

REGULAR MEETING

October 23, 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 23, 2000 at 6:44 p.m.

ROLL CALL:

Present were Mayor Drake, Couns. Fred Ruby, Evelyn Brzezinski, Dennis Doyle, Forrest Soth, and Cathy Stanton. Also present were Chief of Staff Linda Adlard, City Attorney Mark Pilliod, Human Resources Director Sandra Miller, Finance Director Patrick O'Claire, Community Development Director Joe Grillo, Engineering Director Tom Ramisch, Landscape Supervisor Steve Brennan, Police Chief David Bishop, Library Director Shirley George, Support Specialist II Deborah Baidenmann, and City Recorder Darleen Cogburn.

Mayor Drake noted that Coun. Soth was at the meeting that evening just three weeks after knee surgery.

Coun. Soth said he had been overwhelmed by the support he had received from his family, City staff and people in the City who expressed their concern regarding his knee surgery. He said he had received prayer support from multitudes of people and he was very happy to be back at the Council meeting that evening.

CITIZEN COMMUNICATION:

There was no one who wished to speak.

COUNCIL ITEMS:

There were no Council items.

STAFF ITEMS:

Linda Adlard, Chief of Staff, said she wanted to update citizens on the Photo Red Light campaign. She reported the program would be in place at selected intersections within the City on December 1, 2000 and there

would be a 10-day warning grace period. She noted the fine would be \$175 and suggested drivers start practicing right now on their technique to stop at all red lights.

PROCLAMATIONS:

World Population Awareness Week (October 22 – 28, 2000)

Make a Difference Day (October 28, 2000)

PRESENTATION:

00-345 Presentation of Shield and Swearing-In of New Officer to the Beaverton Police Department

Mayor Drake noted that during his time as Mayor new officers had been welcomed to the police force by swearing them in before Council and in public.

Chief David Bishop said he was swearing in David King. He said King had been a police officer for the past three years in Georgia, although he was originally from the Hillsboro area where he graduated from Glencoe High School.

Bishop issued the oath to King.

Mayor Drake presented King with his badge and welcomed him into the Beaverton Police Department.

Bishop thanked those present that evening for their support.

CONSENT AGENDA:

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

00-346 A Resolution Granting a Franchise for Telecommunications Service to RCN Telecom Services of Oregon, Inc. (Carried forward to 10/30/00)

00-347 A Resolution Stating the Official Results of the September 19, 2000 Election

00-348 Westside Light Rail Maintenance Agreement with Tri-Met

Contract Review Board:

00-349 Transfer Resolution – City's Portion of Funding Towards the Bankruptcy Plan for The Round At Beaverton Central Project

00-350 Contract Award – Temporary Janitorial Services for City Buildings

Coun. Doyle congratulated Coun. Ruby on his election to Council as noted on AB 00-347.

Coun. Ruby thanked Coun. Doyle.

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

Mayor Drake announced that the agenda would be slightly out of order with the dispensation of ordinances as the next item.

ORDINANCES:
Suspend Rules:

Coun. Soth MOVED, SECONDED, by Coun. Doyle that the rules be suspended, and that the ordinances embodied in AB 00-351, 00-352, 00-00-357, and 00-358 be read for the first time by title only at this meeting, and for the second time by title only at the next regular meeting of the Council. Couns. Brzezinski, Doyle, Ruby, Soth, and Stanton voting AYE, the motion CARRIED unanimously. (5:0)

First Reading:

Mayor Drake noted that ABs 00-353, 00-354, 00-355, and 00-356 were pulled.

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

- 00-351 An Ordinance Granting a Non-Exclusive Cable and Broadband Access Services Franchise Agreement to RCN Telecom Services of Oregon, Inc.
- 00-352 An Ordinance Amending Ordinance No. 1800, The Comprehensive Plan, by Amending Chapter Six – Transportation Element – by Adding New Text Relating to Transportation Improvements; CPA 2000-0003
- 00-353 An Ordinance Amending Ordinance 1800, The Comprehensive Plan, Adding Text to Comply with the Following Requirements; 1) Metro Functional Plan Title 3; 2) New Unified Sewerage Agency Water Quality Requirements; and 3) Statewide Planning Goals 6 and 7 as Called For in the City's Periodic Review Work Tasks Nos. 4 and 5; CPA 99-00015 (Pulled from the agenda.)
- 00-354 An Ordinance Amending Three Documents; Ordinance 2050 the Development Code; Beaverton Code Chapter 9; and Resolution 3434 the Engineering Design Manual and Standard Drawings; to Add Text in Compliance With the Following Requirements; 1) Metro Functional Plan Title 3; 2) New Unified Sewerage Agency Water Quality Requirements;

and 3) Statewide Planning Goals 6 and 7 as Called For in the City's Periodic Review Work Tasks Nos. 4 and 5; TA 99-00006 (Pulled from the agenda.)

