

## REGULAR MEETING

April 17, 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 April 17, 2000 at 6:40 p.m.

### ROLL CALL:

Present were Mayor Drake, Couns. Evelyn Brzezinski, Dennis Doyle, Forrest Soth, and Cathy Stanton (who arrived at 7:15 p.m.). Also present were Chief of Staff Linda Adlard, City Attorney Mark Pilliod, Human Resources Director Sandra Miller, Finance Director Patrick O'Claire, Community Development Director Joe Grillo, Engineering Director Tom Ramisch, Police Chief David Bishop, Operations/Maintenance Director Steve Baker, Library Director Shirley George, Economic Development Manager Janet Young, Senior Planner Barbara Fryer, Principal Planner Hal Bergsma, Associate Planner Veronica Smith, Engineer Mark Boguslawski, and City Recorder Darleen Cogburn.

### CITIZEN COMMUNICATION:

Ira Frankel, 4450 SW 107, read his letter (in record) to the Council. He commented that in his opinion Beaverton resembled a society envisioned by George Orwell in his novel *1984*. He compared the Photo Radar program to "Big Brother" and said citizens would have to decide if they wanted the posture of municipal government to be local, beneficent, corrective, progressing and caring.

Frankel referred to USPT Lockheed Martin Corporation as a corporation that had been fined because of international corruption and bribes. He said the City paid Lockheed Martin a quarter of a million dollars last year (for Photo Radar equipment) and they would use the money to develop even more repressive tools, which would be vigorously marketed to municipal officials. He expressed his dismay that the last time he spoke before Council there was no response and he felt this was a serious subject and worth dialog.

Frankel suggested policemen be trained well in non-punitive feedback and allowed to work on the many crimes which now went unsolved. He suggested stopping Lockheed from drawing blood from neighbors, friends and others, and sullyng the reputation in the area.

COUNCIL ITEMS:

Coun. Soth reminded Council that they were meeting at 4:30 p.m. on April 21, 2000 to consider Council candidates.

STAFF ITEMS:

There were none.

CONSENT AGENDA:

Mayor Drake noted that AB 00-142 had been substituted for AB 00-136.

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

Minutes of the regular meeting of February 28, 2000

00-136 A Resolution Authorizing the Mayor to Sign an Intergovernmental Agreement (IGA) with Tualatin Hills Park and Recreation District Relating to Future Wetland Mitigation

00-137 Authorize Metro To Transmit Annexation Notices Required By Oregon Revised Statutes Section 222.177 To The Secretary Of State in Compliance With Metro Code

Contract Review Board:

00-138 Contract Award for Preliminary Engineering Services for Pedestrian Improvements on SW 155<sup>th</sup> Avenue, between Nora Road and Weir Road

00-139 Library Architectural Contract Change Order – City Park Expansion Project Ratify Architect's Fee Proposal and Transfer Resolution

00-142 Authorization to Release Payment to Tualatin Hills Park and Recreation District in Advance of the Intergovernmental Agreement to Acquire Interest in Future Wetland Mitigation Property

Coun. Brzezinski explained that the first agenda bill was replaced because they did not have to have an Intergovernmental Agreement (IGA) at this point but they needed to authorize the release of payment to the Park District, which was the purpose of AB 00-142.

Mayor Drake explained there would be a new IGA, but it was not complete at that time and the transfer of funds was sensitive for the purchase of Aspen Woods.

Coun. Doyle referred to AB 00-138, and asked if they knew about how much this would cost.

Tom Ramisch, Engineering Director, explained they were looking for a system of asphalt sidewalks meandering through the right-of-way, saving trees and getting people from one end to the other without being in the street. He said they did not have a cost at that time.

Coun. Doyle noted that area was dangerous and questioned if there was any thought about going south of Nora/Beard.

Ramisch said they were planning to go from Weir to Nora/Beard with this temporary improvement.

Coun. Doyle clarified that he was thinking about going across where 155<sup>th</sup> went across Weir Road.

