REGULAR MEETING
November 27, 2000

CALL TO ORDER:

A regular meeting of the Beaverton City Council was called to order by Mayor Rob Drake in the Forrest C. Soth Council Chambers, 4755 SW Griffith Drive, Beaverton, Oregon, on Monday, November 27, 2000 at 6:31 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, Assistant Finance Director Shirley Baron-Kelly, Community Development Director Joe Grillo, Engineering Director Tom Ramisch, Operations/Maintenance Director Steve Baker, Police Chief David Bishop, Library Director Shirley George, Development Service Manager Irish Bunnell, Program Manager Janet Young, City Utilities Engineer David Winship, Senior Planner John Osterberg, and City Recorder Darleen Cogburn

CITIZEN COMMUNICATION:

There was no one present who wished to testify.

COUNCIL ITEMS:

Coun. Brzezinski noted that she would be unable to attend the Council meetings for December 11, 2000, December 18, 2000 and the City Holiday gathering on December 12, 2000.

Coun. Doyle noted that on December 12, 2000, there would be the Annual City Holiday Open House, with Santa Claus. He related that all citizens were invited, and various staff would be available to talk with citizens. He noted that the time was from 5:00 p.m. to 7:00 p.m.

STAFF ITEMS:

Linda Adlard, Chief of Staff, reminded everyone that the Photo Red Light Enforcement Program would be implemented during the month of December. She related there would be two mailings to residents in

regards to the program, as well as radio advertising. She explained there was a ten-day warning period and then the fines would begin, which would start at $175. She noted that Council had authorized this enforcement program at five locations.

CONSENT AGENDA:

Mayor Drake said there was a request to pull AB 00-392 for separate consideration and discussion.

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

Minutes of the regular meeting of September 18, 2000

00-386 A Resolution of Intent to Condemn Properties Abutting SW Hart Road For Use as Public Right of Way

00-387 Liquor License – The Cheerful Sports Page: Change of Ownership

00-388 Authorization for City to Enter Into an Agreement with TVF&R Relating to Infectious Diseases, Toxic And Hazardous Substances and Bloodborne and Airborne Pathogens

00-389 Authorize Mayor to Enter Into An Amendment to the Program Year (PY) 1999 Intergovernmental Agreement With Washington County for HOME Funding

00-390 CPA 2000-0007 City of Beaverton Operations Center Expansion

00-391 RZ 2000-0009 City of Beaverton Operations Center Expansion Rezone

00-392 TA 2000-0007 Wall sign Text Amendment (Pulled for separate consideration at this meeting.)

Contract Review Board:

00-393 Contract Change Order and Approval of Additional Funds for Legal Services Rendered by Jeannette M. Launer, Attorney at Law

00-394 Consultant Contract Award – Phase 1 of Photogrammetric and Mapping Services for Aerial Photography and Planimetric Updates

Coun. Stanton noted, regarding AB 00-394, that Phase 1 was more than half of the project, and asked why Phase 2 cost more than Phase 1 and was less area.

Joe Grillo, Community Development Director, said there was less work to be done in the Phase 1 area where they upgraded, but in Phase 2 it was new work and much more work was needed.

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

Separate Consideration:

00-392 TA 2000-0007 Wall sign Text Amendment

Coun. Stanton stated that in reviewing the TA 2000-0007 the Wall Sign Text Amendment, she had appreciated all the time that had gone into it and the staff report. She continued that she noticed that some of the sign experts had testified, and on page 011 of the agenda bill, on "K," and stated that she thought the Master Sign Program would be a wonderful idea that they had in Code, but might be hard to implement. She explained that it said that a Master Sign Program might be required by the Board of Design Review (BDR), but that was already two months into the process and would come up against the 120-day time limit at the time BDR could decide it was a requirement. She recommended referring this back to staff for review and modification and adding it to the Code. She felt the language should be looked at to allow some discretion either at Facilities Review or at the pre-application stage, so that if a Master Sign Program was necessary it did not have to wait to become a BDR requirement. She said the language needed to be changed because the current Master Sign Program required proposed colors, letters, styling, sizes and location of the wall and free standing signs, but she thought there should be some reduced specificity on the signage detail. She stated that she did not know if any of the other Councilors thought this was something they should request staff to come back to Council with more information, in the struggle to come up with a "perfect sign ordinance" for the City.

Mayor Drake asked Coun. Stanton to clarify what she was asking for at this time.

Coun. Stanton clarified that she wanted approval of what had been presented, as it was, but that this portion of it not be left and lost.

Mayor Drake noted that he thought she had taken into consideration some testimony from Mike Ceccanti.

Coun. Stanton said that was correct, as well as comments from Irish Bunnell, Development Services Manager.

Grillo stated that staff could not agree more, and noted that this particular item, as well as some other items, in the sign ordinance was in need of repair.

Coun. Stanton explained that she wanted this to be approved, but wanted to direct staff to take this particular portion and make it work.

Coun. Soth noted that this reminded him of when he was chair of Board of Design Review (BDR) they wrestled with this and other similar issues, and noted that the Master Sign Programs often incorporated a different type of analysis than a free standing or a single wall sign, etc. He said he thought a Master Sign Program should be optional, providing it complied with all of the requirements. He said it probably needed some adjustment in this particular area. He commented that he had no problem with it as it was, and noted that he often was asked why the City did not have the same regulations as other areas. He noted that Beaverton had its own requirements, programs and aesthetics.

Coun. Doyle noted that Grillo had mentioned there were some other issues with this Program, and asked if he could tell them what else in particular they should know about. He explained that Grillo could get back to them on those issues.

