

## REGULAR MEETING

October 2, 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, October 2, 2000 at 6:33 p.m.

### ROLL CALL:

Present were Mayor Drake, Couns. Evelyn Brzezinski, Dennis Doyle, Fred Ruby, Forrest Soth. Coun. Stanton arrived at 6:49 p.m. 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, Development Services Manager Irish Bunnell, Senior Planner John Osterberg, Project Engineer Joel Howie, Deputy City Recorder Sue Nelson, and City Recorder Darleen Cogburn.

### CITIZEN COMMUNICATION:

There was no one present who wished to speak.

### COUNCIL ITEMS:

Mayor Drake noted that they wanted to end the meeting that evening between 10:30 and 11:00 p.m. and announced they would return the following week to continue the public hearings. He said no meeting was scheduled on October 16, 2000, so Council would make a final decision during the meeting of October 23, 2000. He specified that no testimony would be taken on October 23, and the meeting would be for Council questions and decision-making.

Coun. Brzezinski announced there would be a Candidates Forum, Tuesday, October 10, 2000, from 7:00 p.m. to 9:30 p.m., in the Council Chambers.

### STAFF ITEMS:

There was no one present who wished to speak.

CONSENT:

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

- 00-331 Establish GIS Analyst Classification and Reallocate Salary Range for GIS Specialist and Transfer Resolution
- 00-332 Boards and Commissions Appointment
- 00-333 Findings and Order Granting Appeal and Modifying the Planning Commission's Approval of Conditional Use Permit (Fountaincourt PUD); APP 2000-0011, CUP 2000-000

Contract Review Board:

- 00-334 Contract Award – Engineering Services for the 125<sup>th</sup> Avenue Extension, Phase 1 Project
- 00-335 Contract Change Order - Public Involvement Services for the Hart Road Project

**Question called on the motion. Couns. Brzezinski, Soth, Ruby, and Doyle voting AYE, the motion CARRIED unanimously. (4:0) (Coun. Stanton had not arrived at the meeting when this vote was taken.)**

PUBLIC HEARINGS:

- 00-252 APP 2000-0006; Appeal of Conditions of the Approval of CUP 20000-0002; Haggen's Store Extended Hours of Operation, by the Planning Commission (continued from 7/10/00)
- 00-253 APP 2000-0007; Appeal of the Approval of Conditions of Approval of CUP 2000-0003; Sexton Mountain Village PUD, by the Planning Commission (continued from 7/10/00). This appeal was withdrawn, so no testimony was taken and this issue was not discussed.
- 00-254 APP 2000-0008; Appeal of the Approval of RZ 2000-0002; Haggen's Rezone; by the Planning Commission (continued from 7/10/00)
- 00-255 APP 2000-0010; Appeal of the Approval of BDR 2000-0004; Haggen's Store at Sexton Mountain Village, by the Board of Design Review (continued from 7/10/00)

Mayor Drake said some people who had signed up to speak that evening would not be allowed to speak. He explained that if they had indicated on their testimony card they wanted to speak about the Haggen's 24-hour operation issue, but they had not testified on that issue at the Planning Commission (PC) hearings, they would not be allowed to speak that

evening. He further explained that the hearing on that issue would be an *on the record* appeal, and no new testimony would be taken.

Joe Grillo, Community Development Director, read the orange handout, detailing the processes of the hearing (in the record).

Coun. Stanton arrived at 6:49 p.m., while Grillo was reading the legal material as indicated above.

Grillo asked if there were any challenges to the right of the Council or Mayor to hear the matter.

Mark Holady, Beaverton, said he was there on behalf of the Neighbors for Livability (NFL). He reported that there were donations to the Mayor's reelection campaign by people associated with the development, and listed the people who had donated funds resulting in a sum total of \$5,550. He gave a copy of photos (in record) of campaign signs on the applicant's property. He stated that the NFL believed that the donation of funds and the support shown by the property owner to Mayor Drake created the appearance of a conflict and they were uncomfortable with Mayor Drake's participation including presiding over the public hearing.

Mayor Drake responded by saying that he had received funds from a great many people well beyond anyone connected with the Haggen's appeal and campaign donations did not have any influence on the way he made decisions. He noted that if one looked at one of the donors, Jack Orchard specifically, who represented Haggen's, he and Orchard did not always agree, and often had different opinions. He stated that he did not feel any contributions bound him to anything and those contributing only wished to see him reelected. He declared that he felt no bias on his part and he was offended by Holady's remarks. He commented that he had managed the City as Mayor and Chief Executive Officer with the highest integrity and the fact that someone contributed to his reelection campaign did not imply anything other than their wish for his reelection. He reminded those present that the Mayor only voted in case of a tie. He noted that he started to vote on this issue at an earlier hearing, but Coun. Stanton changed her vote and at that point he was not required to vote. He pointed out that he had no recorded vote on this issue and the NFL's assertions were incorrect.

Grillo asked again if there were any other challenges to the Mayor or Councilor's right to hear these matters.

There were none.

Grillo asked if any Councilor wished to abstain because of impartiality.

No one did.

Grillo asked if there was anyone present that wished to challenge or object to the City Council's authority to hear these matters.

No one objected.

Mayor Drake asked if any of the Council had any contact with any of the parties directly involved in this appeal.

Mayor Drake said he talked to Jack Orchard about process the past week.

Grillo pointed out that at the back of the instruction sheet (that he had just read) there was a list of individuals who had either spoken or submitted in writing materials dealing with the first appeal (APP 2000-0006). He said that was the list the Mayor, City Attorney and staff would be using. He asked if there was anyone who believed they should be on the list, or if there was disagreement relating to the 24-hour appeal, they should wait until a recess in the public hearing to address those issues with staff.

Grillo noted that in the orange instruction sheet there was a copy from Buck and Gordon LLP indicating their withdrawal of APP 2000-0007.

Grillo noted that the City Recorder's office had received numerous pieces of material and they had done a very good job of recording and distribution, but some items might have slipped through. He asked Council to look through and disregard the evidence as it related to the 24-hour issue if a name was not on the list attached to the orange instruction sheet (unless the sheet was amended that evening or at the following Council meeting).

Grillo noted that John Spencer and John Osterberg were there to present a brief overview on the applications under appeal that evening.

John Spencer, Planning Consultant with Spencer & Kupper, Portland, said he would cover the appeal for the extended hours of operation (APP 2000-0006) by the PC and he would also summarize the staff report on the appeal of the rezone (APP 2000-0008). He referred to the 24-hour appeal (*on the record*), and said the PC approved a Conditional Use Permit (CUP) to operate Haggen's Food and Pharmacy for extended hours, but they conditioned that approval to limit that operation so that it didn't apply for a 24-hour period. He continued that the PC did extend hours of operation where the store would be open to the public between 6:00 a.m. and 12:00 p.m. He said they also extended truck deliveries, but limited those deliveries between 10:00 p.m. and 5:00 a.m.

Spencer said the applicant was appealing those conditions associated with the CUP permit approval by the PC. He noted that the primary reasons the PC gave for imposing those limitations were that those extended hours of operation really were not needed in this community and that other stores had permits for 24-hour operation that were not

taking advantage of that 24-hour period. He said the applicant also found there were some questions about the validity of the noise analysis that was provided, particularly early morning and late night truck activities associated with the operation of the store, which were the reasons the PC imposed those limitations.

Spencer noted the staff originally recommended approval of the 24-hours operation and they continued to support the appellant. He said they felt that the record and technical analysis were adequate and demonstrated that the impacts associated with a full 24-hour operation could be effectively mitigated. He reported that the day and nighttime noise levels would be below the City and State noise standards. He concluded by saying that for those reasons they supported the appeal and the 24-hour operation as recommended by the applicant.