Mayor Drake asked if Coun. Doyle was asking where the roads would line up.

Coun. Doyle said that was part of his concern.

Mayor Drake said he thought the intention would be to have the roads mesh up. He explained that this was a temporary help until they could form a Local Improvement District or find some other funding, either locally or regionally.

**Question called on the motion. Couns. Doyle, Brzezinski, and Soth voting AYE, motion CARRIED unanimously (3:0)**

#### PUBLIC HEARING:

00-140 Appeal of Planning Commission Decision Regarding South Tektronix Neighborhood Plan (TA98-0002, RZ98-0013, CPA98-013, CPA98-014-APP99-0007, 00008, 00009, and 00010)

Mayor Drake read the statement that reviewed the requirements for the public hearing (in record). He reviewed the process that would be followed for the hearing.

Mayor Drake asked if there were any challenges to the Council's authority to hear the appeal, or any Councilors who wished to abstain. There were none.

Mayor Drake asked if there had been any ex parte contact by Councilors. He noted that he had spoken in a very general nature with the appellant's attorney and some of the appellants to move the issue along and interpret to staff what the concerns were.

Applicant:

Veronica Smith, Associate Planner, reviewed the material in the agenda bill. She said she would clarify two edits: the first edit was on page two starting with the heading *Application Process*. She noted that it should have indicated Roman numeral I and the following Legislative Proceeding would have been two, etc. with the Recommendation being Roman Numeral VI. She said the second edit was on page 21 the acreage should be corrected to approximately 18 acres instead of 17 acres.

Smith gave a brief history of the South Tektronix Station Community Neighborhood Plan. She said it was funded through Transportation Growth Management Grant (TGM) funds as part of the Downtown Connectivity Plan. She explained that the amendments were part of the Metro requirements and some were part of Periodic Review that required addressing the Metro plan. She reported that the hearings before the Planning Commission (PC) began in 1998 and concluded with their recommendation decision in 1999. She reviewed the maps and clarified that the notice that was given indicated that they were recommending a rezone of approximately 79 acres. She displayed maps and reviewed the various locations and areas considered for the initial rezone. She noted that the maps were in the record of the staff report. She reported that staff had reviewed the input they received and decided that it was not in the best interest to rezone all of the property and the new configuration was 79.5 acres. She noted that some properties were removed which were in the process of being developed as general commercial.

Smith noted that based on the appeal, they discussed the issues with the appellants and said part of the recommendation had been based on the mutual agreement between staff and the appellant to withdraw the area of the Station Community Multiple use from the rezone request. She noted that it constituted about 18 acres. She explained that the total request of area for the rezone that evening was approximately 60.9 acres. She said in addition to the map change, the appellants and staff talked about some of the Code changes and it was recommended that they also adopt language similar to the Regional Center Transit Orientated District (TOD). She explained that staff was also recommending that be included, striking the original non-conforming use provisions that the PC had previously recommended. She clarified that the difference between the two was shown in Attachments A and B (in record) and the findings were found on page 13 and 16 of the staff report.

Smith reported that there had been a new issue raised by the appellant after they had reviewed all of the information asking for a revision of the Comprehensive Plan Text. She said she had given Council a copy (in record) and read from the document.

Smith noted that based on this information staff recommended the change should occur. She said they had also received a letter from David Scriven (in record) and he and other parties had asked that some properties be excluded and staff recommended that Council review the letter and agree with the change. Smith indicated the Tax Lots on the map that Scriven had asked to be excluded.

Smith said based on the information in the staff report, and the corrections and modifications discussed, staff recommended the approval of the four amendments to establish the South Tektronix Station Community in an area of approximately of 60.9 acres.

Coun. Soth asked for clarification on page 22, *Transportation*, the second line, he thought "east" should be "west."

Smith agreed, and said she would make that correction.

Coun. Soth referred to page 24, and asked for clarification under table 2, item 3, where there was a statement that said "TB" and he asked if it should have been "TV."

Smith said he was correct and she would make that correction, also.