00-355 An Ordinance Amending Ordinance 1800, The Comprehensive Plan, Adding Text to Protect Significant Riparian Corridors and Wetlands Identified in Beaverton's Local Wetland Inventory; CPA 99-00014 (Pulled from the agenda.)

00-356 An Ordinance Amending Two Documents: Ordinance 2050 the Development Code; and Resolution 3434 The Engineering Design Manual and Standard Drawings; to Add Text Protecting Significant Riparian Corridors and Wetlands Identified in Beaverton's Local Wetland Inventory; TA 99-00005 (Pulled from the agenda.)

00-357 An Ordinance Amending Ordinance No. 2050, The Zoning Map, From (OC) to (CS), For Property Located on the North Side of Cornell Road (Cornell Road Rezone); RZ 99-00020

00-358 An Ordinance Amending Ordinance No. 2050, The Zoning Map, From (R7) to (R5), For the Property Located at Hanson Road and 135th Avenue (Hanson Rezone); RZ 2000-0006

Coun. Brzezinski asked for clarification on AB 00-351. She noted that Pilliod had not read the title correctly and this ordinance was related to cable, not telecom.

Pilliod determined the ordinance title could be corrected in second reading so it was consistent with approvals from other jurisdictions.

Second Reading and Passage:

Pilliod read the following ordinance for the second 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

Coun. Soth MOVED SECONDED by Coun. Doyle that the ordinance embodied in AB 00-342 now pass. Roll call vote. Couns. Brzezinski, Doyle, Ruby, Soth, and Stanton voting AYE, motion CARRIED unanimously. (5:0)

PUBLIC HEARINGS:

Mayor Drake noted that the following public hearings were continued from the Council meeting of October 9, 2000.

- 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 10/9/00)
- 00-254 APP 2000-0008; Appeal of the Approval of RZ 2000-0002; Haggen Rezone, by the Planning Commission (continued from 10/9/00)
- 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 10/9/00)

Mayor Drake noted that Coun. Brzezinski and Coun. Soth had missed the last Council meeting, but had listened to the tapes and read all the materials.

Coun. Brzezinski acknowledged she had listened to the tapes and she had read/received the handouts.

Coun. Soth also acknowledged he listened to the tapes and had reviewed the material. He said he was fully prepared to participate in all of the proceedings that evening.

Mayor Drake said he had closed the public testimony portion of the public hearings at the last meeting and the meeting that evening would include Council questions. He asked for staff comments.

Joe Grillo, Community Development Director noted that at the last Council meeting there was testimony and material received on some proposed language dealing with an issue relating to an independent engineering firm. He informed Council that the language had been further revised for consideration that evening. He said the language stated "the City Engineering Staff determines..." and the proposed language would state "the City Engineer determines...." He passed out copies of the proposed language to Council.

Grillo noted that another item under consideration that evening dealt with going back to the final land use orders. He advised that Council consider an issue relating to Condition Number Three about Haggen's rezoning. He said it implied that the rezoning approval would be void after two years and staff recommended that if the Council was inclined to give approval of the rezoning, rewording Condition Number Three would be vital. He reiterated that from staff and the City Attorney's perspective if Council was inclined to uphold the Planning Commission (PC) recommendation then Condition Number Three should be reworded.

Mayor Drake asked Grillo if there were copies of the recommended language for Council.

Grillo handed out copies of the recommendation.

Mayor Drake asked for clarification on materials included in the record.

Pilliod responded that he had contacted attorneys Kleinman and Orchard about the additional information and both indicated there was no difficulty with Council receiving the information. He said that in the time between the appeals being initially filed with the City from the PC and the Board of Design Review (BDR) final orders, until the public hearing portion of the hearing closed, the City Recorder received letters via e-mail which expressed the feelings of the senders about the applications on appeal. He said copies of the letters had been previously distributed to Council as well as to those who had filed appeals. He noted that those letters would be part of the official record in the proceedings.

Pilliod said also, one of the Notices of Appeal contained a quotation from a City staff report relative to the Community Service (CS) zone, which was being considered by the PC and the Council as part of the original Comprehensive Plan Amendment. He continued that so the record could be complete, he offered the staff report to the PC dated June 10, 1998, prepared by John Osterberg and John Spencer. He said the quotation was taken from page 13 of the document and the materials had been received earlier by the Council and he understood that there were no issues with them receiving it.

Mayor Drake announced it was currently time for questions and after that he would close the hearing.

Coun. Stanton thanked Pilliod for giving her the May 2, 2000, letter regarding the consultant report and clarified that at the last meeting she had requested information regarding delivery hours. She reported that Pilliod told her that she could not have it because it was not part of the record. She said there was a May 2, 2000, document that showed that hours of operation of the six grocery stores in the area were similar in the 24-hour or 6:00 a.m. to 1:00 p.m. time period.

