruded above the roofline it should be integrated into the facade of the building in some way.

Coun. Doyle said Peplinski had mentioned that they had made another application, reflecting item 5 in her handout (in record) and asked when she submitted that.

Peplinski said it was two weeks earlier. She said the issue could have gone away a long time ago by working the problems through, but it did not address the underlying problem with the Code.

Coun. Doyle said if this subsequent sign plan was approved, in the ensuing six months and an ordinance was proposed that they could live with it, when would she expect to hear back on this proposal.

Peplinski said she would have expected to hear by now unless there was a problem.

Coun. Brzezinski emphasized Peplinski's main point as the top of the sign was at 16.5 feet, (not the 18-foot height of the actual building) and she wondered how the multiple roof issue affected the design.

Hennessy said that was fine if they had a wall, but she did not believe the awning met any of the definitions for a roof, a wall or eaves.

Coun. Brzezinski clarified that they did not buy the idea that the awning was not a wall, roof or eaves.

Hennessy said they did not think the interpretation they had given it was appropriate or fair to the industry.

Peplinski said she believed that the comment by planning staff was that the interpretation was for placement. She directed Council's attention to the photographs in her handout and noted other photographs that were not awnings. She pointed out the structures that had the signs on them were freestanding structures to hold the signs and pointed out other examples as well.

Mayor Drake noted that the Murray Hill Center had been there for about 12 years and he wondered what was current at that time.

Peplinski replied that it was the same criteria and the Code had been in effect since 1978. She said she found that there were only one or two actual roof signs and since the Code had been in effect for about 20 years there were no *grandfathered* signs.

Mayor Drake said there were no longer any *grandfathered* signs.

Coun. Stanton related some past history with existing signs and the need for variance application on some of the older ones.

Mayor Drake called for public testimony in either support or opposition to the application.

No one wished to testify.

REBUTTAL:

Bunnell said he did not think he would cover any new ground and would not go back through the two years that he and Ms. Peplinski had been dealing with general issues. He said he wanted to remind them that roofline did not matter in terms of placement of signs, it was merely a definition of roofline and described the silhouette of a roof. He noted that what did matter was where the roof was and where a sign could be placed in relation to the roof. He read from the decision in the record about sign placement in regard to multiple roofs. He said it had been mentioned that they were disregarding the main buildings in relation to signs on the wall of an awning, but there had not been a sign applied for on that building. He noted that they had used Webster's dictionary for some definitions that might need clarification. He said when someone gave them an application and they accepted the information and application, they trusted that it was correct. He noted they did not send staff out to inspect and some of the signs could be signs that did not end up as described in their particular applications and some might not have a permit at all. He noted that there was Code language that was not absolutely clear in 635 pages, and the portion dealing with signs might

not be as complete as everyone would like, so there had been two PDI's on the same general subject of signs. He concluded that signs were not allowed on awnings or canopies, but they were allowed on walls.

Coun. Stanton referred to the table of contents, and asked why they used definitions that were already in the Code.

Bunnell said there were definitions in Webster's that were not in the Code.

Coun. Stanton wondered why they used the definitions.

Bunnell said there were definitions included from Webster's Dictionary that were not defined in the Development Code.

Coun. Stanton said the PDI had the wall sign and roof sign definitions and they were not from the Development Code and she wondered why the definition in the Development Code was not used as the basis of the interpretation.

Bunnell said there were holes in the Ordinance and all the language was not there that one would want, and they had gone to the dictionary to try to fill in the holes. He explained that they had a definition in the Code of a wall sign but not a definition of a wall (in the Code), and there was a definition of a wall in the dictionary. He noted that the same was true of a roof. He reiterated that they had to go to the dictionary, fill in the holes and then interpret the Code language based on consistent definitions that were both in the Code and the dictionary.

Coun. Stanton said the first two points on page 90 were not out of Code, but rather out of the dictionary. She asked why they didn't start with what was in the Code.

Mayor Drake explained that the Code was not complete and there were holes in the Code definitions, so the Planning Director went to the dictionary to fill in those holes. He said he thought the Code allowed for use of Code definitions as well as dictionary definitions.

Coun. Brzezinski said she did not understand what Coun. Stanton was saying, because they used the Code definition of the wall sign and roof sign, and roofline. She clarified that the problem was that nowhere in the Code was a definition of roof or wall, so when it said a sign attached to a wall of a building or structure, they did not feel there was adequate definition in the Code of what a wall was to be able to know how to interpret it.

Coun. Stanton said she did not understand why they did not go with Code first.

Bunnell reiterated that they did; they first went with the Code for wall sign and roof sign and then went to the dictionary to see the definition of a wall, and roof to make it clear.

Coun. Stanton said the Code did not appear as clear as the dictionary definition.

Mayor Drake referred to the definition of a wall on page 71 (in record), and asked if Bunnell would say that the first portion of the sentence could be defining the face of an overhang and asked if vertical would have to be at a 90-degree angle.