Coun. Soth referred to page 25, at the bottom of the page, and said it spoke of Beaverton Creek and he assumed that meant to take out the culvert and let it become an open channel.

Smith said that was what the South Tektronix Report recommended.

Appellant:

Tim Ramis, Attorney for Ramis Crew Corrigan & Bachrach, LLP. said he represented the appellant; a group of property owners known as the Beaverton Citizens for a Better Downtown (BCBD). He explained that his clients agreed that with the changes proposed by the staff, all the issues in the appeal had been resolved. He said his clients had asked him to express their appreciation for the way staff had worked with them, and appreciation for the City for having a process where people could bring their issues before bodies to get those issues resolved.

Coun. Soth said he appreciated Ramis' and BCBD's willingness to work together and expressed his theory that if people of good will worked together issues could be resolved in an amicable manner.

Coun. Doyle echoed Coun. Soth's statement and said the past couple of months they had people saying the process was difficult. He said that he appreciated the compliment that evening and that staff should be thanked for making the process work.

Ramis noted that it had been a process where they were able to bring in some creative ideas and reach resolution.

Dave Scriven, 8125 SW Foxglove Pl., thanked them and said he represented Saturn of Beaverton. He noted that it was their intention to acquire additional properties adjacent to the South Tektronix Plan and said they would like to keep those properties in R-7, and exclude them from the South Tektronix Plan. He explained that they wanted to purchase the parcels for parking and noted that most of their questions and concerns were in their letter (in record).

Coun. Doyle said it sounded like they were pretty close to striking the deal to purchase the property.

Scriven said they started negotiations in September of 1999, but did not come to agreement. He noted that they felt they should give the owners time to consider and since then they were notified about the South Tektronix Plan they thought all they would accomplish was exclusion from that Plan.

Coun Stanton arrived at this time, (7:15 p.m.).

Coun. Doyle stated that he did not see the request as a problem.

Mayor Drake said he had thought Council would be willing to listen and honor that reasonable request. He noted that when they came back the Council would be apprised of it in advance, and it would go to the PC and then on to the Council for the Comprehensive Plan.

Mayor Drake asked if any others who had signed up still wanted to speak.

Verna Jensen, 4225 SW Tualaway, said she had lived on her property for 43 or more years. She said she had discussed the property exclusion with the Saturn people and would appreciate the property being excluded.

Teresa Farquhar, 4255 SW Tualaway, said she lived next to the Saturn Dealer and it seemed inappropriate to have the high density zoning in that area. She said she felt it was better for it to be commercial.

Others said their comments had been covered and they did not need to speak.

Mayor Drake asked Ramis if he had any rebuttal.

Ramis said he did not.

Coun. Brzezinski noted Council had received a revised set of recommendations, which removed those two lots, and a revision to one section of the Comprehensive Plan. She asked if they could just refer to the document.

Mark Pilliod, City Attorney, said they could refer to the document.

Coun. Stanton said that since she had not heard any of the presentation, she would abstain.

Mayor Drake closed Public Hearing.

**Coun. Brzezinski MOVED, SECONDED by Coun. Doyle to approve AB 00-140, with the four recommendations that were included in the revisions on page 47, (received that evening and identified at Exhibit No. 1), and which removed the Tax Lots 800 and 900 from the section identified, and a change in the Comprehensive Plan, Chapter 3, Section 3.9.2.4.A.5.b that referred to a Comprehensive Plan Map, and included in the statement.**

Coun. Soth reiterated what he had said earlier that evening, that staff had done an excellent job to bring this to a resolution that benefited everyone. He said the willingness to go through the process spoke highly of the citizens in Beaverton and the professionalism of staff.

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

RECESS: Mayor Drake called for a recess at 7:23 p.m.

RECONVENED:

The regular meeting reconvened at 7:38 p.m.