Spencer referred to APP 2000-0008, appeal of Approval of RZ 2000-0002, and said it was an appeal by the NFL on the PC approval of the rezone of land from Standard Density Residential (SDR) to Community Service (CS) designation. He said this rezone was specifically associated with the roughly 10 acres of property designated for Commercial development in the Comprehensive Plan, currently zoned R-5. He said the major point of the appeal, was the appellants' assertion that a residential objective which called for maintaining maximum livability and quality of living areas was not met because of the impacts of the 24-hour operation of the store on the existing residential area along 149<sup>th</sup> Avenue. He said staff believed those impacts had been adequately mitigated by the proposals incorporated by the applicant. He said the rezone was a conditional rezone and the specifics of the property were known and the issues were discussed. He stated that the conditional approval of the rezone was an important factor why staff felt most of the issues were adequately mitigated.

Spencer said they had a conditional rezone where they had a specific development proposal that they analyzed. He said the appellant asserted that the CS zone was improperly applied to the site and that the purpose statement of the CS and the Commercial Service District policies did not allow the use of the CS zone along Murray Blvd. He noted the appellant asserted that Murray was unimpeded by commercial designations. He said staff believed the CS zone conditioned as it was to a specific development application did not result in strip commercial development that was defined in the Development Code and described as something to be avoided in the use of the CS zone. He said the specific uses proposed (the mixed use of residential to the south and the commercial areas to the north) were taken into account and because of the conditional nature of this rezone, staff believed the issues raised by the appellant were nonexistent. He noted that the appellant did not believe that the relationship between commercial activity and adjacent residential areas was met as it related to noise and lighting issues. He stated that he felt those potential issues had been adequately mitigated.

Spencer noted that the appellant also said that a natural resource policy in Metro Title 3 was not met because the plans for the wetland adjacent to Beard Road were not approved. He clarified that staff wanted it noted that the wetland was not located on the site subject to the appeal and that issue had been dealt with. He said the other issues related to noise reduction and had been adequately addressed by the applicant, and staff recommended the appeal be denied.

John Osterberg, Senior Planner, said he would briefly summarize the request for appeal on BDR 2000-0004, APP 2000-0010. He said the Board of Design Review (BDR) had conducted a public hearing for design review on the Hagggen's's site. He said the appeal was only for Hagggen's's portion of Sexton Mountain Village, which was the northern portion of the site of the larger Sexton Mountain development. He said the NFL submitted the appeal and stated that four of the Design Review criteria had not been met and specifically that on page two of the staff memo (for the Design Review appeal, in record)) it listed two design review technical standards and two design review design standards. He said the NFL had listed nine concerns, and noted that staff had addressed all of the concerns listed by the appellants.

Osterberg pointed out that a majority of the concerns were related to the geotechnical or geoenvironmental issues regarding the geologic character of the site. He said staff acknowledged that there were unique characteristics about the geologic situation on the site and how complex the site was. He said it might require unique and perhaps some specialized construction techniques in order to construct the store and parking lot, etc. He said there were no elements of the appeal that gave the staff any strong concern that the site could not proceed ahead as approved by the BDR. He commented that without going into any detail on any one issue, staff felt that an adequate amount of materials had been submitted for the purpose of land use approval and additional submittals had also been made. He said the City Engineer or Building Official had the ability to require additional reports or analysis to address any issues or problems if they came up. He noted that staff found that any geotechnical issues that had been brought up by the appellant, were issues that could be addressed by the Site Development Code, etc. He said it would be reviewed like any other application.

Osterberg said the appellant had also addressed some additional matters in the Design Review appeal. He noted the appellant had stated that an adequate level of detail had not been provided on design review plans. He said staff felt that all of the required information, such as a grading plan and a utility plan, etc., had all been submitted by the applicant, and was presented and reviewed by the BDR. He said staff did not agree that there was an inadequate amount of information in that regard.

Osterberg noted that the appellant had concerns about noise issues and said staff saw noise impact in two basic areas. He said the first noise impacts would be to the surrounding properties immediately adjacent to

the Hagen's store. He commented that there was sufficient evidence in the record that described how the design included a variety of mitigation and buffering elements, such as the enclosed loading dock and service area. He said the other noise issues potentially come from delivery vehicles that would enter the site from Murray Blvd. and staff had addressed that and the noise study. He said the reports included a Murray Blvd. Site study, which was addressed off of Yearling Way (east of Murray Blvd.). He said the conclusion was that the impact of noise on Murray would be very minimal and would certainly meet the criteria for approval. He said that staff recommended that the BDR appeal be denied and the decision upheld.

Coun. Soth asked Spencer about strip development versus what was being considered. He asked if a strip development was more likely to be in a more commercial area similar to the Beaverton Hillsdale Highway, where there was individual ownership that built the buildings along side each other as contrasted to a major shopping area, which incorporated small businesses within its confines.

Spencer said the Beaverton Hillsdale Highway was an example he would use as multiple businesses and multiple accesses from an arterial, and causing some of the impacts associated with strip development and strip commercial. He mentioned multiple signs for individual, unrelated businesses. He said proposals that consolidated access, that had one use and one building, did not meet the definition of strip commercial. He stated this application was not strip commercial as defined by the Comprehensive Plan and the Code.

Coun. Soth said he assumed that the BDR decision, included not only the general outline of the imprint on the area, but also elevations, the colors of the buildings and the landscaping plan as well as the concerns of the Facilities Review Committee.

Osterberg said the plans included detailed elevation drawings, all sides of the building, the loading dock, the landscape berm, as well as all the site plans.

Mayor Drake opened the public hearing.

**APPLICANT:**

Peter Buck, partner in Buck & Gordon LLP, Seattle, Washington, said he had gone through every page of the notebooks and he would speak from the record. He said staff had presented them with a written report and had reviewed the appeals.

Buck said he would talk about the three appeals. He noted that with regard to the BDR issue, the NFL seemed to think the construction impacts would be extreme as it related to the geotechnical issue. He said, also on a geotechnical issue, there seemed to be some suggestion

(by the appellant) that this was such a difficult site it could not be built on. He agreed that it was a particularly difficult project and it was true that piling would be driven and that was not uncommon, and at the construction stage there would be further scrutiny and conditioning if necessary. He reiterated that there was a suggestion that they had made a mistake and the site was un-buildable. He commented that Council had read the record, and Hagen's's would not make a mistake on this site, they would not risk their credibility going down the drain if this could not be built on. He stated that the record suggested that no one had made a mistake, there were geotechnical issues but nothing that could not be addressed.

Buck pointed out that the appeal on the Rezone seemed to be three-pronged. He noted that the appellant talked about an incompatibility with residential uses, wetlands, and the use of the CS zone. He said regarding compatibility, there was nothing new on this, and they would be surprised to hear any new evidence that evening. He said a decision had been made in the Comprehensive Plan proceedings that they would put commercial zoning next to residential (and specifically at this site). He said the record showed that the majority of the neighbors felt it was compatible.

Buck said there was an argument under the Rezone about wetlands and he felt staff had addressed that adequately by pointing out that the wetland issues were on another property. He noted that the final issue was the use of CS zoning, and Jack Orchard could probably address that better. He pointed out that they would all probably recognize that CS was not the best, but it worked and it had been planned that way. He said it was the best way they had to move forward and staff had recommended it. He reiterated that (as Coun. Soth pointed out), this was not strip development, and there was no other property on Murray that would lead to strip development. He asked Council to stay on the course of their Planning Commission.

Buck referred to the issue of limitation on 24-hours and said there were two different issues, limitation on truck deliveries during the late night hours and another was a limitation on retail customers.

Buck addressed the issue of truck deliveries and said the PC recommended that no truck deliveries be allowed between 10:00 p.m. and 5:00 a.m. He noted that staff had disagreed with the PC and continued to support the application, and asked Council to overturn the PC decision. He said intuitively it would be logical to think that having truck deliveries at night would be a problem and perhaps the PC (intuitively, because there was no evidence in the record about this) felt there would be a problem on Murray Boulevard. He pointed out that the concern was focused on Murray because once trucks were on the site, there was a \$500,000 truck enclosure to take care of noise impacts. He said the PC focused on trucks coming down Murray Boulevard and there



was evidence in the record regarding that, which should cause Council to go along with what staff suggested and remove that condition.

