

REGULAR MEETING
October 9, 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 9, 2000 at 6:39 p.m.

ROLL CALL:

Present were Mayor Drake, Couns. Dennis Doyle, Fred Ruby, and Cathy Stanton. Couns. Forrest Soth and Evelyn Brzezinski were excused. Also present were City Attorney Mark Pilliod, Finance Director Patrick O'Claire, Community Development Director Joe Grillo, Engineering Director Tom Ramisch, Police Captain Wes Ervin, Development Services Manager Irish Bunnell, Senior Planner John Osterberg, Project Engineer Jim Duggan, Deputy City Recorder Sue Nelson, and City Recorder Darleen Cogburn.

Mayor Drake explained that Coun. Soth was recuperating from total knee replacement surgery and Coun. Brzezinski was ill with the flu. He noted that each of them would listen to tapes of the meeting that evening and be prepared to make a decision on October 23, 2000.

CITIZEN COMMUNICATION:

There was no one present who wished to testify.

COUNCIL ITEMS:

Coun. Stanton announced that on Tuesday, October 10, 2000, there would be a Voters' Forum in the Council Chambers. She noted that the major candidates would be there to speak and the bond measures would also be discussed.

STAFF ITEMS:

There were none.

PROCLAMATIONS:

Breast Cancer Awareness Month, and
October 20, 2000 as Mammography Day

CONSENT AGENDA:

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

Minutes of the regular meetings of August 7, August 14, and August 28, 2000

00-336 Resolution Approving Transfer of Jurisdiction over a Portion of SW Farmington Road from the City of Beaverton to Washington County

00-337 Liquor License – Change of Location: Rite Aid #5322

00-338 Traffic Control Board Issues 443 - 448

00-339 Authorize Amendment No. 1 to the April 25, 2000 Intergovernmental Agreement with Washington County for Drainage Study and System Improvements in the Area of SW Millikan Way Between SW Hocken Street and SW Cedar Hills Boulevard

00-343 Boards and Commissions Appointment

Contract Review Board:

00-340 Contract Award – Right-of-Way Acquisition and Appraisal Services for the Bikeway Program Improvements Project

00-341 Contract Award – Geotechnical Engineering Services for the Bikeway Program Improvements Project

Coun. Stanton abstained from voting on the minutes.

Question called on the motion. Couns. Doyle, Ruby and Stanton voting AYE, motion CARRIED unanimously. (3:0) (Coun. Stanton abstained from voting on the minutes.)

OTHER BUSINESS:

Coun. Doyle MOVED, SECONDED by Coun. Stanton, to adopt the resolution (in the record) presented by Mayor Drake, opposing Ballot Measure 9.

The vote was taken. Couns. Doyle, Stanton and Ruby voting AYE, the motion CARRIED unanimously. (3:0)

PUBLIC HEARINGS:

- 00-252 APP 2000-0006; Appeal of Conditions of the Approval of CUP 2000-0002; Haggen Store Extended Hours of Operation, by the Planning Commission (continued from 10/2/00)
- 00-254 APP 2000-0008; Appeal of the Approval of RZ 2000-0002; Haggen Rezone, by the Planning Commission (continued from 10/2/2/00)
- 00-255 APP 2000-0010; Appeal of the Approval of BDR 2000-0004; Haggen Store at Sexton Mountain Village, by the Board of Design Review (continued from 10/2/00)

Mayor Drake reopened the public hearings.

Mayor Drake asked Joe Grillo to clarify Exhibit 6 from the Council Meeting of October 2, 2000.

Joe Grillo, Community Development Director, said there were a number of concerns raised at the last Council meeting as to why certain materials were not available before the Planning Commission (PC) and why certain materials were presented at the last minute to the Board of Design Review (BDR). He said staff had reviewed the material, but had received so much that they suffered from a blizzard of material submittal. He said that within that the PC received (he referred to Appeal Exhibit H5) three particular items that were received at the meeting of April 28, 2000 and one of those was the AGRA Geotechnical Investigation and Report dated November 1995. He said on April 19, 2000, they received the other AGRA report (listed under appeal exhibit G6) which was a Combined Phase One and Phase Two Environmental Site Assessments by AGRA dated December 1995. He commented that to the best of staff's ability to recreate the situation, the December exhibit came in approximately at the same time as material was going out to the PC. He noted that it was not listed as a specific item going to the PC in terms of the application materials presented. He said as far as staff could recall it was there as part of the on-going staff and Facilities Review that was in progress. He said staff remembered that they were looking at all the applications at one time and no party attempted to introduce the item, (Exhibit G6, item No. 8) at the PC, not the staff, applicant, or anyone else. He pointed out that Exhibit Item G6 was submitted to the BDR as part of their Design Review approximately within one week and if someone had come in that week and asked whether there was anything new, the staff probably indicated there was nothing new. He commented that was where staff was in error, because they did not recognize that there was a difference between the November 1995 and the December 1995 documents. He apologized to anyone that had come in and asked for that document, but did not get it. He said it was submitted to the BDR as part of their