WORK SESSION:

00-141 Work Session on Metro's Proposed Regional Goal 5 Stream Corridor Protection Program, The National Marine Fisheries Service (NMFS) Proposed Rule To Protect Endangered Salmonids Under Section 4(d) Of The Federal Endangered Species Act, And The Proposed USA Watershed Approach To The Endangered Species Act (ESA) Listing Of Endangered Salmonids

Hal Bergsma, Principle Planner, reported that on March 6, 2000, Metro Councilor Susan McLain spoke on this issue. He noted that it was decided that they should have a work session to discuss the key elements of Metro's Goal 5 Stream Corridor protection program. He said the elements under discussion were the National Marine Fisheries Service's (NMFS) proposed rule to protect Endangered Salmonids under Section 4(d) the Endangered Species Act (ESA) and the proposed

Unified Sewerage Agency (USA) approach to the ESA listing of endangered salmon, and how these proposals related to the City of Beaverton. He noted the work session would also include a discussion on the City's role in the overall scope.

Bergsma read from his prepared statement (in record) and said they needed to understand the regulatory context for what was occurring. He noted that first was Statewide Planning Goal 5, which required local governments to protect a variety of natural resources including wildlife habitat, wetlands and riparian corridors. He said Metro, as a regional government, might adopt one or more regional functional plans for one or more resource categories and might provide time limits for local governments to implement the plan upon acknowledgment of that functional plan.

Bergsma said Metro was not required to address Goal 5 as city and county governments were and the City had to gather information from surveys relating to the type of resource to be protected. He noted that the information gathered must relate to the quantity, quality and location of resource sites. He said that assuming the information gathered was sufficient, the local government must determine whether individual resource sites were significant relative to criteria in the Goal 5 administrative rule and any additional criteria adopted by the local government. He explained that the analysis must balance out the consequences and the situation related to housing, public facilities and the economy, etc. He related that steps in identifying the analysis included identifying conflicting uses, determining the impacted area of conflicting uses on the resource site and analyzing the economic, social, environmental and energy (ESEE) consequences that resulted from decisions to allow, limit or prohibit conflicting uses. He went on to explain that it might be a generic analysis and must consider statewide goals. He said after the analysis the local government must adopt the ESEE consequences analysis as part of the plan. He reviewed the options of what they could limit, reduce or allow (in the record). He summarized that Goal 5 and its Administrative Rules required local governments to identify and consider protection of significant natural resources, but it did not require full or even limited protection in all cases. He explained that it also required a process for consideration of natural resource protection, not a specific end result. He pointed out that it required that all state wide planning be considered before deciding on a program for protection, and science alone did not dictate the program outcome.

Bergsma said the Metro Charter granted authority to assume responsibility for issues of metropolitan concern. He noted it required Metro to adopt a future vision for the region, to develop regional land use goals and objectives and to adopt a Regional Framework Plan. He said it was not required for protection of resources inside the boundary.

Bergsma reviewed the Metro's requirements of Section 5 of Title 3 (in the record..



Bergsma noted that funding was limited from the State, and Metro had only focused on the stream corridors and the habitat needs of aquatic species (fish and amphibians). He said that nothing in Section 5 of Title 3 specifically authorized Metro to deal with salmon species listed as endangered under the ESA.

Bergsma reported that the City was well represented on the various committees related to this issue. He listed the various concerns they had regarding this plan (in record). He said they thought the proposed program put too much emphasis on regulation and education, and noted that capital improvements such as improved culverts, re-vegetation, and acquisition of critical resources should play a more prominent role in the program.

Bergsma related that Mayor Drake had expressed his concerns about more time needed to meet with property owners and define program elements. He reported that Metro was responding to that by extending the time frame for their project.

Bergsma suggested that others involved could also comment.