Coun. Doyle asked, regarding the BDR decision, if staff was confident that the spillover of lighting was going to be controlled. He said he just wanted to be sure of the standards.

Mayor Drake clarified that Coun. Doyle was referring specifically to the BDR decision and the appeal. He said he assumed Council acting as the Design Review board would consider that issue.

Grillo said that what they received in every case were Lighting Plan Cut sheets, which the staff used to determine whether the applicant met the candle power both on the site in terms of maintaining adequate lighting for traffic circulation, delivery, etc., as well as public safety. He explained how the Lighting Plan Cut sheets were analyzed for possible light "bleeding" off of the property line onto someone else's property. He

noted that they had no evidence that it was not raised as an issue in the appeal.

Coun. Soth asked if it was not true that the general way to keep light from escaping on to adjacent properties was to have lighting fixture cutoffs.

Grillo clarified that that was one commonly used technique and there were a variety of other ways that an applicant (with their lighting contractor) could achieve adequate candlepower, both on site as well as not having light bleed off site.

Mayor Drake said one issue that was of keen interest to Council was the volunteering of the applicant to retain a third party engineer to monitor methane gas from the site.

Mayor Drake asked Grillo to give Council and the appellants a copy of handouts staff had developed and describe what he distributed.

Grillo distributed the materials (in the record) and described the first handout as the offer of the applicant to have an independent third party work with the City to provide greater assurance in the design and mitigation measures that the site might be able to utilize in the development to preserve public health and safety. He noted at the last meeting the applicant offered to come back to further work the draft condition and that was the content of the handout. He pointed out the handwriting noted on the copies was his and his staff's attempt to be clear as to who was making the determination at the City (which was the City Engineer).

Grillo noted the second handout was staff recommendation for Council consideration to re-word condition Number Three on the BDR conditions. He explained the handout and read it (in record). He said the language staff was proposing simply said the site would be developed consistent with the Sexton Mountain Village Planned Unit Development set forth in CUP 2000-0003. He noted staff believed the statement stayed consistent with what the PC was attempting to imply in their land use approval and was nothing more and nothing less and was without any termination or void.

Coun. Brzezinski clarified that they would delete the existing Condition Number Three and insert the recommended wording. She asked if there was anything in the existing Condition Three that should be retained.

Coun. Stanton said she was confused and noted that she thought they had a public hearing in July 2000, and had changed the language based on the Court of Appeals remand.

Grillo clarified that the remand dealt with the Comprehensive Plan and a similar concern where the Council had set a *sunset date* on the Comprehensive Plan. He said he believed that the remand dealt with the issue of Council not being able to do that unless everyone was allowed opportunity through a new public hearing.

Coun. Stanton questioned if it was just on the Comprehensive Plan amendment.

Grillo said it referred to the rezone on appeal that was before Council that evening.

Coun. Stanton asked if a condition could be changed on a land use order.

Pilliod clarified that Coun. Stanton was referring to the rezone. He responded that issue was before Council that evening and it could be changed.

Mayor Drake closed the public hearing.

Coun. Soth MOVED, SECONDED by Coun. Brzezinski to approve the appeal of 2000-0006, Haggens store extended hours of Operation. (AB 00-252)

Coun. Ruby asked if he could make an amendment to the motion.

Coun. Soth responded that if Coun. Ruby's motion was offered as a Friendly Amendment and acceptable by the motion maker and the second, then it would not necessarily need to be voted upon.

Coun. Ruby offered the amendment that as a condition granting the appeal for 24-hour facility operation that the limitations on deliveries, that were developed by the PC limiting the delivery hours between 5:00 a.m. and 10:00 p.m., be re-imposed.

Coun. Soth said he did not agree.

Mayor Drake said it had been moved and seconded for approval of AB 00-252 approving the appeal and deleting Condition Number Two of the PC approval that limit the hours of operation and delivery.

Mayor Drake clarified that Coun. Ruby was in support of the 24-hour operation but preferred limiting the delivery hours.

Coun. Ruby MOVED, SECONDED by Coun. Stanton, to amend the motion to restrict deliveries between 10:00 p.m. and 5:00 a.m.