Grillo replied that he would be happy to get back to them on what needed some minor changes, and some information on why staff saw them as difficulties. He noted that the Mayor and Council might agree or disagree with them, and related that from his own experience, when Councils dealt with sign ordinances it could be messy. He said from staffs' perspective it was not "broken" but needed some minor fixing. He pointed out that staff was not interested in going back and rewriting it, but merely fixing the areas of concern.

Coun. Doyle commented that if this would help the customer service associated with this, he was all for it. He asked if passage of this as it was, was the correct action to take that evening.

Grillo said he recommend adoption at this time.

Coun. Soth said on page 008, section 2 and 5, it only says "wall sign" without any definition or other language, and wondered if there was supposed to be a definition there or some explanatory language.

Irish Bunnell, Development Services Manager, explained that they struck the language because all that that section was doing was identifying that a wall sign was subject to an ordinance regulation as well as other signs. He pointed out that on the next page under "wall signs" it gave location requirements.

Coun. Soth noted that on the page 009 under B, "wall signs shall not…" and he thought the word "to" was extraneous.

Bunnell answered that was correct.

Coun. Stanton MOVED, SECONDED by Coun. Soth that Council direct staff to review the Master Sign Program under 60.30.35.3K and include that in their list of other areas of the sign ordinance that needed to be reviewed and modified.

The vote was taken. Couns. Stanton, Soth, Brzezinski, Ruby and Doyle voting AYE, the motion CARRIED unanimously. (5:0)

Coun. Stanton MOVED, SECONDED by Coun. Soth, for approval of AB 00-392 the Text Amendment 2000-0007 Wall Sign Text Amendment.

The vote was taken Couns. Stanton, Soth, Brzezinski, Ruby, and Doyle voting AYE, the motion CARRIED unanimously. (5:0)

PUBLIC HEARING:

00-395 (APP 2000-0012) Timberline Software

Mayor Drake opened the public hearing.

Grillo read the legal language for the hearing (in the record).

Grillo asked if there were any challenges to the Council or Mayor hearing this appeal.

There were none.

Grillo asked for abstentions.

There were none.

Grillo asked if anyone objected to the Council hearing this appeal.

There was none.

Mayor Drake apologized to those who had listened to this long legal message but explained that it was a requirement as part of a land use process.

Grillo noted that the applicant who was the appellant in this appeal had submitted new proposed language that day, and the staff agreed with the proposed language.

Grillo reported John Osterberg, Senior Planner, would give a brief staff report. He noted the material the Council received was a document that was dated November 27, 2000, by the applicant who was the appealing party. He said by way of reference, the applicant would introduce that into the record, and reiterated that staff had read the information and proposed language, and was in agreement with that proposed language.

He clarified that the language referred to Condition 17, which was the only condition that was appealed.

Osterberg said the item being distributed was brought to the City by the applicant, and contained the recommended alternative language. He noted that the alternative language referred to Condition 17 of the Timberline Software Design review approval, which was the only condition appealed. He reiterated that this was a limited scope of hearing regarding only one condition of approval and regarding specific wording in the last sentence of the condition. He pointed out that in reading both sets of wording, it might appear that they were similar, but they were not identical. He stated that staff agreed with, and supported the appellant's proposed newly revised language. He asked if there were any questions from the Council.

Coun. Brzezinski asked if the City Attorney had looked at the new wording.

Osterberg said that he had.

Coun. Stanton noted that in the Board of Design Review (BDR) minutes for August 24, 2000, she did not see that the applicant challenged Condition 17 during the hearing.

Osterberg said he did not attend the BDR hearing, since former Associate Planner Colin Cooper had attended since it was his project. He noted that Cooper had told him that the issue had not been raised at the hearing.

Coun. Soth noted that the language on Condition 17 was substantially the same language they often used.

Osterberg agreed that it was a standardized wording, and yet it could be altered.

Coun. Soth noted that he had not seen the word "vested" in it before and wondered if once adopted it could be changed.

Osterberg said *vested* implied a certain guarantee and he thought that was why the City Attorney had a concern regarding the level of guarantee that it implied. He noted that the most current language (that had just been distributed) used the word *vesting*, but placed it in a context were it referred to the *vesting* that was granted by the conditions of approval. He explained that that placed the word *vest* or *vesting* in a more appropriate context, one that staff felt more comfortable with.

Coun. Soth said at some time in the future when the Master Plan went forward with additional pieces, they might be subject to modification rather than being required to adhere to the plans as submitted at this time.

Osterberg asked the City Attorney to comment on that issue.

Mark Pilliod, City Attorney, explained that the *vesting* language, as he understood it, was to provide the applicant who was submitting a Master Plan, the assurance that, despite changes in the make-up of staff, BDR, Council, etc., their Master Plan as approved would be given the benefit of having been approved so long as the elements conform with that Master Plan. He said if they had another word they could submit it to the applicant, but he did not have one. He reported that the term was well used in statute and common law, and it was meant to offer a sense of assurance to the applicant and their lenders, that the rules would remain the same as they were when they were adopted. He stated that he was not troubled by the use of the term, and noted that the term *guarantee* assumed, just as the word *vesting* assumed, that the applicant's Master Plan would not change and that applications for future phases would be consistent with that Master Plan.

Coun. Soth explained that what he was concerned about was that no changes could be made to the Master Plan in the future with this language in it. He wondered if it would have to go back to BDR for interpretation as to whether or not a change was a minor change with that word.

Pilliod said he did not know what a minor change was to a Master Plan since that depended on how minor was minor. He said if the Master Plan were in need of change, then it was reviewed and changed. He said it went away with substantial completion, so it was no longer an impediment.

Mayor Drake suggested that when Mr. Bennet made his presentation, questions could be addressed at that time.

Coun. Soth noted that BDR did have some rules and their own way of determining significant changes from minor changes.