Mayor Drake said his comments would be consistent with what he said before and he thought they were all very interested in good streamside and habitat protection. He noted that the interest was because it had not been clearly explained to the property owners, it had come too quickly, and had been a moving target. He said there had been many meetings over a period of time and it took a long time to get information to filter to the public. He clarified that what he had advocated for was to make Metro understand the concern about how quickly it had been moving along. He noted that he had asked for a time extension and September 2000 was a good deadline. He explained that he had asked if it was possible to ask National Marine Fisheries Service (NMFS) to delay the 4(d) rule until September as well. He explained that it would make sense to work on one document instead of two so that they could try and achieve the same goal. He reported that he had not heard an answer on that, but thought it was advisable that they worked on both and suggested that it might produce a better product. He said he was worried that the 4(d) rule would come down in June and the information would not have had time to be disseminated to the property owners. He noted that he thought once it was in print it was hard to modify.

Joe Grillo, Community Development Director, noted that he had made this statement before, but felt it was important that all the interest groups should come along together, including the property owners beyond the suggested 200 foot corridor. He noted that he did not think they would be able to solve or be part of the solution just in regulations. He said the City and the other jurisdictions would have to convince all residents that they had to spend more money in Capital Improvement Programs (CIP). He explained that would include education and re-vegetation. He

commented that it was not feasible or logical to balance the issue on those within the 200-foot corridor. He noted that staff had pointed out that it seemed suspect to get into detailed regulations, when it was doubtful that the extent of the urbanized area (even in Washington County) dramatically participated in saving salmon. He suggested that there would be many people who would comment that one had to "go the extra mile" to make a turn-around in salmon species and it was important to include all the interest groups to assure their concerns and issues were being met.

Coun. Stanton referred to the NMFS 12 Principles for Development (in record). She asked if the wording in the last principle was "of" or "for" the Metro Functional Plan.

Bergsma said there was no requirement that the City had to comply with Metro at all on the issue. He commented that he had more to say and it might answer Coun. Stanton's question.

Coun. Stanton noted that she had heard the Goal 5, Title 3 information about four times, and it sounded to her like Metro said that the information must be complied with.

Bergsma reiterated that Metro had no direct authority at that point. He read from his testimony and noted that many people had become interested and concerned about this issue. He reported that a group calling itself the Portland Riparian Committee, represented by attorney Gail Achterman of the law firm Stoel Rives had united their interests. The Metro Area Homebuilders Association, and other groups and business interests had been involved. He noted that those groups had questioned the value of extensive protection of salmon habitat in urban areas, which covered a small percentage of land in the Northwest region, relative to resource protection on farm and forestlands. He reported that agriculture and forestry interests were resistant to the idea of widening stream buffers and would oppose regulated areas with a 200-foot buffer.

Bergsma noted that other regions including the Puget Sound and the Southwest Washington areas were dealing with this issue and seemed to be taking a long-term coordinated planning approach, with the help of state and federal funding. He noted that Multnomah and Clackamas County commissioners had hosted a meeting to discuss the issue and do some comparison. He said there were alternatives to having Metro take the lead and noted there were some that thought USA should take the lead in developing a coordinated approach under Section 10 of the ESA regulations and develop a habitat conservation or watershed conservation plan.

Bergsma said the City could implement interim measures until a final plan could be completed before a regional or watershed plan was approved by NMFS, to provide guidelines for private developers to follow.

Bergsma explained that the Tualatin Watershed Council might be another organization responding to the ESA listings. He said they consisted of representatives of a number of interest groups including agriculture, business/industry, environmental groups, etc. He noted that their purpose was to coordinate key interests in the watershed and facilitate cooperation and understanding among all stakeholders. He pointed out that they were currently implementing the Tualatin River Watershed Action Plan, which included measures to deal with ESA listings, including education, restoration and volunteer monitoring of the watershed.

Bergsma commented that the City did not have to rely on other agencies to define its response to Goal 5 and the ESA listings. He explained the City was currently working under Periodic Review to bring itself into full compliance with Goal 5. He listed four points including work on the tree inventory, adoption of new policies and regulations, adoption of Local Wetlands Inventory and adoption of wetland and stream protection regulations consistent with USA's standards. He noted that the City already had regulations relating to construction and capital improvement projects to minimize impacts to wildlife. He explained the City was also managing, through its operations activities, maintenance of storm water detention systems.