Coun. Ruby said based on the testimony and evidence, he was persuaded that 24-hour facility operation was warranted and part of the business model for Haggen's and was supported by many members of the community. He noted that putting the late night deliveries aside, they had dealt with many of the other issues, and he felt that the late night truck deliveries were a much closer issue. He commended Haggen's for what they had to do to mitigate noise, including the enclosed truck loading facility and the analyses they had done. He said they did hear some contrary testimony from the neighbors on 149th who were only 100 feet away from the truck delivery area, and there were some sharp concerns. He commented that they were allowed to apply their common sense and collective experience about truck delivery and what trucks sound like. He noted that most important to him was that if it was a close call then what was the hardship to Haggen's. He asked Council to recall his exchange with Buck about what really was the hardship to Haggen's from not having the late night truck deliveries. He said Buck had said if one was talking about the hours between 11:00 p.m. and 4:00 a.m., then in that period the hardship to Haggens was really minimal and the store could easily go without deliveries during that period. He said Buck also said the closer question for Haggen's was they would like to be able to deliver until 11:00 p.m. rather than 10:00 p.m. and commence early morning deliveries at 4:00 a.m. rather than 5:00 a.m. to meet their preferences on freshness of bakery goods and produce. He said that exchange was very helpful and he felt it came down to those two, one-hour periods of time. He mentioned that he did not see a lot of evidence in the record that late night truck deliveries were really vital to meeting Haggen's quality standards. He said those hours picked by the PC restricting deliveries between the hours of 10:00 p.m. and 5:00 a.m. were based on some common wisdom that those were the hours that were traditionally designated for sleeping when people would have an expectation of having some peace and quiet. He explained that for that reason he was persuaded that on that issue the PC made some sensible restrictions that seemed to have fairly minimal hardship on Haggen's and was a sensible accommodation to the neighborhood. He offered that amendment to his fellow Council members.

Coun. Stanton agreed with Coun. Ruby and said she knew that trucks made noise and she was not persuaded that very many trucks went up and down Murray making deliveries at that time of night. She said she would support the amendment.

Coun. Doyle said to tap their collective memories, he thought there was a document that discussed records from other stores, and said he thought at other stores there was a 4:00 a.m. time allowance for deliveries.

Coun. Brzezinski clarified that the document Coun. Doyle was referencing was dated May 3, 2000, and it stated that the person observed the stores getting deliveries after the time of closing, particularly after 4:00 a.m.

Coun. Soth said one of his reasons for opposing the motion was he was of the belief that each business had their own method of dealing with its own business operations. He said the other stores in the record had a different type of approach and a business decision made by those people consistent with the conditions and limitations placed upon them through these types of proceedings were the best way to go. He said he would oppose the motion.

Coun. Stanton pointed out that the May 3, 2000, document was not clear in understanding the restrictions each store had. She noted that Albertsons and Safeway were allowed 24-hour operation and in the past they had been open 24 hours only between Thanksgiving and Christmas. She said she was not sure that looking at the retail hours of operation was a reflection of what they were given and she would still like to have some assurance for neighbors. She said if the trucks were not going between grocery stores at those times they might start to and that would impact a lot more neighborhoods than just the neighborhood to the west of the Haggen's site. She said she would continue to support the amendment.

Coun. Brzezinski questioned if the amendment went down to defeat did the Council or the neighbors have any recourse. She said if they learned that the amount of truck traffic in the area was louder or there was more traffic, could anything be done at that time.

Pilliod said he did not believe the City had the authority to re-open the CUP approval based upon circumstances that were not intentionally misrepresented to the City Council. He said the question that would have to be asked was did the noise being generated constitute a public nuisance and if so then that was something the City could address by way of Code Services or at the Council level.

Coun. Brzezinski said the PC had approved an application twelve years ago and the neighbors at that time had been very concerned about the noise issues. She said the PC had approved the opening of the business, but told the applicant they had to come back in one year for a final decision and then the neighbors were offered the opportunity to come back and say if the business had been a problem or not. She said the final approval was then given.

Coun. Soth said the Council did have the "hammer" through the Code Enforcement and nuisance ordinances if the operation got out of hand. He said it would be subject to the compilation of the complaints, where they originated and how they originated in order to get into the Code Enforcement issues.

Coun. Stanton said she remembered the same establishment Coun. Brzezinski was talking about, and recalled that it was a very good way to address the concerns, and this allowed the neighborhood to have the

opportunity to come back and see what happened. She said this allowed for some assurance over the next year.

Coun. Stanton said that with language like that in the motion she might be persuaded to take her second away from the motion for reduced delivery hours.

Mayor Drake asked Coun. Stanton if she might be inclined to support a 24-hour delivery with a contingency of reporting back in one year and seeing what verifiable information there was. He said he was on the Council when they previously discussed application from twelve years ago had come through. He said the circumstances were different and Council had experiences with facilities similar to Hagggen's and they were not receiving complaints about deliveries.

Pilliod established that if the decision of the Council was to be final, then they were not entitled to condition it in such a way that it was not final. He said Council would have to make a decision that evening to approve the conditional use and the rezone or to not approve both issues. He said as a condition of approval of the rezone or conditional use, if Council had some concerns about noise, they could require the applicant or staff to conduct a study to determine what the noise levels were and require the process to be reopened for purposes of further consideration on some aspect of the conditional use they were granting. He informed Council that they could not give approval and then say the level of noise was different than what they understood it was, and therefore it was no longer approved. He said they would have to go through an additional process to enable the parties to address it, because it was essentially having new information.