Buck clarified that Eric Hansen from MFG, Inc. was a noise expert who conducted an environmental noise assessment and concluded that it would rarely even be perceptible in the 149<sup>th</sup> neighborhood and on Murray Boulevard. He pointed out that in the record (June 20, 2000 staff report, page 14) Murray was designated a truck route, so they were talking about trucks on a designated truck route, and at night on Murray there were trucks. He said on the May 31, 2000, transcript on page 9, the trucks were going to other stores and they were the same vendors that would be coming to Haggen's's. He stated that the evidence showed there were no impacts and what the restriction was saying was the trucks could go by and serve other stores, but not Haggen's's. He said they did not want it to come to appeals but it had and they wanted Council to take this seriously based on the evidence. He pointed out that Haggen's's did not take this casually, and they were willing to spend \$500,000 to enclose the truck loading dock.

Buck said the final issue had to do with how Haggen's's operated and how they got deliveries and provided customer service. He stated that Haggen's's had asked from the start to be allowed to operate the same way it did in 28 other communities and have customers be able to come to that store 24-hours a day, but the PC decided that was not permissible. He explained that the rationale that was troubling Haggen's's was that two other stores in the area were granted the right to be open 24-hours. He continued that since those stores were not using that right, there was an assumption that there must not be a demand. He said therefore, Haggen's's could not do it, because two other companies were not doing it and the PC decided it was not needed.

Buck reported that there were a significant number of people who shopped 24-hours a day and Haggen's's asked Council to overturn the PC decision and allow the customers to be serviced as they wanted. He said economics was the other thing in the record worth mentioning, and explained that it was not only about requesting to serve customers as in other locations, but being open those 24-hours would increase sales by 20%. He noted that this included the people who did not have to worry about whether or not the store was open when they needed to shop. He pointed out that dynamic made a huge difference from a business standpoint. He said it was a very expensive to do all that Haggen's's had done throughout this process, and they had hung in there because they were successful enough at serving their customers at other places. He said they were able to generate the revenue necessary to put together a good proposal and be able to do things like the truck loading dock. He asked Council to give Haggen's's the ability to operate in this community the same way they operated in every other community.

Buck encouraged people who wished to testify that evening to be brief or perhaps not talk at all if he had covered their points. He said they

appreciated the time staff, Council and the City Recorder had put in. He commented they also respected the people who were opposed and the time they had put in on it as well and noted it showed they really cared and were passionate about their cause.

Coun. Soth asked if Hansen, in doing the sound analysis, had observed trucks using Jake brakes to slow down when they came over the crest of the hill southbound on Murray.

Buck deferred to Eric Hansen and asked if any reports in the record addressed that issue.

Eric Hansen, Senior Environmental Scientist, MFG, Inc. Lynwood, Washington, said he would have to check his field notes which he did not have with him.

Buck asked Hansen if the issue was addressed in the record as a report.

Hansen said the information did not come in through a report.

Buck responded that there was no evidence in the record on the issue.

Coun. Soth noted they were not considering the 24-hour operation of any other Hagggen's's store even though that was company policy, but just the request for the Beaverton location.

Buck agreed that was absolutely correct.

Coun. Soth referred to the groundwater and environmental impacts, and noted that he had observed all of that area since everything south of that was a two-lane gravel road including the area under discussion. He noted that it had been used as a rock quarry and a disposal site for other construction projects. He said during all of those years, it was a concern of his of unwanted domestic waste being dumped there, but he never observed any.

Coun. Soth noted that in the appellants' concern Number 4, on page six, they referred to a potential hazard to domestic wells in the area, and according to staff information the only well was the City's well on Hanson Road. He asked in the Hagggen's's investigation of the site if they had run into any other domestic wells in the area, which were currently operating for domestic or irrigation use.

Buck said Scott Mills, Professional Engineer with GeoDesign, Inc., was the expert on it, and it was in the rezone area so it was not *on the record*, for this issue.

Coun. Soth read from the record regarding domestic wells.

Buck said they were not aware of any evidence that there were any wells, but Mills was present that evening and during rebuttal Mills would speak on the issue.

Coun. Ruby complimented the way Buck divided up the issues about the 24-hour operation between the truck deliveries and the retail operation. He said he understood very well from the materials and the presentation that the 24-hour operation was part of the Haggen's business model. He commented that it was not fair to look at other grocery stores, which have had the opportunity to operate 24-hours, but haven't because 24-hour operation was what Haggen's was committed to as part of its consumer response. He asked how important was the ability to deliver late night between 10:00 p.m. and 5:00 a.m. to support that business model, and could they live without it.

Buck said the truck delivery was not a do or die issue, and Coun. Ruby's question was well taken, because it did not relate to the customer service ethic of the company. He commented that from a practical standpoint though they did appeal it and the record showed there were often only three to five deliveries and many times those did not occur until 4:00 a.m. He explained that those few deliveries allowed the store to receive its fresh produce and restock the shelves easier during the night when there were fewer customers in the aisles. He pointed out that the store could then be in a position in the morning with fresh product and the shelves stocked and ready to go. He stated that if it was not considered important, they would not have appealed, but they would not fold up their tent and go away. He asked Council to let it happen since they were on a truck route and there was no evidence that it caused a problem. He said it was important for Council to be aware that when the studies were done, it blended in with the other truck traffic at that time of night.

Coun. Ruby said Buck had answered well and he appreciated his candor in saying that intuitively it would be just the idea of the late night truck deliveries. He noted that the point Buck made about the fact that it was a truck route and the trucks would continue to go by and serve other locations, was well taken. He said he was also sensitive to the fact that the other late night locations the trucks would be serving would not necessarily directly adjoin a residential area.

Coun. Soth asked for clarification about the route the delivery trucks would take from Murray through the loading dock area and exit. He said he understood they would come in off Murray via Maverick through Haggen's private street, around to the back of the building through the loading dock area, and then exit in a southerly direction (not to the loop road that came up from Beard) back up to Murray to exit the property.

Buck said that was correct.

Coun. Soth asked if the drivers would have definite instructions.

Buck said that they certainly would, and if there was a condition of no Jake brakes, they could do that also.

Coun. Doyle said if it was conditioned to have no Jake brakes that would be acceptable.

Buck said he was sure that it could be done and they would do it to get along in the neighborhood.

Mayor Drake thanked Buck for his comments.

Mayor Drake noted that next speakers would be a group consisting of Margaret Barrett, Jane Athanasakos, Steve Sanders, and Floyd Harrington. He reminded that they each had a seven minute time limit.

Mayor Drake asked for clarification from Mark Pilliod, City Attorney, about the seven-minute time limit per person and if up to two of those seven minutes would be *on the record*. He asked if they could have those two minutes now to speak on the 24-hour appeal or would they have to come back up to the testimony table on that appeal.

Pilliod said they could make a single appearance but no more than seven minutes total.

Coun. Brzezinski referred to the orange instruction sheet and asked for clarification about time limits on certain appeals.

Mayor Drake explained that parties who supported the Applicant's position on the appeal(s) would be afforded five minutes each. He clarified that as to APP 2000-0006 only, each speaker would be afforded an additional two minutes and testimony would be limited to that evidence found in the record. He explained that total testimony could not exceed seven minutes for all appeals.

Steve Sanders, Beaverton, said, regarding the group of speakers, all would be within the five-minute limit, with the exception of Floyd Harrington, who would be addressing all of the appeals.

Coun. Brzezinski remarked that she just wanted to clarify the time limits for all that wished to testify that evening.

Sanders said they would be speaking to the criterion of conforming to the Comprehensive Plan. He explained the order in which those currently at the testimony table would speak.