Bergsma suggested the City review the content of the 4(d) Rule with its adoption in June of 2000 to determine what changes to City programs might be necessary. He concluded by saying the City needed to continue to participate in ongoing discussion relating to Metro's Goal 5 process and the ESA listings.

Mark Turpel, Metro's Growth Management Services Program Manager, said it was clear that this was a complicated effort and would take time to work out the details. He noted that they would work with the City in achieving goals to protect the fish and wildlife and as far as the 4 (d) Rule was concerned, although the Metro approach was listed, the jurisdictions could take any approach. He explained that they were hoping to provide a way for the jurisdictions to comply and provide an umbrella for anyone that would say the communities were not addressing the requirements of the 4(d) Rule. He said the other comment was that the Metro Council felt they were looking at the areas that needed to be protected for fish and wildlife and the implications on capacity and expansion that might need to occur as a result of that. He reported that in 1997, they had assumed that the 200-foot areas were not being developed, and added that another concern was the need to protect those areas by assigning them to inventory.

Sue Gries, Tualatin Watershed Council Coordinator, said the Watershed Council was a diverse group with 20 stakeholders. She reported they were non-regulatory and in terms of the 4 (d) Rule they could organize any planning with NFMS, and were working with USA for fish inventory. She noted they had an analysis of Scoggins, McKay, and Gales Creeks

and they were doing a watershed analysis for the middle and lower Tualatin River, which included Beaverton.

Kendra Smith, USA, ESA Program Manager, gave them an overview of the conservation planning. She said they wanted to make sure streams were healthy and agreed that some streams would support salmon and some would not. She said they needed to decide where they should put the various levels of efforts and that varied, and they were trying to figure out which was best and protect the best and restore the rest. She said the Clean Water Act was the minimum standard and noted that this was required. She reviewed her handout (in record) and the timeline. She reported they would be reconvening the old committees that had worked on the earlier projects and noted they had almost 40 consultants submit for the project, so they had an intense turnout. She said she had been focusing on the watershed conservation and strategy and once the 4 (d) Rule was finalized, they would be exposed and would need to look at coverage of the planning effort it. She said she would like to know Council's response to the level of participation and involvement they would like the City to have.

Coun. Doyle said he thought he heard Smith say that they were thinking of framing the project from the results of the 4 (d) Rule, and wondered what the impact would be.

Smith said it would not impact them as far as the 4 (d) Rule was concerned, because they did not submit it as a 4 (d) Rule program. She said the idea was that 4 (d) was a programmatic effort and it was a kind of piece-meal approach. She pointed out that if the status of the species changed from threatened to endangered, the work that was done under the 4 (d) Rule would no longer be valid. She noted that they would put the planning process into the rule, so NFMS would understand that they were marching forward and that they understood there were some risks. She reported that King County was trying to follow a plan.

Coun. Doyle commented that the regional approach was best.

Mayor Drake explained that the reason they took a Tualatin approach was that in the Tualatin Basin, Metro jurisdiction only covered about 5% and since USA was the umbrella for all the jurisdictions they needed a broader approach. He related that citizens, industry and governments thought it was a good product as well as planning directors. He said Metro would be a key partner because they had experts on staff and were looking at it from a broader regional approach. He noted that Metro's tentacles did not reach out to all the watershed basins and it was so complicated, that if there was any way to combine the process it would make everyone's life better.

Coun. Doyle asked if all the folks in the valley were in agreement, or were there some that would not agree.

Smith reported that as far as covered by this plan, they had met with the Soil and Water Conservation District and the Watershed Council and had received very favorable responses. She noted that USA had been working on an intergovernmental agreement with Washington County to potentially take some elements outside of the Urban Growth Boundary on behalf of Washington County.

Coun. Doyle noted that it seemed crucial that everyone in the valley should participate. He commented that people were amazed in other areas that Washington and Oregon talked about things (with each other).