Mayor Drake commented that he respectfully thought Council was going down the wrong path with that kind of limited approval.

Coun. Doyle addressed those who had not expressed the way they were leaning, and asked if there was some middle ground on the limited hours of operation.

Coun. Soth said that he had no doubt of the willingness of the applicant to comply with whatever the Council applied. He said his concern was if Council was being fair to this applicant when other existing businesses in the same area were not subject to such restrictions.

Coun. Brzezinski she was leaning towards voting against the amendment. She said her possible decision was based on her understanding that there would be more trucks in the 4:00 a.m. to 5:00 a.m. period than there would be in the 10:00 p.m. to 4:00 a.m. period.

Coun. Doyle said he thought Coun. Ruby made the motion to gender some discussion and he wondered if the motion maker might accept some modification to the motion.

Coun. Ruby said he would accept modification to the motion, because his chief effort was to persuade Council that the PC picked the hours sensibly to restrict truck deliveries. He noted that the PC was being aware that this was a sensitive issue, since if the project moved forward it was in fairly close proximity to established homes. He said the hours they picked were in some measure because most working people were at least starting to stir at 5:00 a.m. and prior to 5:00 a.m. was thought of as the dead of night. He said he would consent to modify the motion to gain votes. He commented that he thought that was doing something tangible for the neighbors.

Coun. Doyle suggested that they change the time from 10:00 p.m. to 4:00 a.m. rather than 10:00 p.m. to 5:00 a.m.

Mayor Drake asked Coun. Ruby if he would be willing to modify his motion to Coun. Doyle's suggestion.

Coun. Ruby said he would be willing to modify his amendment, since that would still be doing something tangible for the neighborhood. He said based on the feedback he was receiving from Council he would be willing to modify his amendment. **He revised his proposed amendment to read as a condition of granting the appeal and allowing 24-hour facility operations that truck deliveries would be restricted between 10:00 p.m. to 4:00 a.m.**

Coun. Stanton said she would accept that as the Second.

Mayor Drake said it had been moved and seconded the initial amendment was modified to include a prohibition for deliveries from 10:00 p.m. to 4:00 a.m.

Coun. Brzezinski noted that even if Council passed the motion it would not negate the opportunity if between 4:00 a.m. and 5:00 p.m. it started to get too loud, then Code Enforcement options could be enforced.

Pilliod clarified that there was a motion to amend the main motion to allow the 24-hour retail operation, but restrict truck deliveries to the hours between 4:00 a.m. and 10:00 p.m. He said this was the motion to amend the main motion.

Coun. Ruby said that was correct as far as the motion maker was concerned.

Mayor Drake clarified that there was a motion to grant the appeal and then Coun. Ruby made an amendment to that. He also clarified that Coun. Stanton seconded the revised amendment.

Mayor Drake restated the motion as it had been moved and seconded to revise the recommendation on deliveries and to prohibit hours for truck deliveries from 10:00 p.m. to 4:00 a.m.

Question called on the motion. Coun. Ruby, Stanton, Doyle, and Brzezinski voting AYE. Coun. Soth voting NAY, the motion CARRIED (4:1)

Mayor Drake directed Council to the main motion.

Coun. Soth said that to restrict Haggen's hours of operation and deliveries would be unfair to the Haggen's proposal. He noted that the other stores mentioned in the record and in testimony all had 24-hour permits and whether they chose to exercise their permits to the fullest were business decisions best made by the owners. He said that truck noise (while a concern) was not a major issue. He noted that because Murray Blvd. was a county road, a major arterial and a designated truck route, it was obviously impossible to distinguish one delivery destination from another, either northbound or southbound, particularly since many trucks were common carriers and served most of the stores in question. He said the PC performed their duty diligently and were to be commended for their long, dignified and professional conduct in these proceedings, even though he could not support their views.

Coun. Doyle said he wanted to make it clear that he did not like 24-hour operation on anything in the City. He said the problem he had was that the 24-hour operation went with the property and noted that his was not an over joyous support of the change to what the PC felt was appropriate for the area. He said he thought he would support the motion.

Coun. Stanton stated that she would support the motion because she thought even Haggen's might find out that they might not need to be open 24 hours, and said she was comfortable with the 24-hour operation issue.

Coun. Doyle pointed out that he also thought that it was appropriate to level the playing field for a business, and the equity issue was important. He commented that the market would determine what would work.

Coun. Brzezinski said that was the reason for her approval of the motion. She said the fact that other grocery stores chose not take advantage of the 24-hour right was not one of the criteria that the PC should have looked at.

Pilliod noted that he realized that the main motion was probably taken from the sequence set out in the agenda packet, but he had to assume it all presupposed the commercial designation that would allow the CUP as indicated. He said he realized that would be the next topic of discussion.