Margaret Barrett, Beaverton, said she was a Board Member of Sexton Mountain NAC and a Rezone Committee member. She read her testimony (in record, meeting exhibit No. 16). Her written testimony included statements about concerned neighbors spending time to see that developers were held accountable to build an excellent product that

would benefit and enhance the neighborhood and City. Her statement also requested that Haggen's be allowed to operate their business on a 24-hour basis, because it was an important issue for the neighborhood. Her testimony explained that the neighbors worked a broad spectrum of occupations with difficult work hours, and it was important for them to be able to shop for food and other necessities, as well as pharmacy items, at hours that were convenient for them. She said she felt it was a fairness issue that Haggen's be allowed to operate 24-hours like the other stores in the area.

Jane Athanasakos, Beaverton, stated that she was a member of the Sexton Mountain NAC Board and a Rezone Committee member and was speaking for the Rezone Committee and herself. She reported that she had been very involved all throughout the process and wanted to focus that evening on the need for the 24-hour operation of Haggen's. She said the PC had stated at the May 2000 hearings that they never shopped at 3:00 a.m. and therefore there was no need for the store to be open all night. She stated that she had never needed to shop at that time either, but there were people who did. She noted that at times her husband needed to pick up bakery items for early morning meetings, and had stated before the PC that there were no other 24-hour pharmacies in the immediate area. She noted that in the past she had needed medical items at late night hours that could be obtained in grocery stores, such as children's aspirin and baby formula. She said those items were not luxuries, but were the needs of the neighborhood that were not only hoped for, but considered realities, considering the neighborhoods demographics. She noted that Haggen's had 28 stores that worked well and that was the business plan that worked for them. She pointed out that patrons of Haggen's had come to rely on a level of service provided by the store. She said other stores might not be open to the public, but she believed they operated past their posted hours of operation in stocking and receiving product. She commented that Haggen's recognized long ago that their business plan might be new to the area and they had a mitigation plan far beyond what any other grocer had ever considered a need for. She said she hoped Council would hear all the individual and unique reasons that Haggen's was needed 24-hours a day and asked Council to consider those needs and everyone their decision would effect.

Steve Sanders, said he was a Rezone Committee and Sexton Mountain NAC member and represented the Rezone Committee and himself. He said they praised the PC for its time and consideration of all information submitted, including all public testimony provided. He stated that the PC's decision to not allow the 24-hour operation, but require the enclosed loading dock, was in stark contrast to the unanimous votes in favor of the five other applications presented by Haggen's. He pointed out the PC had said they did not know how they arrived at their decision regarding the 24-hour operation issue.

Sanders commented that significant neighborhood need existed for the store's 24-hour operation in addition to the availability of medicines, prescriptions, etc. He noted that during the deliberation some members of the PC did not seem to take the needs seriously. He reported that no one on the PC or the general public had refuted Haggen's analysis and findings regarding potential impacts due to 24-hour operation. He said some PC and opposition members voiced concerns regarding the 24-hour effect on the neighborhood, but no one cited any specific impacts. He pointed out that no evidence was presented that 24-hour operation was not viable and no one in the grocery industry had testified as to why 24-hour operation would not work at the proposed location. He stated it was the PC individual commissioner's personal opinions, rather than facts or evidence presented. He commented that the viability of 24-hour operation should be left to the public and the public already supported the operation of all other Haggen's stores on a 24-hour basis. He pointed out that one of the PC Commissioners indicated that 24-hour operation should not be allowed because Haggen's was bordered on all sides by residential development. He commented that Thriftway, which had a CUP to operate on a 24-hour basis was bordered on three sides by residential development and their loading dock was open and adjacent to multi-family housing with no berms and no mitigation.

Sanders noted that the PC decided to limit store operations from 6:00 a.m. to midnight and store deliveries from 5:00 a.m. to 10:00 p.m. He questioned why those points of time were so crucial and what evidence the PC used to arrive at those endpoints. He said the PC indicated that Haggen's should stand on their own merits without reference or comparison to competitive grocery stores in the area, but at the same time direct comparisons to competitive stores were made, in order to demonstrate (in the Commissioner's minds) why 24-hours was not viable. He said they (he and the Rezone Committee) were concerned that Haggen's was being held not just to a different standard to that of nearby competitors, but to an impossible standard, which no applicant could succeed in obtaining.

Sanders stated that, based on the evidence presented, the Rezone Committee supported the 24-hour operation and found no basis for preventing either store operations or deliveries to occur on a 24 by 7 basis. He said that with 24-hour operation it made sense to cover the loading facility as Haggen's had committed to do all along.

Floyd Harrington, Beaverton, stated that he was a board member on the Sexton Mountain NAC, but that evening he represented himself and the Rezone Committee. He read his testimony (in record as meeting exhibit No. 15). He noted that this was a great project and many neighbors felt that it should already have been approved and they should be shopping at the Haggen's store by now. His testimony specified that he had visited his neighbors and 86% of them supported the project. He commented about the higher density proposed residential developments in the area and how this was a good fit with the neighborhood. He pointed out that

the Haggen's store was the cornerstone of the project and the Haggen's developers had kept their word on all issues.

Harrington addressed the issues of soil and water contamination and specified that the geological investigation performed by Haggen's consultant did not indicate any contamination. He addressed noise issues relating to the 24-hour operation and the loading dock and pointed out that the sound emanating from the store site met Oregon nighttime noise guidelines for commercial next to residential. He commented about security and light pollution issues and felt they were both well mitigated. He concluded that the Rezone Committee saw no negative impacts of 24-hour operation and in fact, felt there would only be positive impacts in shopping convenience, better security and less crime as well as the importance of a 24-hour pharmacy. He urged Council to uphold the Planning Commissions approval of the CS zoning and the BDR's unanimous approval of the applications.

Coun. Soth asked if they had any of the residents from 149<sup>th</sup> on the Rezone committee.

Sanders said Jim Anderson was a resident living on 149<sup>th</sup> and had been a member and co-chair on the Rezone Committee for some time. He said Anderson was moving, but diligently supported the effort and was a man of extremely high integrity. He clarified that Anderson was moving, in a new phase of his life, to Eastern Oregon and it was not because of the Haggen's issues.

Mayor Drake invited the rest of those present that evening in favor (of the application) to speak. He noted that Peter Barrett, Beaverton, had filled out a card, but did not want to speak, but indicated he supported the 24-hour operation of the Haggen's store. He listed those people who had filled out testimony cards as Susan Franich, Beaverton (not present, but indicated support of the 24-hour operation), Bryce Adkins, Beaverton (indicated he had nothing to add, but supported the 24-hour operation), Patrice Kuchulis, Beaverton, (indicated she was in support of the 24-hour operation), Janet Furgerson, Beaverton (indicated support of the 24-hour operation), Georgia Randle, (asked to speak at the public hearing next week if necessary and was in support of the application).

Allison Burgett, Beaverton, said her testimony pertained to the appeal on the 24-hour operation. She noted she had testified on her unwavering support for the store and had been frustrated with her choices for grocery shopping (in the area). She commented that there were many issues of concern with the current grocery stores including poor quality, inadequate service, parking problems, crowding, and dangerous egress out of parking lots. She explained that none of those things had improved over the last four years and the crowding had worsened. She said she wanted change before she even heard about Haggen's. She mentioned she had worked with Haggen's for four years and had met several people who represented them and she trusted them implicitly. She stated that she

and her neighbors needed the store and her main point was the lack of choices with the current grocery stores in the area.

Burgett said she appreciated all the work the City had done and especially the PC, but did not understand their decision on the 24-hour operation. She remarked that she did not think it was up to anyone else to make the choice of when they could shop, and there were other valid reasons for 24-hour operation, which included the need for over-the-counter medicines and prescriptions. She said she did not hear any evidence or data for refusing the request for 24-hour operation and some of the Planning Commissioners that supported it requested that those opposed to it should reconsider their position. She concluded by restating her reasons for support and asked Council to grant Hagggen's request to be open 24 hours.