Grillo said the minor/major issue rested with the Planning Director and if the applicant would propose something that appeared to be straying significantly from the Master Plan, the Planning Director would send them back to the appropriate body to address it. He said with a minor change, no matter what the Planning Director's decision, it could be appealed by either the party that is requesting it or by some other party that disagreed with the Planning Director. He noted this community was confronted on a daily basis, with people who want to get something approved. He said they tried to come to an agreement prior to the appeal being filed to parse the language that was consistent with the Code in previous BDR or Planning Commission decisions. He added the staff felt the language was in the right place when using the word *vesting*.

Coun. Stanton questioned the language in Condition 17 and the language presented that evening. She asked if State Building Code requirements would apply in one but not the other, and if the law changed in three years would the new Building Codes have to be met.

Osterberg said that was correct.

Coun. Stanton stated she had looked up *vested* in the dictionary and verified that *vested* was settled, fixed being absolute, being without contingency.

Applicant: Jeff Bennett, attorney representing Timberline Software, said the reason they had asked for the change was a practical financial one. He noted that this was a $15 million dollar project, which was described in the record. He explained since they were a public corporation, they had responsibilities and said Coun. Soth was right, it came right out of the Code. He reviewed the material attached to his letter (in the record). He explained the second attachment, the fourth page of the BDR decision, and noted that Condition #17 states that Design Review approval shall be void after two years from the date of approval unless a building permit had been issued and substantial construction pursuant to it had taken place. He said the language in subsection G regulated the time limits on approvals and was identical to what they found in Condition #17. He reviewed the material and read from the documents (in record).

Bennett explained that with a three-building project, there was a question as to in which building the principle use took place. He said Timberline was concerned with implementation of this provision and there might be a dispute over whether the parking lot, stand-alone office or the addition was the principle use. He reported that in talking with the staff, everyone agreed that because of that ambiguity it made sense in this situation to create a level of certainty with Condition #17, so that Timberline could go forward and make an investment of $15 million. He added Timberline did not want to go through the process again after they completed Phase 1, because the City did not consider that the principal use

Bennett noted that they worked on the proposed language and had two concerns. He said one was the principal use issue, which the second sentence of the proposed condition in the staff report satisfied. He said Timberline and staff were in complete agreement as to stating that the installation of base footings for any one of the three structures would be considered a principle use under the definition of substantial construction.

Bennett said the second question was what could be done to assure that once that was agreed upon, what was the effect of it. He said from Timberlines perspective, they needed assurance that once they did that, they will be able to complete the Master Plan. He said that is were the word *vesting* came in. He explained it was not Timberline's intention to try to trick the City into fixing the entire world for purposes of developing that project by adding the word *vesting* to that condition. He noted that

what they were trying to accomplish was that as long as they developed in accordance with the Master Plan approval, then they could continue to develop the project in accordance with the Master Plan, without having to worry about going through another procedural process.

Bennett noted that the City Code provided, if Timberline decided to undertake work on the project that was inconsistent with the Master Plan, they were willing to accept the fact that they need to go through that procedure. He said Timberline would go through the procedures for modifications that required additional hearings required by the Code. He added when Timberline went through the Master Plan implementation, they needed to be able to rely on that approval until the project was completed.

Bennett said the two-year time span was what concerned them most. He explained that they did not have a problem starting it in two years, but wanted to be sure that once they had substantial construction within that two-year time period, there was not another two-year time constraint on building. He added that they needed the ability to respond to market forces, and as market forces created a demand for additional space at Timberline's headquarters, they needed to be able to respond. He said to get the entire Master Plan complete they would rely on that making their corporate decisions for the future. He pointed out that he laid out all three versions of sentence number three of the condition, and he felt staff would agree on the first two sentences and had heard that there was agreement as to the third sentence. He said what he did to respond to Pilliod's concern about the use of the word *vesting,* was to try to limit what it meant. He explained that what it said was that once substantial construction occurred, the applicant's right to complete the Master Plan, pursuant to the terms and conditions of this approval, would be vested. He clarified that this condition would automatically sunset and would not apply to further phases of development authorized by this decision. He said the reason he added the words "pursuant to the terms of conditions of this approval," was to assure that they were *vested*, subject to what the approval says. He asked Council to adopt a new Condition #17 that used the first two sentences and implemented the third.

Coun. Brzezinski said she understood the problem with "substantial development," and understood the solution for that problem. She stated that she did not understand the problem that was being solved by the new third sentence. She asked what was it about the original wording of Condition #17 that was problematic for Bennett.

Bennett said he was trying to get assurance for the future.

Coun. Brzezinski said she did not understand the problem then.

Bennett took her to the first sentence of the letter (in record). He said it created ambiguity as to what the word sunset meant.

Coun. Brzezinski asked if he had a problem with the original Condition #17 and the new second sentence, which explained substantial construction.

Bennett said it didn't say what the effect of the substantial construction was, which was what they tried to achieve with the third sentence. He said the second sentence basically said that substantial construction was the construction base footings for any one of the three buildings. He added what he was trying to do was add further certainty as to what substantial construction meant. He said they did not know what would happen if they came back five years from now, with a new Council or new Planning Director, etc. He said those words were vague enough where if someone was so inclined that they could say that the approval didn't apply to the second two buildings, it only applied to the first building.

Mayor Drake clarified that if they had the base footings on one building then they had met the initial requirements. He said that allowed them to complete the other two buildings without having to go back through the whole process each time. He said this allowed them to complete part of the project in two years and the rest as the market panned out.

Coun. Brzezinski asked if there was any precedent to them saying that they could not build the last two buildings after the first building was done, even though they had approved all three.