Coun. Soth pointed out that Washington County was in an unusual situation in that the Tualatin River drained the entire County and it also lent itself to analysis on a watershed basis. He said if he could be "dictator for one day," he would take USA, Metro, the County, NFMS, and EPA and put them all in a room and tell them to meet together and come up with viable solutions. He said it appeared that Smith had talked with some of the various players regarding a time when they had all met together and talked about the same thing. He suggested they needed to talk with each other, not to each other.

Coun. Soth said he was bothered by Metro's approach to the fact that there were 900 miles of both intermittent and permanent streams, some of which were in culverts. He said within that 900 miles the total acreage that would be impacted was in excess of 40,000 acres, which would have to be replaced by some type of developable property when Metro got around to it. He said along with that came the liability on the individual property owners. He noted they were talking about 200 feet on each side of each stream, and that was from the top of the bank. He stated that if there was a gully that was 50 feet wide there would be a 450-foot strip down the corridor. He said no one had said it would be exempted from taxes because it would not be useable. He commented that the property owner would have to pull out the blackberries and replace them with native vegetation and then would not be able to walk on the land, so as not to violate the rules. He pointed out that if a property owner lost 250 feet, and only had 50 feet left for two houses where he had intended to put in 10 houses, that would be a considerable *taking*.

Coun. Soth pointed out that on the issue of *takings*, NFMS had defined it as almost anything and everything; they were the ones that made that judgment. He commented that really bothered him. He said in terms of ESA, they were hollering about protecting the salmon, and also protecting the seals and sea lions, who were the biggest predators of salmon. He noted that he would like to see those issues addressed and what the effects on individuals and jurisdictions would be, as well as replacing a \$30,000 culvert with a \$1 million bridge.

Coun. Soth said he had read an article by Ernie Platt and noted that it thoroughly expressed his thoughts.

Bergsma said they were talking about two kinds of *takings*, salmon and property *takings*. He clarified that Metro's present proposal would not be a total *taking* of property in that they would allow for some development of existing lots of record. He reported that 50% of the lot (up to 5000 square feet) could be developed, and as for commercial and industrial properties 35% could be developed. He noted that was the "Safe Harbor" proposal and there were also alternative proposals under riparian district which would provide greater flexibility. He said the problem was the proposals were not very well defined, so they were not sure what could be done. He said there would not be an absolute *taking* although there would be a great limitation on use of property in the regulated area.

Coun. Soth said there needed to be an inventory of streams to see if they even supported any of those species, and noted that some areas of some streams were considered a drainage ditch; not natural streams.

Smith explained that that was what the Watershed Plan 2000 was going to try to determine. She said determining if the streams were perennial or intermittent was necessary, and they would have the maps available for developers. She noted that by the Fall of 2000 they would have done that on a regional scale. She said that Coun. Soth could be "king for a day," because all the groups coming together and working together would happen by Watershed Forums and in January 2001, the Project Advisory Committee would begin and that would guide the actual development of the Watershed Conservation Plan.

Smith said it would probably take about one year to work through to the final process, and they would get down to the bottom line for the social and economic impacts.

Coun. Doyle expressed his concern about how they were going to reach out to property owners and other interested parties who would be impacted.

Smith explained that there were a couple of levels, one being the programmatic non-structural buffers and modifying those to meet the requirements of Metro and Goal 5. She noted that Metro had a massive mailing list for streamside residents. She commented that as they collected the science they might want to rank the streams and not all would have 200-foot buffers.

Coun. Doyle related that he had been talking with several people recently, and did not think there was anyone in the room who had any idea of what was going on. He noted he was concerned about the average guy who would not know about it, and was concerned that they needed to let everyone know. He noted that the impact could be enormous for the City as well.

Mayor Drake said he had been trying to get the message across to Metro, that it was difficult to administer interim regulations and it was smart to be sensitive to good environmental regulation, but they could not go out with a broad-brush stroke and try to apply it. He said it was ill defined and staff could not explain such a broad issue. He commented that they needed to slow it down so they could understand the regulations and administer them effectively.