Pat Russell, Beaverton, said he would reserve his testimony for later, because he was in opposition.

Glen Ferguson, Beaverton, said he was in favor of the 24-hour operation.

RECESS:

Mayor Drake called for a recess at 8:18 p.m.

RECONVENED:

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

Mayor Drake called Jacqueline Stovall forward and noted that she could not talk about the 24-hour operation issue, since she had not spoken earlier on that issue.

Stovall said she had lived in Beaverton for five years and was happy to know there would be a Hagggen's. She said when she first came to Beaverton the population was 63,000, and explained that she came from San Jose, California, and was happy to leave there because the population was approaching a million. She commented that Beaverton's population had grown to 67,000 people and the area needed a new store (to accommodate everyone). She said she liked the prepared food items and spoke as a member of the Senior Citizen's group and they didn't like to go too far to do their shopping. She commented that the fact that she could shop at odd hours was a plus for her. She said she had a minor disability and the Hagggen's location would be ideal. She concluded by saying she thought there were other people in the community like her who also welcomed the opportunity to shop at a store of the caliber of Hagggen's. She said she wanted to vote "yes" for Hagggen's and would like to see them join the community.

Mark Pilliod, City Attorney, stated that Council was faced with the decision by the Oregon Court of Appeals on the Comprehensive Plan Amendment, which Council had previously approved. He explained that



after looking at the extensive record in this proceeding it did not include the method in which the Council disposed of the issues sent back by the Court of Appeals. He said, for the record, he wanted to include AB 00-307, *An Ordinance Amending Ordinance 4032 Remand Decision for Sexton Mountain Expedited Comprehensive Plan Amendment*, (Ordinance 4124, August 28, 2000), AB 00-299, *ECP 97002, ECP 97003 Remand of a Portion of the Oregon Court of Appeals Decision on the Appeal of the Sexton Mountain Expedited Comprehensive Plan Amendments (ECP's)* (August 14, 2000), and staff memorandum dated July 25, 2000, which was incorporated by reference in the Ordinance itself. He said in addition, Ordinance 4032, which together with the findings and facts to support the decision, was the underlying Comprehensive Plan Amendment.

#### APPELLANTS:

Jeff Kleinman, Portland, said he was a land use attorney representing the NFL. He commented that they respectfully disagreed with many of the things heard at the meeting that evening. He stated that it was something of an astonishment and wonder to him as a land use attorney that the City appeared to be proceeding to locate the proposed store at the particular site and with the proposed zoning designation. He noted that within the context of the site that Haggen's had selected that the store itself was jammed back almost into the back yards of the nearest six existing residences. He said that to him it was the planning equivalent of a "poke in the eye." He questioned the validity of the PC's prior actions i.e.: the rezone, based upon the reading of ORS 197.625 for the record with the underlying Plan Amendment still pending on appeal. He asked Council to bear in mind that ultimately the appeal was upheld. He declared that the PC acted without authority in taking the actions that it did and these matters were not properly before Council at that time. He commented that they were invalid under ORS 197.625 (2) and they might also be invalid under ORS 197.625 (1), because nothing in the record that showed the plan amendment itself had been submitted by the Department of Land Conservation and Development (DLCD). He noted that under ORS 197.625 (3)(b) the Statewide Planning Goals (Goal) applied independently now and they had identified goals 2, 5, and 6. He stated he would talk later in his presentation about an issue under Goal 6 that was important and justified a remand of the rezone to the PC and the development review approval to the BDR.

Kleinman said they were in complete agreement and the CS zone was not a permissible zone and read the description of the CS zone (in the Comprehensive Plan). He described Haggen's as a gigantic parking lot and a typical box with some nicer architectural details on an arterial not listed in the Comprehensive Plan for the CS district and questioned if it still wasn't a strip development. He asked Council to take a step back and look at the language in perspective. He pointed out that the entire CS district described was strip development and not alternate forms of development. He stated that if Haggen's were not a strip development

then it would not qualify for the CS district and referred Council to the language itself. He said if Haggen's was a strip development it didn't belong on Murray Blvd. and either way they were not entitled to prevail. He commented that they (Haggen's) had the burden of proof whether they were the appellants or not and it was not a CS use and if it was it would not be permitted on Murray.

Kleinman pointed out the intent (as previously identified by staff) of prohibition on extending this kind of development on streets like Murray and other arterials not identified in the CS district. He said staff disagreed with a statement that he made in his Notice of Appeal that there was a particular statement in the June 10, 2000, staff report on the Plan Amendment. He said the staff said in their staff report that evening that it was not there, but he pointed out that it was there on page 13. He said this language was adopted by the City Council in the Plan Amendment case when it incorporated this staff report by reference. He read from the report "... *the Comprehensive Plan intended that the CS district be limited to areas already developed for auto dependent purposes, not for corridors where the existing development pattern was residential. Staff was concerned that if the CS Zone was used at the Murray/Beard site a precedent might be established for expansion of CS zoning along Murray, particularly to the vacant land immediately to the north of the subject site. In addition the CS zone was intended to allow commercial uses that were not limited to local activity. Businesses within the CS zones typically drew from a sub regional market area and were often auto oriented commercial destinations as well as auto convenience uses. For these reasons staff concluded that the CS zone without mitigating conditions might be inappropriate at the Murray/Beard location.*" He said there were various conditions of approval attached to the application at that point, but none of them addressed the concerns that staff raised about the appropriateness of the CS zone.

Kleinman said this store would be a very big draw because it was not a neighborhood store, nor was it intended to be. He commented that one of the purposes of having the other arterials free of commercial uses was that they allowed some halfway decent flow of through traffic without the in and out of commercial traffic and Haggen's would impede that traffic flow. He said this was a Level of Service (LOS) argument and the idea of a CS development, something not limited to neighborhood use, on Murray, totally interfered with the purpose of the CS zone which, in part was to protect the flow on non-commercialized arterials.

Kleinman referred to Goal 6, and stated that they had identified it as a basis for their appeal. He said that specifically near the beginning of the appeal they stated among the criteria that Goals 2, 5 and 6 were issues, and left open the possibility that there were other issues that they had not addressed. He explained the background by saying there was a document in the record that was not in the record of the PC when they approved the rezone. He reported that it was not in the record for the CUP and it was added to the record at the time of the BDR hearing, but

not at a point where anybody could read it before acting. He said Goal 6 was to maintain and improve the quality of the air, water and land resources of the state. He said that this project, based on the evidence in the record, violated Goal 6. He presented the document (he had referred to earlier) called *Combined Phase 1 and 2, Environmental Site Assessment* by AGRA Earth and Environmental dated December 14, 1995, and submitted by Buck and Gordon for the applicant. He said the City received it, but not by any of the review bodies on April 19, 2000, with some other supplemental materials. He said it did not surface at the City until it was stamped and received on April 19, 2000.

Kleinman stated that the report revealed there was a substantial risk of methane, carbon monoxide, and carbon dioxide migration off of the site due to the proposed construction activities of Haggens. He said this document was at the BDR hearing on June 8, 2000, but no one looked at it. He reported that his clients asked for a copy and didn't get it until July 17, 2000, when it was made available to them, not only after the decisions had been made, but also the appeal periods had passed and the appeals had been filed. He said the scope of the Rezone appeal was broad enough in mentioning Goal 6 as a basis to include this particular basis based on a document in the record.

Kleinman said the legal point was that staff had said there were concerns about water issues, but those would be dealt with later. He reported that his point was that it was an impermissible deferral of a determination of compliance with the approval standards pertaining to these environmental items. He said there were some choices, but none of the choices were doable at that point and at that proceeding. He stated that there was no evidence in the record now to find compliance and he thought staff acknowledged that when they said it would be looked at later. He said there was not substantial evidence in the record for Council to make a finding that it would be feasible to achieve compliance through the satisfaction of conditions of approval later on when there was no public participation in the process. He said what was really in the record was a document which exposed a large amount of risk of off-site migration, in particular to the houses on 149<sup>th</sup>, and the record did not provide evidence to contradict or prove that risk. He stated that there were other criteria that had been mentioned in the appeal including Noise Pollution Policy 8.4.2 a.