Mayor Drake said that was correct and he had them in that order and should have taken the rezone first and the conditional use permit second and the BDR last.

Mayor Drake asked for the vote for the amended motion to grant the appeal, including the amended motion of modified delivery hours allowing deliveries from 4:00 a.m. to 10:00 p.m.

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

RECESS:

Mayor Drake called for a brief recess at 7:47 p.m.

RECONVENED:

The regular meeting reconvened at 7:59 p.m.

Mayor Drake asked for a motion on AB 00-254.

Coun. Soth MOVED, SECONDED by Coun. Brzezinski that Council Deny the appeal in APP 2000-0008 and uphold the PC decision and replace PC Condition Three with Condition Three language as proposed by Grillo that evening.

Coun. Soth said, speaking to the motion, it was a rezone of approximately 10.5 acres to CS zone, which contrasted to strip development. He explained that strip development consisted of several individual buildings built at different times and for different purposes, and this rezone proposed a single building of comprehensive design which allowed several businesses within a single cover. He said that allowed fewer automobile trips, and provided community service as the designation indicated. He explained that the Comprehensive Plan recognized that changes would occur from time to time reflecting changes, trends and demographics. He said this zone change was in keeping with the philosophies and statements outlined in the Comprehensive Plan and therefore he moved to deny the appeal.

Coun. Brzezinski said this appeal was more confusing to her than the other two were. She noted that after going back and looking at the PC minutes and the memorandum from staff dated June 28, 2000 (where each point of the appeal was discussed) she was convinced that the criteria that allowed the PC to approve the rezone was adequately satisfied. She said she would support the motion. She commented that this motion was difficult to deal with because it had so many pieces compared to the other two motions.

Mayor Drake asked for the vote on the motion to deny the appeal and substitute Condition Number Three from the PC to that which was handed out at the meeting that evening.

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

Mayor Drake noted that they would move on to AB 00-255 and if Council wished to attach a Condition of Retention of Third Party Engineer this would be the appropriate place to do so.

Coun. Soth asked if this appeal was *on the record*.

Pilliod said it was the 24-hour appeal that was *on the record* and the appeal in question currently was *de novo*.

Coun. Ruby asked if the additional engineering study should be offered by way of amendment to the motion.

Mayor Drake said it could be just included into the motion.

Coun. Ruby proposed that condition be included in the motion.

Coun. Soth MOVED, SECONDED by Coun. Brzezinski that the Council deny the appeal of BDR 2000-0004 and that the proposed condition that they received that evening be attached as a condition to the BDR approval.

Mayor Drake restated the motion as to deny the appeal and include the attachment regarding a third party engineer reviewing the project as outlined in the wording provided by city staff that evening.

Coun. Soth spoke to the motion and said he agreed with others of the Council who had indicated that this had been one of the most extensively discussed and "cussed" matters that had been on the Council in his 20 years and four years prior to that on the PC. He thanked all the people for all of their input and said it was the kind of representative democracy the United States and particularly Oregon was noted for.

Coun. Soth explained that the BDR looked at such items as aesthetics, design, plot plants and other factors according to the Development Code. He said zoning items such as zone changes, conditional use permits, were not a part of the BDR's overview and it was their responsibility to determine whether any given proposal met criteria outline. He said that in this case they had done that as was evidenced by their deliberations. He noted that Haggen's had gone beyond the bare minimum of requirement to ensure quality development that the citizens in Beaverton had come to expect.

Coun. Soth said the question had been what was the impact to those areas surrounding it. He pointed out that nowhere in the Development Code did it say that no development should have any impact on anything surrounding it. He noted that what was said was that the impacts on surrounding areas or property would be minimized. He said that in this case they had seen the BDR information, and their deliberations and they had determined that the impacts, while in some cases might be a little more than others, generally were not a major factor in conforming to the rules under which the BDR operated. He said the site had been a subject of a number of development proposals over the years and in almost every case, did not go forward.

Coun. Soth noted that the applicant had been very sensitive to concerns of interested parties and had endeavored to go well beyond minimum requirements in response and had provided a project, which would have a minimal impact on adjoining properties.

Coun. Stanton noted that the condition that was discussed two weeks earlier had two parts. She said there was much discussion about organic matter and methane gas and different materials under the top layer of the site. She said they (Council) included a condition that would have the applicant pay for hiring an engineer to assist the City engineers. She explained that in tandem with that, if the City wished to read into the record that all that meant was that if an additional engineer examining the site, found situations that needed to be addressed, Haggen's would pay for that mitigation, to endeavor the highest level of safety.