Bennett said they did not know, but were trying to create as much certainty for Timberline as possible. He said that Timberline was in the process of making a decision about siting a substantial facility and desired to have as much certainty in the process as possible. He said they did not absolutely need the last sentence, but without the last sentence there was uncertainty as to how far it would go. He commented that he had been a lawyer long enough to know that lawyers, City Councils and neighbors could make substantial arguments when they wanted to stop something, even though it had been approved. He said he tried to avoid the possibility of having to come to the Council in the future and wanted it to be made abundantly clear that the approval applied to the entire project.

Coun. Brzezinski questioned since they had just received the information that evening, and they could be setting precedent, would this apply to other projects if approved for Timberline.

Grillo said he would be glad to take a break and think it over, but he did not think that the staff and Council would be going astray. He felt the issue was with the applicant in how they raised money and put equity and capital back into their project. He said they were attempting to be more concise.

Mayor Drake suggested a ten minute break to have time for review.

Coun. Brzezinski asked staff to look to see that they were not establishing a precedent for the future for applications.

RECESS Mayor Drake called for a brief recess at 7:35 p.m.

RECONVENED

The meeting reconvened at 7:45 p.m.

Mayor Drake asked for comments from staff.

Grillo said it was good to have the opportunity to discuss this with staff as a group. He said he had three points he wanted to make. He noted that Council needed to know there were changes that could occur, and he suspected that this or any applicant would raise this point, because this community had the ability to make Comprehensive Plan, Zoning Map and Development changes. He continued that sometimes when those changes were made, in the best interest of the public, with good intentions, the changes might draw individual property owners into the non-conforming section of the Code. He pointed out that most people would prefer to not venture into the non-conforming section of the City's Code. He explained that it was a very difficult portion of the Code and made people very nervous. He stated that the City had the capability under the best of intentions to change things that might unintentionally make it difficult for people if they had not finished a project completely. He clarified that his point was that the City had the ability to make change and affect people.

Grillo continued that he was not arguing for the applicant, but the question that Coun. Brzezinski asked was what was different in the application from any other application the City processes. He explained that what the staff does, administratively by interpretation, was that if the developer started a project in Phase 1 within the two years, they could continue through all of the phases. He reiterated that was done administratively by interpretation of the standard condition, and by implication. He asked the rhetorical question "could the administrative interpretation change five years down the road?" and said he suspected that it could, which he suspected was what made this party nervous. He pointed out that this had never been done. He explained that what the applicant tried to do was put down in writing what the City did on a daily basis in interpreting the Code.

Grillo said the third point, in response to Coun. Brzezinski, was that the staff would not have a problem attaching this condition to another project, if they had another Master Plan that had multiple phases and lasted over a few years.

Coun. Soth recalled a situation where a Master Plan had been developed for a single family development as Phase 1. He said years later Phase 2 went in as multi-family housing and the neighbors were upset because they did not know about the Master Plan. He noted that Timberline proposed to incorporate their existing structure into the Master Plan and add new structures around it to enhance what they had. He said they and their financial partners needed the assurance that what was on the Master Plan would be allowed to happen. He said if his description was correct, he had no problem with the third sentence.

Bennet said that was correct.

Coun. Doyle said that he agreed with Coun. Soth and from a business sense this made sense. He noted that it would be beneficial to all concerned and hoped it helped the financing of the project.

Coun. Stanton questioned what was in the revised Condition #17, dated November 14, 2000, other than the word *vested,* that they needed.

Bennett said the word *vested* was it. He said the word *vested* had legal magic in a court of law and it meant that once Timberline went to a certain point they were entitled to take the steps that would follow in the development. He reiterated that this was what lenders looked at when they considered loaning that amount of money. He said the lender who loaned that sum of money looked at the prospect and the possibility that sometime in the future the customer would not be able to complete the project. He pointed out that a project partially complete is not nearly as valuable as a completed project, and this would make a big impact on a lender's decision to lend or not. He said Timberline wanted as much certainty as possible for business decisions. He said they tried to reflect what the City's procedures were according to these matters. He reiterated that Grillo was comfortable with applying this to another development.

Coun. Stanton asked why he did not ask about this during BDR.

Bennet said he was not part of the BDR issue, and the project manager said it was discussed. He noted that there had been some discussion between staff and BDR and the applicant and BDR relating to the language of this condition.

Coun. Brzezinski suggested that staff change the wording of Condition 17 so they did not have to go through this again.

Mayor Drake asked if there were any other questions for Bennett.

There were none.

Mayor Drake asked if there was anyone who wanted to speak in support of the appeal.

There was no one who wished to speak.

Mayor Drake asked if there was an opponent.

There was no one who came forward.

Mayor Drake said made note there was no rebuttal.

Mayor Drake asked if there were any questions.

Mayor Drake closed the public hearing.

Coun. Doyle MOVED, SECONDED by Coun. Brzezinski to follow AB 00-395, the recommended action which was to improve the BDR decision with a recommended change to Condition #17 to read as follows: Design review approval shall be void after two years from the date of approval unless the building permit has been issued and substantial construction pursuant there to has taken place. For the purposes of this approval completion of construction of base footings for any of the three structures shall qualify as substantial construction for purposes of satisfying this condition. Once substantial construction occurs the applicants right to complete the Master Plan pursuant to the terms conditions of this approval will be vested and this condition will automatically sunset and will not apply to further phases of development authorized by this decision.

Mayor Drake confirmed the motion granting the appeal with recommended revisions both by staff and by Bennett in the letter (in record) to the Council dated November 27, 2000, specifically on page 2.

Coun. Doyle said he echoed Coun. Brzezinski's suggestion regarding the second sentence where you put into the language how you define substantial completion. He said it is good to have it written in Code.

Coun. Soth mentioned that this was a different type of situation that they often run into, and they needed to look at this considering that the City of Beaverton was going to have more redevelopment occurring.