Kleinman addressed a response to the NFL's appeal of the BDR decision, which was contained in the staff report on the BDR appeal. He pointed out that staff said the issues numbered one through nine in the appeal also would be dealt with in the same manner that he described earlier. He said the attitude was "don't worry we will take care of it, these are technical things that could be looked at." He said for the same reasons he had given earlier, that too would be a defective determination in this case if Council chose to adopt it.

Coun. Soth said he read the report that mentioned the existence of a small amount of methane gas. He said the report indicated there was organic material (such as logs, stumps or woody material as opposed to domestic waste) decomposing, and there was not a significant amount of methane gas.

Kleinman replied that there were other people in attendance that evening who would comment on that issue.

Mark Holady, Beaverton, said he was there on behalf of the NFL and he was vice chair of the Sexton Mountain NAC. He said he operated his law practice out of his house and had lived there for three years. He thanked the Mayor's staff particularly City Recorder Darleen Cogburn's staff for typing up transcripts and also Community Development Director Joe Grillo's staff who had also been helpful and cooperative over the past few years. He said he was submitting two letters that evening, one from himself and one from his wife Monica Holady (in record as meeting exhibits 7 and 6 respectively) who could not attend the meeting that evening.

Holady commented that the NFL was opposed to the application at hand, but was not opposed to the applicant. He explained that the NFL was there because a commercial use of the land was not appropriate, and a commercial use and the application process had violated the integrity of Beaverton's planning goals, which was why the NFL opposed the application. He expressed the NFL's views and said that particular parcel was to be part of a zone swap. He noted that if it was a true zone swap as the Council had approved in its Comprehensive Plan Amendment and as the applicant had originally envisioned, the area directly abutting 149<sup>th</sup> would be a neighborhood services zone (NS). He said there were various reasons why the applicant had not proceeded with a neighborhood services zone stance and to get the zone changed would require a variance, because of the proximity of other NS zones. He pointed out that the applicant was the party who chose to site its property there and also chose to follow the Development Code as laid down by the City's forefathers. He said the NFL opposed CS zoning, because while Hagggen's was a great store, they could move on and leave the area and once the Council granted the site with 24-hour operation (for example) that approval criteria would remain regardless of what (kind of development) went in there. He said there would be a fight for 24-hour operation and something like the adult bookstore Fantasy Video could come into the neighborhood.

Holady referred to his written testimony and pointed out land use issues contained in the Comprehensive Plan criteria, including other uses with residential areas, and residential policies. He said they had a viable neighborhood surrounded on four sides by residential housing. He noted that the Rezone Committee brought up Beard Court in that there was no consternation per se, because it was a residential use of the land. He said that if the applicant was proposing a residential use along the entire

strip then he doubted anyone would be there four hearings and four years later. He declared that if the viability of the neighborhood was to be preserved then the neighborhood must be maintained. He remarked that there were no other sites in the City where there was a neighborhood surrounding a commercial development directly abutting single family housing and operating 24-hours per day.

Holady talked about commercial facilities being allocated in a reasonable amount and in a planned relationship to the people they would serve. He said Hagggen's planned to insert a 24-hour, 61,000 square foot store in the middle of a neighborhood using existing vegetation to buffer it. He commented that if this was truly a zone swap and they were truly serving the neighborhood as they stated they had, then he would argue that 24-hour operation would not be necessary. He said there had been previous testimony that people would like to shop at 24-hour stores, but there were convenience stores nearby in the area. He said many stores in the neighborhood were allowed to operate 24-hours and they had chosen not to, and said he believed that if there were a viable need the market would indicate that.

Holady said the applicant had talked about Eric Hansen's noise study. He reported that the NFL contacted Albert Duble, Acoustical Engineer for his own firm Arbert G. Duble, P.E. Inc., to perform a noise study (in record) for submission to the PC. He said Duble stated in his report that the applicant did not take into account the diesel truck and refrigeration units noise spiking above the ambient noise, especially as they accelerated outside the proposed loading dock enclosure. He urged Council to compare and contrast the reports that Hansen had followed with those that Duble had filed. He stated that Hansen's report did not disclose the microphone sites, distances, etc., and was not up to the standards that Duble set forth as what would be appropriate for a sound study.

Holady referred to the previous testimony of Nancy Bruns-Hall (video tape and oral testimony) who had talked about the effect on the neighborhood in the Hollywood Fred Meyer site. He pointed out that one could hear the sweepers, trucks and the nighttime activities on the videotape. He also referred to the testimony of Maura Malone, who had a PHD. in Education, and her testimony touched upon the effect of sleep deprivation on children.

Holady suggested Council deny the applicant's applications. He said Planning Commissioner Maks had said that if people were going to shop in the early morning they would already shop at the stores in the area. He noted that Chairman Maks also said that commercial activity should be directed into activities where it could develop harmoniously with the rest of the community. He noted that Planning Commissioner Heckman said that Metro's number one goal was to reduce parking and if NS was such a better zone than CS shouldn't they be adhering to some of those goals from Metro. He also said they should be adhering to parking

standards and the 24-hour operation was not necessary. He said as far as obtaining pharmacy items at night the hospital pharmacy was nearby and diapers were available at convenience stores.

Holady said as far as life issues were concerned, one did not have commercial development in the middle of a neighborhood. He said if the development were to go in as planned, from the house immediately to the north of his own home on 149<sup>th</sup>, the loading dock would be 51 feet from his back yard. He compared other neighborhood locations that would be close to the loading dock and said that there was no buffering planned except for a berm. He noted that Hansen's noise study had assured that the berm would provide noise control but even if the entire approach, loading dock and ramp would be completely enclosed the sound would affect the neighborhood. He said it would not matter if it was operating 24-hours or not, if deliveries were allowed in the middle of the night, residences would be disturbed along 149<sup>th</sup> and into the interior of the neighborhood.

Holady noted that Buck had said that further supervision would be possible because of the process of building when the permits were being applied for. He questioned who would provide that supervision and asked if it would be the City, because they had not been provided to date with the proper information, or was it the deliberative bodies that had not been provided with all of the information, or was it concerned citizens. He stated that it was one thing to ask citizens to come on a nightly basis to City Hall to attend the hearings, and it was quite another thing to ask that they interrupt their work day to come down to make sure that the applicant was following all the building codes.

Holady noted that there was an uptake in traffic that had been talked about and 20% of the traffic to the store would come from 155<sup>th</sup> avenue. He said he was concerned that two things were lacking in regards to that uptake in traffic and those were the impact on the residences of 155<sup>th</sup> and the impact of the noise, and he believed that information was not included in the record. He concluded that for the reasons stated there was insufficient evidence in the record to support the applicant's need to go forward and he urged Council to deny the applicant's appeals and grant the NFL's appeals.

Coun. Soth addressed Holady's questioning about the inspections and who would watch the process. He reported that under the Site Development Code, which took a separate permit, the City inspectors would be out there to be sure that whatever was done there, especially in the area of excavation, erosion control, drainage, etc., was done correctly and within State Law.

Coun. Soth referred to the noise analysis issues, and said the situation was that there were two sound engineers who were equally qualified and the one advising the applicant came up with a set of findings and figures which appeared to reinforce what had already been indicated. He noted

that when he read Duble's analysis it did not disagree strongly with Hanson's findings and in his second letter there were many "might be" rather than direct addressing of the points that Hansen had addressed.

Coun. Soth clarified that the original Hollywood Fred Meyer store was built around a single family resident, because they were the only property owners who did not sell to Fred Meyer at the time it was built. He said at that time the whole Hollywood District was an upscale neighborhood as exemplified by the success of the old Hollywood Theater and restaurants that still operated there. He noted that the entire neighborhood had deteriorated, so it was not a question of whether or not the problems were directly attributable to that store, but more in the change in the demographics, which had occurred in that area over the last 40 to 50 years.