supplemental materials. He established that they made a mistake as it related to the BDR in not being able to clearly identify that there was a different AGRA report going to the BDR. He affirmed that both items were before Council that evening as part of the appeal packet. He said the other item that was submitted at the Council meeting entitled AGRA Addendum Geotechnical Investigation and Report dated November 1997, was not in the file and had not been submitted by anyone to the PC or the BDR. He said he was not sure that it was currently part of the record, but that did not mean it could not be part of the record with Council's review.

Mayor Drake asked Mark Pilliod's opinion on whether the AGRA Addendum Geotechnical Investigation dated November 1997, was part of the record.

Mark Pilliod, City Attorney said he had not reviewed the tapes from last week, but he recalled that while an exhibit 6 was referred to, and referred to further as a report prepared by a consultant by the name of AGRA, there appeared to have been two other reports as well. He said that typically, to become part of the record, a person had to identify an item and ask that it be entered into the record. He said that by merely referring to it by a letter/number designation (perhaps given in another forum) did not help identify the item at all. He said he believed it would be appropriate in as much as it was the material that was prepared at the request of the applicant and it was his understanding that the applicant was prepared to submit and offer that document for the record. He said it then became a moot point. He confirmed that at that point it was not part of the record.

Mayor Drake said that further testimony from anyone new would be taken at that time.

In support of applications:

Susan Cadell, Beaverton, thanked Council for allowing her to speak, and said she appreciated the lengths the City had gone to, to look into the big picture of the neighborhood. She said she was there representing the Beaverton Chamber of Commerce Board of Directors and was testifying on Haggen's behalf. She read her letter into the record (meeting exhibit No. 6). Her main points included total support of the Haggen's store based on Haggen's established caliber of business and their continued willingness to work with the neighborhood by building an enclosed loading dock. She urged Council to allow 24-hour operation and she spoke of Metro's increased density requirements and how rapidly the area was changing.

Tom Gilroy, Beaverton, said he represented the Rezone Committee and himself. He read his letter into the record (meeting exhibit No. 1). His main point was that the Rezone committee fully supported the Haggen's appeal and the request for 24-hour operation.

In Opposition:

Monica Holady, Beaverton, offered into the record the November 1997 AGRA report, which was handed to the City Recorder at the last meeting. She read her testimony (meeting exhibit No. 7). Her main concern was the approach and departure lanes leading to the loading dock and the noise of low-speed truck travel. She was also concerned about noise issues and stacking of trucks (trucks waiting to deliver). She requested Council to uphold the PC decision regarding limited hours of operation and deliveries. She further requested Council to grant the NFL appeal in regards to CS zoning and Design Review.

Coun. Stanton asked her if there were assurances that there would be no trucks idling, would that change her mind.

Holady said that would give her some relief, but there would still be more noise from incoming and outgoing trucks.

Mayor Drake asked her how long she had lived there.

Holady replied that she had lived there three and one half years.

REBUTTAL:

Peter Buck, Buck and Gordon, Seattle, Washington, said he was there on behalf of the applicant and with him was Scott Mills from GeoDesign. He noted that methane gas was a topic of interest and Mills had prepared a letter on that issue and was available for questions.