Coun. Brzezinski said she would support the motion. She noted that the discussion in the appeal of the geotechnical and environmental issues was the strongest part of the appeal. She commented that she was convinced after hearing the rebuttal and looking at the materials again and again reading the full reports on the condition of the land, that with the addition of the condition that neighbors would be protected. She pointed out that it did not say it was a done deal that an independent engineer would be hired, but it was if in the opinion of the City Engineer the regular monitoring indicated that it might be necessary. She said she was comfortable given the extreme interest in what was happening at the site, that if there was any indication that the conditions were not what was expected, then an independent engineer would be brought in immediately. She reiterated that with that condition, adequate protection was provided.

Mayor Drake noted that the City had retained third party consulting in the past when the staff had been uncomfortable with the level of expertise in a very specific area. He said this was not something new for the City and was something the City would be very comfortable with.

Coun. Doyle stated that in listening to the folks that were appealing the documentation talk about site development, setback, vegetation, berms and the lack of specificity of what was going to happen, he said that he did not see any criteria that the applicant had not met. He noted that he would carefully watch how this development happened and was confident that the applicant would follow through. He pointed out that this applicant had gone above and beyond the call of duty and was surprised by what some other developers had done. He said he was comfortable with it and had a lot of confidence that the applicant would exceed any current expectations to buffer the project from the folks who lived nearby. He said he would support the motion. He formally challenged the applicant to do a job that would make everyone say in five years time that it was the right decision and it worked.

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

Mayor Drake asked Pilliod if all the subjects had been covered.

Pilliod said the staff would prepare and appropriate a series of final land use orders at a future meeting. He said the final land use orders would contain the reasons and justification for the decision announced that evening.

Mayor Drake thanked them for being professional, upbeat and very civil.

RECESS:

Mayor Drake called for a brief recess at 8:15 p.m.

RECONVENED:

The Regular meeting reconvened at 8:25 p.m.

OTHER BUSINESS:

Mayor Drake remarked that he had some internal discussions over time and often they were subjects of emotion and controversy. He went on to explain that they had an issue at the library in the children's area where someone had put up a pornographic Internet site and then left it up and running. He said they had received some complaints from parents whose children had been there and who happened to see the site. He specified that he wanted input from Council that evening about providing some kind of filtering for the Internet in the children's area.

Linda Adlard, Chief of Staff, explained that obviously this was a serious problem, and depending on which perspective one wanted to take, one could argue the issue. She said there were issues of constitutional rights to information, freedom of speech, etc. and blocking portions of the

Internet was not what some people wanted and thought it was not the City's right to do so. She said that some would say that no city had resources or the desire to monitor the patrons use of the Internet. She said the other side on the conflict of values was that children did not have the ability to make critical decisions about information and the manner in which they received information. She stated that government should promote parent's right to decide not to expose their child to sexually explicit materials, since that would be a parent's decision and not the City's decision, but the City had to respect supporting good parenting.

Adlard said the other concern was to prevent access to illegal pornography. She also noted that they needed to avoid the creation of a sexually hostile work environment for the City's own workers who were exposed to computer screens that might be left running with sexually explicit materials. She pointed out that the Council could go several ways in dealing with the issue. She explained that the City could follow the lead of the City of Lake Oswego and filter the areas in the children's area or they could increase the number of volunteers to make sure the screens were clear after someone left to ensure the screen was appropriate for children. She another possibility was they could clear the screens when a computer user left the station. She reported that there was certainly a broad spectrum and pointed out that the National Library Association would say that it was the parent's responsibility to ensure their child did not have that access and the City should have nothing to do with it. She said the other side of the spectrum was that when people trusted an environment like the new library in a children's designated area that the City had some sense of responsibility to protect those children from areas of information which they would not understand. She requested Council feedback.

Coun. Brzezinski noted that she was the Council liaison to the Library Board when this was first discussed two years ago, and Coun. Ruby was now the liaison and had been on the Board for some time. She suggested that the Library Advisory Board should give input before the Council gave their input.

Coun. Doyle asked if a child had to log on with their library card number so they could be tracked.

Coun. Stanton replied that was not the case.

Coun. Doyle asked if the City's computer department could erase the last sites on an automatic basis.

Adlard said she did not know if the computer's history could automatically be erased. She said she would have to look into it.

Coun. Stanton said the Library Board and the library staff were looking at software that would shut down the computer and then come back on line again, so people who were waiting could use the machines quickly after the last user.

Coun. Ruby said Washington County Cooperative Library Services (WCCLS) was exploring the use of *Time Out* software and Beaverton was going to be a test site. He said that the software dealt with a somewhat different issue of people monopolizing the computers and it was also monitoring software.

Coun. Doyle said he appreciated the free speech arguments but at some point they had a duty to the children who would have access to sexually explicit material on the Internet. He said he had no problem with the filtering software and would be interested in the Library Advisory Board's comments.

Adlard said she believed that from the description she received of the Internet pornography that any adult would probably have been offended. She noted that they were at this point talking about the children's area, not the young adult section.