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

ORDINANCES:

Mark Pilliod read the following ordinances by title only:

Second Reading and Passage:

00-381 An Ordinance Amending Ordinance 2050, the Development Code, to Effectuate Annexation-Related Amendments; TA 99-00010

00-382 An Ordinance Amending Ordinance 1800, the Comprehensive Plan, to Effectuate Annexation-Related Amendments; CPA 98-00011

Coun. Soth MOVED, SECONDED, by Coun. Doyle that the ordinances embodied in AB 00-381 and 00-382 now pass. Roll call vote. Couns. Brzezinski, Ruby, Soth, Stanton and Doyle voting AYE, the motion CARRIED unanimously. (5:0)

WORK SESSION:

00-396 Discussion of Response and Implementation of Ballot Measure 7

Pilliod distributed an outline of how he thought the work session should proceed regarding the implementation and the effects of Ballot Measure 7. He said he thought the discussion for that evening was intended to give some general ideas both to the Council and from the Council to staff, as to what Council believed were the appropriate policies necessary to implement Measure 7. He clarified that it was not intended that from comments and discussion by the Council that night, the City's position under particular claims would be decided. He explained that they would want to retain the right to specific litigation strategies, which could be discussed in executive session.

Pilliod said there were probably more questions than firm answers and noted that many of the points he would make were educated guesses, and they were not sure. He noted that the Mayor and others on the staff had been in discussions with the League of Oregon Cities (LOC) and others to discuss where they think this might lead. He noted that from his conversations with other city and county attorneys, the measure implied that there would be some process for a person who feels that they are protected under Measure 7, to present the claim.

Pilliod pointed out that he had prepared an ordinance (on the agenda) that set out a claims procedure. He explained that this would allow the City to evaluate a application to determine if it allowed all of the necessary information that would allow the City to determine if a claim was valid. He continued that it would all Council to conduct a hearing to further investigate the amount of the claim and the specifics and to reach a decision within the 90-day time frame, set out in Measure 7. He said the outline he had distributed indicated a process and the impacts particularly on the budget and the fiscal security of the City. He noted

that he wanted to have a dialog with them and the Council should feel free to ask questions.

Mayor Drake suggested that Pilliod should discuss the basic tenants of this and suggested that some issues should be discussed at executive session and they should save those and do those issues all at once.

Coun. Stanton suggested that those watching on TV, might not remember what Measure 7 was and asked Pilliod to explain.

Pilliod noted that Measure 7 was not the "picture of clarity" so what people thought they were voting on might have been different than he would try to explain. He said Measure 7 amended the (Oregon) Constitution, the clause referred to as "the takings clause." He explained that it amended the Constitution to require that whenever a state or local government adopted or enforced a regulation that had the effect of reducing the value of a person's property, the person could present a claim to that government which was required to pay the reduced value, the amount of value lost by the regulation, or to remove the effect of the regulation from that property owner's property. He said in so many words there were exceptions for historically based nuisances on property, terms that were not defined. He said there was also an exception for regulations that were required to be adopted by the federal government, which was also poorly defined. He pointed out that the voters in the state approved it by 53-54% and in Beaverton the citizens voted it down. He noted that since it was a statewide issue, it was the total popular vote that counted.

Pilliod said the outline could be divided into three areas, the claims process, the regulatory impacts and the political impacts. He noted that the Council had a chance to take a look at the ordinance which was on the agenda that evening, and said it mirrored a land use process in many respects, but the hearing would be at the City Council level. He explained there were a couple of reasons for that, one being that the time frame for reaching a decision was much shorter than the traditional land use process, and also because the Council was responsible for the fiscal considerations, which the Planning Commission (PC) and the BDR were not. He explained that there was a good argument that the decisions made under this claims process might not be land use decisions, even though the Council would evaluate the effect of a regulation on a piece of property. He said the matter is as much a fiscal matter of whether to pay a claim or release the effect of this regulation on that property.

Coun. Soth said this brought to mind Metro Title 3, which had to do with setbacks from stream banks and some of the regulations related to that including cost to the property owner. He noted that Metro was not a permit-granting authority, and the requirement from the Title 3 situation, would mean that since Beaverton was the permit granting authority, Beaverton would become the paying agent for something foisted upon them by Metro, which was not a federal agency.

Pilliod noted that the measure provided relief from paying a claim if it was a federal requirement, but agreed that if it was not a federal requirement, the City could not utilize that relief. He said if there were other agencies that were responsible for applying or enforcing an requirement, such as the Unified Sewerage Agency (USA), the City would see to it that they became aware of any claims that they would more appropriately be responsible. He said they would evaluate who might be responsible for a particular legislative framework, whether it would be USA, Metro, or others. He said the same type of argument comes in the case of the Urban Growth Boundary, which was administered by Metro and which Metro was fully expecting to hear about in terms of claims. He said they would direct the attention of the people to what the City felt was a more appropriate entity for a response to those types of claims, if it is not for the City to receive.

Mayor Drake reported that that Metro was setting up a claims process.

Pilliod said a piece of the process was to have requirements for a person to submit. He explained that if they failed to do so, it would be the responsibility of staff (under the direction of the Community Development Director) to advise the applicant of any missing information and allow the opportunity to submit it. He said once the material was submitted they would then consider that the clock of 90 days to begin to run. He clarified that there was nothing in the measure that actually said this was how it should operate, but it implied that a process of evaluating claims be established. He noted that notice was to be given in the typical land use Type III process, where people within a certain radius of the property would be given notice. He said he had put in 100 foot notice because that was the state minimum for land use matters, but the City could increase that radius if the Council wanted to. He noted that the City Development Code set out a 500-foot radius, and he had inserted the 100-foot radius in an abundance of caution.

Coun. Brzezinski said the notice would be going to the neighbors of the person who had filed a claim, and asked for clarification as to why the neighbors would be notified, why they would care.