Bunnell said they considered vertical to mean vertical at 90 degrees from the ground. He noted that the first portion of the sentence defined a wall, but not completely. He clarified that a wall ran from the foundation to the roof and the definition of a wall above the roof was called a parapet. He commented that they had two imperfect examples to match to the definition of a wall and one of those examples was the sign in question that evening.

Mayor Drake asked Bunnell how he would currently redefine "wall."

Bunnell stated that the definition included on page 71 was adequate, and noted that it did not cover the example he gave earlier.

Mayor Drake about a service station example, and referred to the "lip" off of a parapet.

Bunnell referred to it as a wall.

Coun. Brzezinski stated that she could buy Bunnell's logic, but her problem was all the things that did not seem to be governed by that logic. She pointed out that in a way, the applicant was being penalized for saying what they wanted to really do and applying for the sign. She noted that some of the signs in the photos did not meet the Code. She stated that the Council was being asked to think about an interpretation that was supposed to be applied Citywide, and she was disturbed by the variations.

Bunnell said he shared her concern; staff might have permitted something by mistake; something other than what was applied for was built or a sign may have been installed without a permit. He said he thought there were signs that were installed not in conformance with the permit issued.

Coun. Brzezinski asked if there was any reason why the sign discussed that evening was noticed.

Bunnell said it had been discussed at the Planning Counter and once the sign was put up it was noticed.

Mayor Drake added that it was a big sign and the parapet issue had been pending for years.

Coun. Doyle referred to the latest attempt by the applicant and asked where that was in the process.

Bunnell said he did not know but would research the request.

Coun. Doyle stated that the sign in question that evening seemed to meet the PDI.

Bunnell replied that it seemed to match the sample of the solution he had given earlier.

Coun. Yuen said the first thing Bunnell told them was that there was no permission for signs on canopies or awnings, and maybe he missed something, but if they took that at face value, there was no provision for canopies or awnings.

Bunnell stated that they could take that for face value, because no where was there any provision for a sign on those structures. He said they tried to figure out how signs were permitted on awnings and canopies according to Code language.

Coun. Yuen commented that it was pretty obvious that they had to redefine it in order to make it fit, but in trying to make something fit rather than change the Code, they brought in past practices. He commented that made Council's job a little harder because now they had to say which past practices were not good and which were good. He said the Code obviously needed to change.

Mayor Drake said some members of Council had served on the PC over the years, and they always had the option to give staff very good direction on how the Code should be modified and processed. He said Council could provide direction to the staff to clear up any ambiguities as policy makers. He commented that Council had disagreed with staff in the past on certain things and they had the authority to look at it and interpret s they saw fit. He said that after the hearing that evening they could reanalyze their instructions and direct staff on another path. He noted that it depended on how Council viewed what was in print.

Coun. Stanton noted that awning and canopy were roof-like structures, but a roof-like structure was not a roof.

Bunnell said according to the PDI the structures were divided into two parts: roof and wall. He said Coun. Stanton perhaps thought that awnings and canopies were roof-like structures by definition, and roof signs were prohibited, therefore how could signs be permitted on awnings and canopies.

Mayor Drake asked if there were any comments Mark Pilliod, City Attorney would like to make.

Pilliod said there was nothing else he had to add.

Mayor Drake closed the public hearing.

Coun. Brzezinski MOVED, SECONDED by Coun. Yuen that the Council Deny the appeal and uphold the action of the Planning Commission at the February 23, 2000 regular meeting as summarized in land use order 1295/APP 20001.

Coun. Brzezinski explained that she made the motion because she agreed with the interpretation of where a sign could be allowed. She noted that Mayor Drake said they could change the definitions, and she did not want to change the definition. She said she did not want violations of Sign Code in the City and noted the Council had been asked to make a decision on a citywide basis about signs on awnings and canopies. She commented that she bought the logic of why this one was denied.

Coun. Yuen said he seconded the motion, and agreed with the sign ordinance and the interpretation of the sign ordinance. He said the problem was the Code had holes in it and was causing problems because of its ambiguity. He said none of that changed the intent of the Code or the community aesthetic. He noted that he thought Council might want to make some decisions after the decision that evening to give direction to staff to further clarify what the Code meant.

Coun. Stanton she would support the motion because she thought if it were crafted perfectly it would be perfect. She said she agreed with Coun. Yuen in that there was a dichotomy of intent and wording and they needed a follow-up conversation. She commented that she wanted to clarify the Code.

Coun. Doyle said he would not support the motion. He said he thought it was vitally important to see the Code reflect practice. He said he thought that Peplinski's fifth application would get the job done, and hoped that staff review could be expedited. He said there was no doubt that the process had been going on for two years and there were different types of things happening. He said his negative vote was more of a statement of dissatisfaction that they could not be more precise. He urged Council and staff to take a look at the latest application.