Coun. Doyle said they would find out that it was not appropriate in a work place and was not allowed. He commented that the library was a work place and that was a basis to install what ever they could. He said the issue was of valid concern and from his perspective the City needed to utilize every tool to put an end to it.

Coun. Stanton reported that the Library Board had a policy for using the Internet, which stated that when a person wanted to use the Internet room, they reviewed policy and signed their name to an Internet agreement. She explained that one of the conditions was that no user should access pornography. She said while there was a written policy, there was no monitoring other than normal staff walking around. She commented that one time she walked through the library and saw graphic pornographic material and she told library staff to check that terminal. She noted the staff had been trained to request the Internet site be vacated. She agreed that for the children's section there should be a higher level of monitoring and she would like to give parents some level of assurance that in the Children's section pornography should not be there. She suggested that the issue go before the Library Board.

Adlard said she was not sure when the Library Board would meet again, and she did not think this could wait. She wanted to call a Library Board special meeting or email the board members to request their opinions.

Coun. Brzezinski said the option of having more volunteers monitoring Internet use could take place immediately and that would help until the Library Board could meet.

Coun. Soth said this was one of the most serious matters facing society today. He said he recalled being a parent of young children, and screened what his children were reading. He remarked that this was a public library and the Council was responsible for the health, safety and well being of citizens and filters in the children's library Internet area were completely justified. He commented that he recognized the conflict that might exist with the First Amendment (that in his view had been trampled on) and he believed Council had responsibility and accountability to citizens.

Coun. Brzezinski said her concern was not the First Amendment issue, but her problem was that unless the software was better than a couple of years ago it filtered out good sites also. She said she just wanted the Library Board to have a chance to review the issue. She suggested increased monitoring would also help and she asked if this had been the first episode.

Mayor Drake replied that this was the first episode in the new library that had been reported to Council. He said he knew there were other incidences in the old library, but it was smaller and was easier to monitor because the terminals were closer to the librarians. He said Council's intention was not to infringe on the First Amendment, since they clearly understood it, but when they were talking about access to the Internet, there were many other terminals that adults and young adults could go to other than in the children's area. He clarified they would like to solicit the response of the Library Board quickly and get something back to the Council so protection from Internet pornography could be provided to children who visited the library.

Coun. Doyle suggested the filters be applied and if the Board disagreed at a later date the filters could be removed. He referred to the children's area of the library and asked if it would be possible to put an age limit on the users in that area, and not allow adults to use the children's section.

Coun. Stanton said not all the equipment had been installed at the new library, so some adults were using the children's section. She noted that library staff had instructed those people to go to other terminals other than in the children's section.

Adlard reported that they were close to full capacity for what had been budgeted and installed. She said until another budget year there would not be too many more terminals installed.

Coun. Stanton stated that she saw at least five empty computer stations at the new library.

Adlard explained those were for the future growth of the library. She said she understood the direction of Council and she would get back to them.

Adlard said they were putting locks on all the toilet facilities in the new library because of vandalism. She described the vandalism as broken liquor bottles, vulgar words scratched on walls, and rolls of toilet tissue stuffed into toilets to cause overflow. She said they would put a security guard on the premises for 30 days to look for people abusing City property. She said skateboarders had practically destroyed the concrete benches by skating on them. She reported they had put some rules in place that would not allow skateboarding, rollerblading, biking, etc. in the pedestrian area in front of the library, similar to the waterfront area in Portland. She said the beautiful wood on the inside of the elevators had been scratched with disgusting words and had been refinished and already they were scratched again. She advised that parents needed to take responsibility for their children because they would be charged for damage their children had done.

Coun. Doyle said he supported Adlard's comments and said Tualatin Hills Park and Recreation District had ongoing similar problems.

Adlard said that in addition to the security guard they would have enhanced police patrol. She described an incident at the new library where a child was hitting a baseball into the front of the library at 2:00 a.m.

Coun. Brzezinski asked if anything could be done to guard against things like defacing the elevator. She suggested video cameras be installed.

Adlard said the Mayor had directed staff to look at what kind of video equipment might be installed and from that point possibly prosecute offenders doing the damage. She said that young people who misbehaved on public property would not be tolerated in Beaverton and parents were responsible.

Mayor Drake said they felt that they had to act decisively since the taxpayers had been so generous in funding the library and the City could not just stand by and let a few people ruin it for everyone.

Coun. Stanton said it had been mentioned that the bathrooms would be locked. She said it was equally important to mention how to pick up a restroom key.

Adlard said there would be a process to get the key to the restroom, they might have to give their library card or drivers license and there would be checks throughout the day.

Pilliod reported Council approved an agreement with Dorn Platz, and the agreement was finalized and signed the past week.

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 8:50

Darleen Cogburn, City Recorder

APPROVAL:

Approved this 18th day of December, 2000

Rob Drake, Mayor