Pilliod explained that they would have to consider the recourse to the City if the City were to choose to not pay the claim. He gave an example of an issue that was not a nuisance, not a federal requirement, but the restriction was to a particular part of the Code dealing with uses, and the person said the reduction in value caused by the regulation was $1 million, and they were prepared with an appraisal to prove that. He said the City might look long and hard before paying $1 million, in part because it would have its own citizens appearing at a hearing, wondering what it might do. He explained that if the City did not want to pay the claim, then they could just not enforce the regulation. He gave the example of a person saying that their property was much more valuable with a multi- family residential project instead of a single family project,

and the people in the neighborhood could be quite concerned if the City waived the regulation and let them build the multi-family project.

Coun. Brzezinski clarified that the alternative was to keep the regulation and pay the $1 million, or waive the regulation and keep the $1 million. She said if the claim was valid, the City had to do one or the other, they either had to pay or had to waive the regulation. She pointed out that the City would not be aware of what the person was going to do with the property if the City waived the regulation. She wondered if public input would influence her decision on that, when they would have to do one or the other. She explained that she was not suggested that they not notify the neighbors, she was just pointing out that to her that this was a different reason to notify than the reason they currently notify for, to 500 feet.

Mayor Drake pointed out that people might say the City should pay in lieu of allowing a 30-unit complex in a nice residential neighborhood. He said there was value in the public seeing what the new state law, that maybe our citizens did not vote for but others did. He stated there was value in the public learning just what this change and requirement brings. He pointed out that the way the measure was written, of course the government should reimburse you if it took your property. He continued that he thought a lot of people looked at the measure and said, “if government was to take somebody’s property, such as taking someone’s right-of-way, that was what they meant.” He felt that was what the voters were thinking about on the measure.

Mayor Drake stated that when people started to see what was really happening, for example the first case that was noticed in Jackson County, where people were seeking $50 million dollars because they were not able to put in a gravel plant that was turned down a year ago. He noted that neither Jackson County nor Jacksonville could afford $50 million, so that would leave one choice and that was to let them build the gravel plant. He stated that once people saw what the potential was for the change in state law, they will find that the good environmental regulation will go out the door, or they are going to bankrupt their local government, whether it is city or county.

Coun. Brzezinski felt that was a good example. She explained that she did not think that even notifying people within 500 feet of the area of that would have made a difference as to what the governing bodies decided to do.

Pilliod reiterated that the reason for putting in the 100-foot was because that would satisfy the bare minimum state requirement, assuming this was a land use type of decision. He clarified that he would want to preserve the argument that it was not a land use decision, that no notice was required and no public hearing was required. He stated that he felt the decision by the City Council needed to be made in an open session and minimally by sending a notice to those in the immediate vicinity was

not a bad decision. He noted that as the claim got smaller you would be inclined to find the money than to waive the effect of the regulation.

Coun. Brzezinski explained that she was not trying to get rid of the 100 feet she was trying to not go to 500 feet.

Pilliod reported that there were a couple of jurisdictions that had discussed with their governing bodies the evaluation and the decision on some of the smaller claims to be made internally; delegated by City Council to staff. He said they had not gone that direction and not suggested that the matter be heard by a hearings officer or anyone other than the City Council. He suggested that was the best way to go at this time. He noted that if there were a number of smaller claims, the Council might decide to have a cutoff and for certain levels of claims at the Council's direction, to be decided by the Mayor or a staff member.

Coun. Brzezinski asked when would it be decided to do it a different way. She clarified that it seemed like Pilliod was suggesting to pass the ordinance this way, but leave the door open so they could change it later. She asked why not talk about it at that time instead of later.

Mayor Drake replied that was possible, but said one of the reasons he supported Pilliod's suggestion to have Council make the decisions, was that he and the Council were elected and they account to the citizens for the budget and actions. He said he and the Council balance the dollars and decide how to spend it.

Coun. Brzezinski said it was fine to pass it like this if they wanted, but if they were inundated with these claims she was certainly open to having a dollar figure cutoff and look at someone else handling it.

Coun. Doyle noted that Coun. Brzezinski had touched on this and he was wondering how many of these they thought they would see in a week. He pointed out that if it was a large number, they might need to look at this differently. He said they should make people aware that the rules could change depending if there would be three or four a week, because that would take up all of the Council's time. He said then they could look at it and see if there would be a better way to do this. He noted that the ordinance was to set up the procedures for doing such an appeal or claim, and it mimicked the procedures for how the City did other things. He said this was something that was being put into place and this was only the procedures, and not how they make the decisions.

Mayor Drake noted that anyone can run a petition and it did not have to be decided if it was legal in advance and it would go into effect 30 days after the elections so it did not give much time to address it. He pointed out that this was the City's first shot at trying to address this, and no one had any idea of how many claims would actually come forward. He said the $5.6 billion per year that was estimated by the State Fiscal office, was a realistic figure if they did not waive any land use regulations.

Coun. Doyle asked if the decision was made to waive a regulation, and the removal of that regulation impacted another person's property. He asked with the removal of the regulation, where was this addressed in measure 7.

Pilliod said it was not in Measure 7, and that a similar question had come up as to whether or not when the City had approved a zone change or a development in support of the zone change that had a perceived effect on adjoining properties, whether those property owners had rights under Measure 7. He said he did not believe they did. He explained that it had to be a piece of property on which the regulation applies directly, not indirectly. He stated that likewise the lifting of a regulation is not covered at all in Measure 7, other than as one of a couple of responses that the government can make. He noted they were perceptive and right that there might be an influence on property values if someone utilizes that waiver to build a different type of use than would otherwise happen in a particular neighborhood. He said Measure 7 did not give that effected property owner the right to recover from the government.