Buck said he heard the seemingly surprise of the report that Jeff Kleinman reported that the NFL did not get until July 15, 2000. He said Elise Smith quoted from the report (page 23) and much seemed to be made of the report not being available. He said that technically, even though the NFL sited from it extensively, it might not be an exhibit as part of the rezone proceedings. He noted that it was an exhibit before the BDR, not the PC and he submitted a copy of the document dated December 1995, (Combined Phase One and Two Environmental Assessment) in to the record. He said it appeared to him that it seemed to be a sense that someone was sandbagging the PC or the BDR or NFL, by saying if the report had been found by the PC it would have been very significant and would have shown there were significant methane problems that could not be mitigated. He explained that to make that point Smith quoted from page 23, (of the report) and quoted some sentences that said there was methane on the site. He noted that this was the type of study Haggens did on a regular basis. He commented that Smith did not quote all of what it said and what she did not quote was very significant and stood for the exact opposite proposition she was trying to make. He handed out copies of page 23 (from which Smith quoted and submitted the page for the record. He pointed out that it highlighted what Smith did not read to Council. He established that what

she did not read was that the methane issue was a manageable problem and one simply needed to manage it. He suggested that this told it all, that if one only read part of a report it could cause fear, but in true fairness when one read the rest of the report it suggested it was manageable. He said the methane issue was fully discussed before the PC and the BDR and neither commission was sandbagged. He said Smith testified before the PC and her testimony could be found in the transcript of the PC on May 23, 2000. He called attention to the fact that Maura Malone also testified before the PC on May 23, 2000 and Scott Mills testified on May 31, 2000 on the same issue. He maintained the PC knew about the issue and noted that the BDR met on June 8, 2000, and that transcript showed that Elise Smith testified on the issue again, and Maura Malone and Scott Mills all talked about the methane gas issue. He said there was no sandbagging and no failure of any commission or directive body to be aware of the issue. He reiterated it was simply an issue like many others that was manageable and could be managed.

Buck noted that the Facilities Review Committee knew it could be managed and they suggested a condition, which was imposed by the BDR, that to deal with methane gas during the site development permits, gas issues would be studied and if there were any problems they would be dealt with. He said that was part of the recommendation before Council. He quoted condition B1 regarding the impacts of organic fill material and methane gas and how the applicant in coordination with the Geotechnical Engineer should submit reports prior to issuance of a site development permit. He commented that there was no failure by anyone to have the opportunity to discuss it. He noted that all of this had been put in Mills letter dated October 9, 2000 (in record) and also addressed in two letters from two experts. He handed out Mills's letter to Council, Kleinman and members of the audience.

Buck reviewed the letter from Mills (in the record), and said there was ongoing monitoring, and they would continue to monitor, and if it were indicated, they would take care of the problem. He said that Mills reported that this was not a difficult site to deal with in terms of methane gas. He confirmed that the methane gas issue was a manageable problem and that was exactly what the report, that Smith only partially quoted to Council, said in the portions that were not quoted. He pointed out that they had established that the decision-making bodies in the City were fully aware of the issue and had discussed it. He said the NFL had also discussed it and there was a condition imposed.

Buck noted that one thing that remained that was not addressed was that NFL thought the City should have independent review of this issue. He said Haggen was willing to have a condition added to allow the City staff to have independent review. He submitted a suggestion of how that could be accomplished (in the record). He read the item and reported that Haggen's would reimburse the City for all reasonable costs of the independent engineer.

Mayor Drake thanked Buck and noted that the City's building official had the option of requiring independent review, but it was good that Haggen's had offered that as a possible condition.

Buck said that could kick in at any time the City wanted.

Coun. Stanton referred to the second paragraph of the last submittal, and read from it, and said it did not say that Haggen's would pay for the mitigation.

Buck said they could add in the second to the last line, that Haggen's would carryout the solution.

Darleen Cogburn, City Recorder asked Coun. Stanton if she was referring to the last document that Buck submitted.

Coun. Stanton confirmed that she was referring to the last document.

Pilliod said a document that Smith had referred to, the addendum from AGRA dated November 1997, Holady said she wanted it to be part of the record that evening. He asked if Buck or his consultants had any additional comments they wished to make regarding the addendum. He said Buck's comments that evening had referred primarily to the December 1995 AGRA report and this was a different document by the same consultant.

Buck responded that Mills had reviewed the November 1997 document and it was referenced in his letter. He said they did not make much of it that evening because the thrust of comments from the last meeting seemed to be aimed at the December 1995 document.

Coun. Ruby noted that Buck had not discussed it in rebuttal, but asked if there would be hardship on Haggen's if there were restriction on the 10:00 p.m. to 5:00 a.m. truck deliveries. He said he was trying to balance it between hardship to Haggen's and the neighbors.