Coun. Yuen extended his apologies to Peplinski and Hennessy because of the ambiguity of the Code. He said that they had to go through this and hoped they would all learn from this and invited them to participate so they could have a Code that everyone could work with.

Mayor Drake said he thought it was appropriate that staff wait on the additional sign, because it had no bearing on that evening's decision and it may be a moot point, depending on what Council did.

Coun. Stanton said she would change her position and not support the motion.

Question called on the motion. Couns. Brzezinski, and Yuen voting AYE and Couns. Stanton and Doyle voting NAY. Mayor Drake voted NAY against the motion. The motion failed. (2:3)

Mayor Drake said the definitions were somewhat ambiguous in the way it was described not only in the dictionary but also how it linked up with the definition of wall sign. He said the definition of roof sign was ambiguous and there were some interpretations by staff that took a different view of it. He noted that he could not believe that this many (illegal signs) leaked through and he thought there were interpretations along the way that said that some of those signs met the Code.

Coun. Doyle MOVED, SECONDED by Coun. Stanton to grant the appeal contained in AB 00-117 and not uphold the action of the Planning Commission.

Question called on the motion. Couns. Stanton and Doyle voting AYE. Couns. Brzezinski and Yuen voting NAY. Mayor Drake voting AYE to support the motion to grant the appeal and to break the tie. The motion CARRIED. (3:2)

ORDINANCES:

Suspend Rules:

Coun. Yuen MOVED, SECONDED by Coun. Doyle that the rules be suspended, and that the ordinances embodied in AB 00-118 and 00-119 be read for the first time by title only at this meeting, and for the second time by title only at the next regular meeting of the Council. Couns. Yuen, Brzezinski, Doyle, and Stanton voting AYE, the motion CARRIED unanimously (4:0)

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

First Reading:

- 00-118 An Ordinance Amending Ordinance No. 2050, The Development Code, to Add the Use "Cemetery" to the List of Conditional Uses in Various Zoning Districts; TA 99-00014
- 00-119 An Ordinance Amending the Development Code, Ordinance No. 2050, Modifying Current Provisions and Adding New Text Relating to Traffic Impact Analysis Requirements; TA 99-00003

Second Reading and Passage:

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

- 00-84 An Ordinance Amending the Beaverton Code to Implement the Road Closure Policy
- 00-85 An Ordinance Amending Ordinance No. 1800, the Comprehensive Plan Map, And Ordinance No. 2050, The Zoning Map, to Reassign the County's Residential 6 Units Per Acre Plan Designation to City Urban Standard Density Residential Comprehensive Plan Map Designation and City R-5 Zoning District for .09 Acres of Property; CPA 99-00020 and RZ 99-00011 (16705 SW Hart Road)
- 00-87 An Ordinance Amending Ordinance No. 1800, The Comprehensive Plan Map, and Ordinance No. 2050, The Zoning Map, To Reassign the County Residential (R-5) Plan Designation to City Urban Standard Density Residential Comprehensive Plan Map Designation and City R7 Zoning District for 1.98 Acres of Property; CPA 99-00022 and RZ 99-00013 (Hendrickson Property)
- 00-88 An Ordinance Amending Ordinance No. 1800, The Comprehensive Plan Map, and Ordinance No. 2050, the Zoning Map, to Reassign the County's R-9 Plan Designation to City Urban Standard Density Residential Comprehensive Plan Map Designation and City R5 Zoning District for 19.52 Acres of Property and a Request for Flexible Setbacks; CPA 99-00023/RZ 99-00014/FS 99-00026 (Murray Ridge Property)
- 00-89 An Ordinance Amending Ordinance No. 1800, The Comprehensive Plan Map, and Ordinance No. 2050, The Zoning Map, To Reassign Washington County's Planning Designations to City Comprehensive Plan and Zoning Designations for Twenty-five Newly Annexed Properties Consisting of Approximately 30.46 Acres of Property; CPA 99-00024 and RZ 99-00015 (Lodato)

00-90

An Ordinance Amending Ordinance No. 1800, the Comprehensive Plan Map and Ordinance No. 2050, the Zoning Map, To Reassign Washington County's Planning Designations to City Comprehensive Plan and Zoning Designations for Forty-seven Newly Annexed Properties Located Within or Adjacent to the Westside Lightrail Right-Of-Way; CPA 99-00004 and RZ 99-00004 (Tri-Met R.O.W.)

Coun. Yuen MOVED, SECONDED by Coun. Doyle that the ordinances now pass. Roll call vote. Couns. Yuen, Doyle, Brzezinski, and Stanton voting AYE, motion CARRIED unanimous. (4:0)

EXECUTIVE SESSION:

No executive session was deemed necessary.

ADJOURNMENT:

There being no further business to come before the Council at this time, the meeting was adjourned at 10:05 p.m.

Darleen Cogburn, City Recorder

APPROVAL:

Approved this 10th day of July, 2000.

Rob Drake, Mayor