Coun. Ruby stated that this was another reason to, at least initially, treat this as a land use matter for the purpose of giving notice to adjoining land owners. He explained that if you had this domino effect, that waiving the application of the regulation to the applicant, harmed an adjoining landowner, might trigger a right to a claim. He pointed out that if a notice had been given, the municipality might have an argument that due process had been given. He continued that if the neighbor had not spoken up on the initial application, they could not be heard later, or at least the burden should be higher later for someone that would then want to make a claim because of something you did for the first land owner.

Pilliod noted that was the reason they were trying to at least meet the threshold level of requirements for a land use decision, even though it might not be of that character. He explained that if they had met the requirements of state law when they made a decision, someone could not come in and say they need to start over because this was a land use decision, and it had been violated. He said they were trying to meet those requirements even though the statue might not apply.

Coun. Soth referred back to the issue of adjoining property owners, it appeared to him that they would have to go through the same procedures as the first ones did. He said you could not tell the effects of this until sometime after December 7, 2000, when it would go into effect, so how many lawsuits were hanging out there waiting for December 8, 2000, were unknown. He pointed out that the Attorney General had not made a decision as to some of the concerns, which made it difficult to determine anything except what was outlined in Pilliod's information. He stated that he thought they were wise to get he ordinance in place so that when the time came they would not be caught sleeping at the switch. He noted he

was thinking about the counties in the Columbia Gorge, because that wasn't federal, it was another Commission.

Mayor Drake noted that some land use watchdog groups were questioning whether local governments had the authority to waive some of the land use laws. He noted that would put them all in an interesting position of being caught between a property owner who claimed they had been denied something, and someone on the other side who said the City should not waive the regulation because they did not have the authority to do so.

Coun. Stanton gave the following scenario: she owned a business in Beaverton and had 15% landscaped according to Code, and wanted to rip out the landscaping, change the parking, and rent out a piece of her property for a little building. She said she could do a claim against the City of they would not allow her to do this, and wondered if that were true.

Pilliod suggested that if she wanted to talk about individual cases, they should discuss them in executive session. He pointed out that it sounded like she was telling how to make a claim.

Pilliod said he thought the courts would have to decide regarding what a use restriction was. He noted they would have to decide what it related to and said the Measure did not tell them.

Coun. Stanton expressed her concern for the design standards for the City of Beaverton.

Pilliod explained that the Measure did not say if they were vulnerable to challenge and noted that he would maintain they were not vulnerable, but it was up to the Courts

Coun. Stanton asked if that would happen when someone filed a claim.

Pilliod pointed out that was addressed farther in the outline, but the choices were to pay, waive the regulation or deny outright. He said the person could then sue the City and incur a judgment including attorney's fees, and depending upon the characteristics of the challenged regulation, the City would argue that it did not apply.

Pilliod said there would be plenty of lawsuits and that would be the third option to deny any compensation and to deny the waiver of the City regulation and defend it or challenge measure 7.

Pilliod said he, the Mayor and the Community Development Department Director would work on and present at the next meeting both a finished ordinance which would contain some adjustments to what had been seen. He reported that they would also have a fee resolution because there would be a considerable amount of cost for staff to process these, much like land use applications that require fees.

Pilliod continued to review his outline and noted it was difficult to gauge the costs at this time, including the costs of appraisers. He pointed out that the current land use processing fees did not nearly cover the costs of processing the various applications. He said it was a policy judgment the Council would have to make.

Coun. Brzezinski asked if the ordinance made the payment of the appraiser the responsibility of the applicant.

Pilliod said that was correct, but the City might want to have their own appraisal done.

Coun. Brzezinski agreed because she recalled situations where the appraised value was in the eye of the beholder, so it did not seem prudent to just take the appraisal of the applicant.

Pilliod said they might want to address that on a case-by-case basis.

Coun. Brzezinski asked if there was a mechanism for a third party appraisal for everything.

Pilliod said it would not really be an appraisal, but the truly independent third party would be the jury, where they award damages based upon what they believe was the value. He noted that if you hired the appraiser that was always subject to someone claiming their influence or their bias in favor of their client.

Pilliod said that portion of the discussion had covered the Fiscal Issues and the Strategies, and noted that the claims were not covered by insurance.

Pilliod said he would not go into a lot of detail (orally), but noted he had highlighted (in his handout) some of the arguments that were potentially out there, to either invalidate or require the courts to clarify the Measure. He said he found it difficult finding a theory on which he felt comfortable saying they could go to court and prevent Measure 7 from going into effect. He said he did not think that theory existed, but said he could be proven wrong.

Pilliod noted there were provisions in both the US and Oregon Constitutions which were either sidestepped or ignored by this Measure and they hoped that in short order the courts would have a chance to decide if that is enough to knock the Measure out.

Pilliod discussed his information on the Regulatory Impacts. He said the staff agreed that at least in the short run they should suspend the efforts they were being put forward to adopt new regulations of a substantive variety, which arguably impose new use restrictions. He noted that did not necessarily cover the procedural Code changes, that they had talked

about, even that evening, so those would still go forward. He said until they had a better sense from the courts how broadly the new Measure applied, they had to assume the City was vulnerable if the continued forward to adopt issues. He pointed out that they might find out that the Council had approved various recommendations from the PC, on various regulations that they had not taken to the next step, such as adoption as an ordinance, sort of a preventive measure. He said the handling of land use applications as they came in would be a different problem, because they would expect people to try to file claims, or assert that they were entitled to file claims. He said he thought the ready answer was that there was a process for these people to follow, but it was not the land use process they were currently involved in. He reported that there was a statue that required a person to exhaust their remedies if they claim the regulation is unconstitutional and whether that particular statue applies to cases with claims of this nature, he did not know. He noted this was a possible hurdle that a person who wanted to file a claim might have to fulfill.