Buck said his partner Joel Gordon had assigned him that issue, last May. He noted that he hired an independent traffic counting firm to study two existing Haggen's stores at Tanasbourne and Tualatin, and the reality was that the hardship was between 4:00 a.m. and 5:00 a.m. He said there were typically three to four trucks that delivered fresh produce at that time and the typical pattern that worked started by 4:00 a.m. He said there was not a hardship between 11:00 p.m. and 4:00 am. He commented that it was an issue that was important and constituted some hardship.

Buck said he realized the balancing that the Council had to do, but Haggen's had not heard it in the proceedings that the NFL had said the issue could be balanced. He reported that the NFL said balancing did not help them and it would not stop them from suing. He pointed out that the

one thing that would ease it was to move it to 4:00 a.m. and the noise studies would support that that time would not be difficult. He said they could take deliveries at 5:00 a.m., but it would be nice if they could do it at 4:00 a.m.

Coun. Stanton noted there were two grocery stores outside of Beaverton and three inside Beaverton and she would like to know what their hours were.

Grillo said he did not have that information that evening, but could get it to Coun. Stanton by the next meeting.

Mayor Drake explained that they would leave the hearing open for questions and Couns. Soth and Brzezinski would listen to the audiotapes of the meeting.

Coun. Stanton asked about delivery times for Howards, Albertsons at Barrows and Walnut, Murrayhill Thriftway, Safeway at Murray /Allen, and Albertsons at Greenway and Hall.

Mayor Drake said he did not hear any new information that had not been present in reports or earlier testimony. He asked Pilliod or Council if they had heard anything new.

Pilliod said the letter from GeoDesign was material that was not in the record in its current form and he could offer the appellants that they could disagree and offer comments about it. He said it appeared that it just responded to material that was referred to at the last meeting and material that was already in the record.

Mayor Drake asked if Kleinman had seen anything new.

Grillo pointed out the staff had done a quick review and noted that the first bulleted item in the Environmental Site Assessment Proposed For Sorrento Terrace dated August 11, 1992, would be something that was not in the record. He said the other item, which had just been introduced into the record that evening, was the addendum dated November 1997, the first bulleted point, would be an older report and was not in the record.

Pilliod clarified that the first bulleted point in the letter from GeoDesign dated October 9, 2000 would also not be in the record nor would it be with the letter. He noted that it appeared to be a comment by the author of the letter, about something he reviewed.

Mayor Drake clarified that Pilliod was disagreeing with Grillo because the report had not been entered into the record.

Kleinman thanked them and said they had reviewed the letter and it was argument based on evidence already in the record.

Mayor Drake noted that Coun. Doyle had asked about the 1992 report and Pilliod had said it was not part of the record.

Coun. Stanton MOVED, SECONDED by Coun. Doyle, to continue the public hearings APP 2000-0006, AB 00-252; APP 2000-0008, AB 00-254; and APP 2000-0010, AB 00-255, to October 23, 2000.

Question called on the motion. Couns. Stanton, Doyle and Ruby voting AYE, the motion CARRIED. (3:0)

RECESS:

Mayor Drake called for a brief recess at 7:30 p.m.

RECONVENED:

The meeting reconvened at 7:40 p.m.

ORDINANCE:

Suspend Rules:

Coun. Stanton MOVED, SECONDED by Coun. Ruby that the rules be suspended, and that the ordinance embodied in AB 00-342 be read for the first time by title only at this meeting, and for the second time by title only at the next regular meeting of the Council. Couns. Doyle, Ruby, and Stanton voting AYE, the motion CARRIED unanimously. (3:0)

First Reading:

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

00-342 An Ordinance Amending Ordinance 1800, the Comprehensive Plan, to Update the Significant Natural Resources Map and Adopt Support Documents for the Goal 5 Wetland Inventory and Riparian Assessment; CPA 99-00005 and CPA 99-00006

EXECUTIVE SESSION:

Coun. Stanton MOVED, SECONDED by Coun. Ruby, that Council move into executive session in accordance with ORS 192.660 (1) (g), to discuss the legal rights and duties of the governing body with regard to litigation or litigation likely to be filed. Couns. Stanton, Ruby and Doyle voting AYE, motion CARRIED unanimously. (3:0)

The executive session convened at 7:43 p.m.

The executive session adjourned at 8:00 p.m.

ADJOURNMENT:

There being no further business to come before the Council at this time,
the meeting was adjourned at 8:00 p.m.

Darleen Cogburn, City Recorder

APPROVAL:

Approved this 18th day of December, 2000

Rob Drake, Mayor