Holady commented that Bruns-Hall had limited her testimony solely to the noise impacts of the present operation of the store. He said Dubel was a licensed Professional Engineer and he was not sure if Hansen was.

Dr. Maura Malone, Beaverton, said she had spent her entire summer reviewing exhibit 6. She said she thought it had been given to the BDR, but she wasn't sure and she knew it was not given to the PC, and she showed a different exhibit 6 (expanded). She said that when she came across the document she realized that there was a component to the expanded exhibit 6 that would make it likely that the PC could reconsider their designation of the CS zone. She noted that she read the entire report and made several calls to the Department of Environmental Quality (DEQ), a geologist, a geotechnical person and PC Chairman Dan Maks. She noted that she had asked Maks a question that concerned the process. She asked Maks if given the new document (received by the City on April 19, 2000, but not given to Maks or the PC) did it constitute a remand. She reported that that Maks had replied that the process had been flawed and he recommended that Malone ask for it to be remanded back to the PC. She related that Maks had stated that Council should remand because the process had been flawed, however it was definitely a procedural error and it needed to be taken to the Land use Board of Appeals (LUBA). She recommended strongly that Council remand it back to the PC.

Malone referred to Coun. Soth's statement about root and bark particles as being organics. She said that if he looked in exhibit 6 and read about the borings done in 1995, he would find that they distinguished between organics and rootlets.

Coun. Soth commented that if anyone tried to tell him that a tree was not organic, then he was sorry, but that was not the dictionary definition.

Malone replied that she thought what they were saying was that the organics were comprised of different things. She said in further investigation of the boring log, one would find diesel fuel, gasoline, and

other substances logged in those borings. She said the people writing the boring logs wanted to make a specific distinction between rootlets and other things that were called organic.

Mayor Drake said he considered Commissioner Maki a dear friend, but Maki was not an attorney and his opinion off the record like this was of concern. He clarified that Malone was expressing a casual conversation.

Malone said it was not a casual conversation and she was very concerned. She said if he (Mayor Drake) read the items in exhibit 6, then he would know those things were sort of threatening.

Mayor Drake said it was still considered a casual conversation without the other party present and with all due respect Maki was an outstanding chairman, but he was not an attorney and that was what the staff and City attorney were employed for. He said he was confident that there would be some response from the applicant. He said he was concerned about Malone paraphrasing a conversation with Maki without his attendance at the meeting that evening to expand or clarify the statements.

Malone said Maki had asked her to call Planning Commissioner Johansen to make sure that exhibit 6 was indeed a document that Johansen did not get. She said she did not think that was within the realm of casual conversation and it made it very much apparent that there were two exhibits 6.

Pat Moyle, Beaverton, read Diedre Bussard's, Beaverton, testimony (in record meeting exhibit No. 3). She said Bussard could not be at the meeting that evening. Bussard's main points from her written testimony were her concerns about the 24-hour operation and the crime associated with it, including shoplifting and drug dealing in the parking lots. She stated that those crimes were not suitable anywhere, but especially in a neighborhood. Her statement asked Council to uphold the denial of the 24-hour operation of the Haggen's store, otherwise they would be knowingly inviting crime into their neighborhood and violating their trust as elected officials. Attached to her testimony were several statistical reports (in record as meeting exhibit No. 3) documenting crimes at various grocery stores in Beaverton over the last three years.

Coun. Soth asked if Bussard had checked with the Police Department and if the facts were in the reports.

Boyle said she did not know.

Mayor Drake informed Trevor Smith that he was not permitted to make a comment on the 24-hour issue, but could comment on the rezone issue.

Trevor Smith, Beaverton, said his property abutted the north parcel of the quarry. He commented that he was on the faculty of Portland State University (PSU) as a professor in the Civil Engineering Department and



passed out copies of a letter from Patrick Kelly (in record as meeting exhibit No. 5). He said Kelly was a Geotechnical Consulting Engineer retained by the NFL to provide additional review on the geotechnical environmental aspects that were previously commented on. He read from the letter and said the introduction discussed Kelly's scope, and the reports made available to him for his review. He stated that the NFL felt that Kelly's review was important and the site was very unique and technically challenging as a brown field site. He noted that the second page summarized the background information and he emphasized the comments and recommendations listed on the bottom of page two. He pointed out a paragraph entitled "Monitoring for Construction Damage" and said it included information about vibrations from pile driving, excavating equipment, traffic and blasting and how they had been documented to cause settlement as well as serious cosmetic damage to structures in the vicinity of construction areas. He said that it was Kelly's opinion that a monitoring program of off site property was appropriate and prudent for this project and the program should be designed by the project's geotechnical engineer's record, reviewed and approved by the City and the NFL and implemented by the project geotechnical engineer. He noted that Kelly recommended that the back filling of trenches with granular materials would provide underground pathways that would have higher permeability for aqueous and gaseous substances than the existing soils. He said the report recommend that because of the planned site improvements there was a possibility of increased potential for contaminates to travel off the site. He noted that the report stated the need for evaluation by the geotechnical engineer.

Smith said he wanted to add his own thoughts and recommendations and commented that the fact that he had a background of seventeen years in geotechnical problems qualified him to add three additional recommendations. He recommended adopting drill shafts to mitigate the construction damage. He reiterated that this was a very technically challenging site and he did not believe the City had geotechnical and geoenvironmental staff specialists to adequately analyze it. He recommended those issues be submitted for external review. He said in his capacity on staff at PSU he had two candidates who would like to complete a seismic study of the site, and he recommended the completion of the project be delayed until a seismic study could be accomplished.

Mayor Drake asked if Smith was suggesting a job for two of his students.

Smith said he knew graduate students that would be qualified to do the seismic analysis study of the site. He stated that it would be an excellent opportunity to expose them to state-of-the-art techniques and also provide the City with additional analysis.

Mayor Drake asked if Smith was aware that there was money allocated for outside consultation for the expertise that staff did not have.

Charles Cook, Beaverton, said his residence adjoined the north side of the quarry and the park. He read a letter from NW Geological Services (in record). He reviewed the main points of the letter as the potential for ground water contamination and migration and the potential for migration of methane gas trapped under the fill. He summarized that there should be third party reviews reporting to the City and paid for by the Hagen's group.

Susan Cook, Beaverton, said she was opposed to the 24-hour operation. She commented that refrigeration trucks whose motors would turn off and on every 15 minutes would make some deliveries and would be very noisy. She suggested that limited delivery times would help with noise issues. She clarified that she was not opposed to development of the site, but she wanted any development to be a good one. She showed a copy of a newspaper article and the conditions of application for a previously proposed development in the area (both in the record). She said one condition from that development was that the City was required to hire a specialist. She commented that the DEQ had concerns about the Hagen's site after the start of development, as did the NFL. She said the site was not supervised when it was filled and no one knew what might be down there. She referred to Exhibit 6 (discussed earlier), and noted that she had a right to public records and needed to get all public records. She recounted that in 1988 they (another developer) tried to build a mobile home park on the site, but development was stopped because of methane gas problems. She urged Council to look at the history of the area and said that with the mobile home park development there had also been water issues. She thought there was the possibility of City liability involved in the development and concluded by saying that she appreciated the efforts of City staff.

Coun. Stanton asked if she was opposed to 24-hour operation or truck noise issues or both.

Cook said she was concerned with both, and she thought the store being open 24-hours would draw people from out of the area.

Coun. Brzezinski asked what her concerns were.

Cook said that there were concerns about water issues for a past proposed mobile home park development and consequently those issues carried forward to the current development proposal. She said if the whole surface of the site was covered the methane gas would have to come out. She stated that she was concerned that it was the best site for a store and asked why they couldn't put the store out on the street away from the neighborhoods. She pointed out that the site was on an old gravel pit and noted that Scott Mills said cost was an issue.