Coun. Stanton explained her trade was Customs Broker and she dealt with the US Treasury regulations and processes daily. She referred to the 4 (d) Rule and asked if there was another part of the Rule that referenced existing development. She asked if development would have to be "undone" or retrofitted without any new development going on.

Smith said it was not specific in the 4 (d) Rule. She explained that fish passage needed to be provided but it was not clear if fixing the old culverts was required. She suggested figuring out highest priority stream reaches and fixing those and recognizing that some might not get fixed. She explained the Watershed 2000 effort would look at the top three culverts for every major sub-watershed.

Coun. Stanton asked if the 4 (d) Rule had been finalized. She suggested crafting the 4 (d) Rule now, instead of trying to go back and change it after it was finalized. She questioned if there were salmon in the Tualatin River.

Smith replied that there were Chinook and Coho salmon in the Tualatin River.

Bergsma said the City had submitted a letter commenting on the 4 (d) Rule.

Coun. Stanton said her point was that whatever they came up with, it would not be specific and there would be plenty of outs and opportunities for extensions of time.

Bergsma clarified that the effective date of the 4 (d) Rule would be sometime later in the summer of 2000.

Coun. Stanton recommended dealing with the 4 (d) Rule and putting Metro on hold. She commented that she thought Metro wanted to do their Goal 5 to tag onto the 4 (d) Rule and broaden the Goal 5. She noted that it would be better to wait for the 4 (d) Rule to be finalized before the City locked into Goal 5 issues.

Coun. Soth clarified that if NMFS found the City in violation for some *take* of some kind of fish, the person directly responsible could be held personally liable and also those above could be fined for illegal activity. He reported that he had heard of it, but had not seen any documentation.

Gries said there was a lot of discussion about cities that permitted development and official case law on issues of *takings*. She noted that the idea of *takings* went beyond the action of the individual that did the *taking* and went back to the jurisdiction that permitted the activity. She explained that was part of the reason a plan was necessary.

Mayor Drake said the USA advisor was very concerned and a driving force in focusing on *takings* and liabilities issues.

Coun. Doyle stated that he supported the Regional Water Basin and would like the City to drive that in support with budget and staff. He said he concurred with the impact study and there were questions that needed to be answered. He noted that it made sense to follow a set of rules and guiding principals, and the region needed to be united. He pointed out that developing the science was a big part of the answer, since having an issue proved by science was very important and more acceptable to people. He noted that most people wanted to see the environment stay the way it was. He commented that he looked forward to the next 400 pages worth of information and the long-term impact. He said the push was there and it should be based on the best science they had today, and no one should jump over the cliff trying to meet a certain deadline when time should be taken to explore all the issues. He remarked that it was an excellent presentation.

Mayor Drake thanked Gries, Turpel and Smith for participating.

#### OTHER BUSINESS:

**Coun. Doyle MOVED, SECONDED by Coun. Stanton, that the Council adopt the package of three resolutions they had received that evening. He noted the resolutions were in support of both the Portland Community College and Beaverton School District Bond Measures as well as Ballot Measure 82.**

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

#### EXECUTIVE SESSION:

**Coun. Soth MOVED, SECONDED, by Coun. Doyle that Council move into executive session in accordance with ORS 192.660 (1) (d), to conduct deliberations with persons designated by the governing body to carry on labor negotiations and in accordance with ORS 192.660 (1) (h), to discuss the legal rights and duties of the governing body with regard to litigation or litigation likely to be filed. Couns. Brzezinski, Soth and Doyle voting AYE, the motion CARRIED unanimously (3:0)**



RECESS:

Mayor Drake called for a brief recess at 9:00 p.m.

The executive session convened at 9:05

The executive session adjourned at 9:16 p.m.

ADJOURNMENT:

There being no further business to come before the Council at this time, the meeting was adjourned at 9:17 p.m.

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Darleen Cogburn, City Recorder

APPROVAL:

Approved this 10<sup>th</sup> day of July , 2000

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Rob Drake, Mayor