Coun. Brzezinski described Cook's position as being opposed, but was willing to be proven wrong.

Coun. Soth commented that the mobile home park concern was not about methane, but radon gas.

There was discussion about and awareness of radon gas being of concern at the time of that earlierproposed development.

Elise Smith, Beaverton, said she had concerns with the last page of a report entitled "Addendum Geotechnical Investigation" by AGRA Earth & Environmental and dated November 1997 (in record) and said the methane gas was a physical hazard. She pointed out that methane concentrations were found to be high and if it migrated horizontally it would go into the surrounding residential neighborhoods. She read from the report and said it added liability to the City. She pointed out that there was also carbon monoxide and dioxide and elevated levels of methane gas. She referred to exhibit 6, and said she did not have it even though it was part of the record. She said it was a 20-acre site and there were four borings that had environmental issues, and the fourth boring had problems, and they did not do environmental tests that she was aware of. She presented a handout to Council (meeting exhibit No. 4). She referred to the handout and noted that there were contaminates when they built the reservoir. She asked for more tests and the site to be cleaned up, lined and filled.

Coun. Soth pointed out that the fuel tanks for the quarry had been removed and the site cleaned up when they constructed the reservoir.

Pat Russell, read from his letter (meeting exhibit No. 10 in the record), and said he would like them to move the building closer to the street. He emphasized that those issues did not deal with a particular corporation, and he was concerned about quality development and design review. He said this was a proposed CS zone and all the different things that could occur on the property in the future. He noted that those things could happen and the issues of outside activity beyond the enclosure were important. He asked Council to think about the kinds of uses that were not in the CS zone, such as Target, Home Depot, etc., but looked much the same. He said the things that went on in conjunction with this type of activity were noisy and would impact property values. He noted that he testified at BDR and his testimony could be found in Volume 4 of the record.

Jack Franklin, Beaverton, said he was speaking for himself and submitted written testimony, which he read (in the record). He related that his main concerns were with water issues on the site including pollutants draining into the creek and eventually to the Tualatin River as well as runoff from pavement and roof areas carrying pollutants to nearby streams and wetlands. He was also concerned about the fill of the site and how soft and unstable that made the site as well as issues with methane gas. He said the best use of the property would be as a park.

Coun. Stanton asked him who would buy the property and donate it to the Park District.

Franklin said possibly the Park District.

Marv Doty, Beaverton, said his daughter lived on 149<sup>th</sup> and felt he had a vested interest in the property. He said he had received a staff letter, which he had not previously seen, dated July 5, 2000, and sent to him through the NFL. He commented that he had a BS in Mechanical Engineering and a California Construction and Engineering License. He said his main concern was the storm water collection facility as it related to the Sexton Mountain project. He said the storm water collection facilities for Haggen's were located on the site and his concerns related to City staff reporting there was not a creek on the Sexton Mountain Village PUD. He declared that was not true, because maps showed the headwaters of Hiteon Creek were located on the southeast portion of the site. He said he was also concerned that the applicant had presented a storm water collection system for the entire site, and (in his opinion) there was no plan to remove the total contaminates. He said he accepted the storm water flow estimates by AEI, and explained they were using three detention ponds planned on the site. He said the flow of the storm water would be discharged from the three ponds at a controlled and appropriate rate. He reported that the storm water drainage system was proposed to remove 65% of the phosphorous as per United Sewerage Agency (USA) standards. He noted that the total project on the 17.6 acres changed the present pervious area by 61.52%.

Doty commented that certainly a dramatic event could take place and he believed a proper multiple cartridge filtering system needed to be incorporated after containment ponds Number Two and Three and prior to discharge into the 24 and 36 inch diameter storm sewer lines leading to the south wetlands area. He said the contaminates from hundreds of cars and trucks traveling on roads and in the parking lot area leaking oil and antifreeze, gas, etc. would be a major hazard to cope with and containment ponds would not do the job to protect the water quality downstream. He commented that the applicant's water quality plan should be reviewed and he recommended a storm water system with replaceable multi-cartridge filtering capacity that could remove all the contaminants. He said he testified to the BDR and was concerned about moving the store and also about the noise issues. He stated that the enclosure of the loading dock area should be there on both the entry and the exit areas of the building.

Bob Beard, Beaverton, said he had a BS in Electrical Engineering and four years experience in the construction industry. He stated that he was concerned about the missing report that was not available to the City staff as well as the public. He said he would not paraphrase Dan Maks comments, but felt that Maks believed in the process as they went through the applications. He commented that it was very hard fought, but had a remained civil effort and the missing document (referring to Exhibit

6) angered him and he thought it angered Council as well, because of the problems it would cause in the process.

Beard distributed a matrix (in record as meeting exhibit No. 2) that referred to the geotechnical aspects of the site and compared it with the GeoDesign report recommendation that was included in the applicant's application. He said major issues were raised about the kind of structure on the site and those issues were blasting, rock crushing, site preparation and methane gas and others. He noted that others had spoken about some of those issues, and referred to his handout on page two and discussed some of the problems that had arisen, because of the missing Exhibit 6. He discussed his handout and some of its contrasts between the AGRA report with the GeoDesign Report. He said he was concerned with the contrast in reports because some procedures on a site like the one in question could force the methane gas into the ground or horizontally to adjacent structures. He related that his matrix detailed nine significant areas of inconsistencies between the original AGRA reports of 1995 and 1997 and as well as the later GeoDesign report that was included in the final application. He explained that methane gas was not unlike compost, and said that if you added water to compost and turned it over, the gas would be released into the air, but that would not happen here if a parking lot or a structure was built over what one could think of as a very large compost heap.

Beard pointed out that there was different kinds of material in the soil including wood debris, which was a kind of organic and separately other organics that were caught out distinctly from the wood debris, which he thought that was very significant. He said another area he wanted to talk about did not have to do with the inconsistencies between the AGRA reports and the GeoDesign report, but specifically to the internal inconsistencies of the GeoDesign report itself. He noted that at some of the earlier hearings, Mills had stated that there were over one hundred explorations that were done on the site. He stated that if one actually counted the explorations in the report there were only 83 listed. He said in looking at some of the kinds of things that were found in the fill pits, the discrepancies of 17 explorations were quite significant. He said it was important that they dig into this further and assume the site was not buildable before they proceeded.

Beard reported that DEQ determined in July 2000 that based in the materials that they received that this site would very likely become an Environmental Clean-up Site Investigation site once the project was active and noted that the DEQ could not investigate until a project actually started. He concluded by saying that 10 people had moved out of the area that year, and that did not count previous years in terms of people moving out because of the proposed development. He noted there were substantial effects already because of the proposed development.

RECESS: Mayor Drake called for a brief recess at 10:38 p.m.

RECONVENED:

The regular meeting was reconvened at 10:45 p.m.

Mayor Drake noted that there had been a lot of new information presented that evening and they would continue the public hearings to the next week and open it for any additional testimony, but not for the same people. He said the next meeting would include the same limitations as this meeting, and he explained that the next meeting would include rebuttal and sur rebuttal to respond to anything new that was presented and then the applicant would be able to come back with the last word. He said he would ask for any questions and or close the public hearings and then Council would then come back on October 23, 2000 with a final decision. He explained that Coun. Soth would not be there for the meeting of October 9, 2000, but he would listen to a copy of the audio tape (of the meeting) and he would be part of the decision on October 23, 2000. He pointed out that if for some reason someone was ill on October 23, 2000 he would be available to break a tie in votes.

Coun. Soth MOVED, SECONDED by Coun. Doyle that the Public Hearings on the AB 00-252, 00-254, and 00-255 be continued to October 9, 2000 at 6:30 p.m. (AB 00-253 was excluded since that appeal had been withdrawn.)

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

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 10:50 p.m.

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Darleen Cogburn, City Recorder

APPROVAL:

Approved this 18<sup>th</sup> day of December, 2000

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Rob Drake, Mayor