Pilliod explained that in terms of long-term future regulations, the effects on the Department of Land Conservation and Development (DLCD) Periodic Review orders to the City, whether the City would be able to engage in additional land use regulations was really an open question. He added that the soonest that question would be answered would be when the Legislature convened in January 2001 and chose to do anything about Measure 7, such as possibly placing a competing measure on the ballot.

Pilliod pointed out that they had already talked about some of the long-term impacts and a couple of those were listed on page three and they should keep them in mind. He said one was what effect an annexation had, and noted that arguably City regulations were then adopted first, or enacted as to that that property. He explained that the City could argue that the regulations were always in effect and that the person came to the City voluntarily, but the Measure did not decided that clearly. He noted that the City might want to alter the application or approval of annexations to see that people forgo any challenges under Measure 7 before they came into the City. He said that similarly, decisions on extensions of utility services were a fiscal matter, and a lot of the City's utilities were sized according to policies that had been made related to the size of the City and the Urban Growth Boundary. He noted that it was not, practically speaking, within the City's power to extend those services well beyond the City's current boundaries. He said they would be looking at the effects on capital projects as well, and whether they should enact adjustments in the existing regulations. He explained that would be looking at how they handled an applicant's land use process and could they be required to go through the claims process that had been presented that evening.

Pilliod reviewed his outline regarding the Political Impacts. He noted that Beaverton voted against Measure 7, and they did not know what the Legislature would do in helping implement the Measure, but certainly the State could expect claims against the State. He noted this put the Attorney General in an awkward situation, on the one hand having to defend the Constitution, which Measure 7 is part of, and at the same time, interpret and defend the State based on the Constitutional provision. He noted that would be interesting. He said they would be looking at, (but he did not have recommendations that evening) whether the City should join together with other groups such as LOC in a formal challenge to the Measure. He reported that both he and Mayor Drake were very involved with a subcommittee of LOC that was working specifically on this Measure.

Pilliod reported that the had looked at a process that was developed by the Washington County Counsel's Office and had actually already made a number of minor modifications to the ordinance that was distributed earlier. He explained that what that would mean was, assuming they had first reading that night of the ordinance that was distributed the previous week, before the ordinance could be effective, under the Charter, it would be necessary for the him to read the specific sections that were being amended and then they could read the ordinance by title only at the next regular meeting and presumably pass. He said he planned on having first reading that night, and then the second reading, specifying the changes, at the next meeting on Monday December 4, 2000, and then it would come into effect in advance of Measure 7.

Coun. Ruby stated that since the intent was to get the ordinance finalized, he had a couple of comments on a couple things he had questions about. He noted that if they were more suitable for executive session Pilliod could stop him, but he thought there were issues of clarity where he wanted to raise the issues and if no changes were necessary that would be fine. He asked, regarding the part of page 6 of the ordinance, regarding exemptions, 2.07.015 Application, sub-paragraph Exemptions c9. He explained this was where the applicant was required to come forward with on the initial matter to make his claim, and under Exemptions, this ordinance required the applicant to include a statement including analysis of why the regulations were not exempt from the application for compensation. He explained that his question was if it was prudent to require the applicant to not simply attest that to the best of its knowledge that the regulation was not exempt, but to require them in an initial matter to come forward with an analysis. He noted that it could be inconsistent with 2.07.035 Burden of Proof, page 10 of 13. He read the Burden of Proof (in the record). He stated that his understanding was that in most government applications for compensation that he had seen, was that the burden was normally not on the applicant as an initial matter to show why it was not qualified for the compensation. He was concerned with requiring the claimant to include an analysis of why the exemption should not apply, might be inconsistent with that Burden of Proof.

Coun. Ruby said he thought for the purpose of clarity, on Proof of Ownership, section 2.07.015 subsection c4, on page 4 of 13, where it talked about the application and required the applicant to provide proof of ownership. He pointed out that Measure 7 did not define "owner," and Pilliod had stated that if the claimant owned less than fee title interest, evidence that the claimant was the then current owner, with the right to develop the property. He said it looked like there was a word left out. He noted that what Pilliod was addressing was that in Oregon you could have someone who had the primary rights of a property owner even if that person did not hold full legal title, which was primarily in the case of a land-sale contract where title does not go to the purchaser until it was fully paid off. He explained that he was wondering if using the term "the then current owner" was not especially helpful, and it might be better to look at the definition he (Pilliod) had developed of ownership interest, in 2.07.010 of Definitions, on page 2 of 13. He pointed out that Pilliod had defined Ownership Interest, as a legally recognized interest in the proceeds of any sale of an interest of the property in question. He expressed his belief that using that definition could lend some clarity to paragraph 4 on Proof of Ownership to say something such as "if the claimant holds less than fee title interest, evidence that the claimant is the primary legally recognized interest holder in the property," or something along those lines that went to the definition Pilliod had developed.

Pilliod stated that Coun. Ruby's point was excellent, and suggested that the best thing might be delete the last sentence of sub 4. He said they would consider that along with the definitions they already had. He added two points, one that Coun. Ruby indicated that an owner might not actually have a deed, but had all of the other powers associated with ownership by virtue of a land sale contract or long-term lease. He said they would suggest that included with the requirement they list any long-term leasehold interests or encumbrances, because they could effect who was the owner of the property. He pointed out that because of the way these claims were styled, much like condemnation claims, they could not always tell, and sometimes it was up to a group of owners to figure out amongst themselves how they would divide up the award. He noted that was not up to the City to decide that, but the City would need to make sure that anyone who potentially had a claim as an owner, was included in a claim, so it would not be piecemeal.

Coun. Ruby stated that this ordinance represented a lot of hard work. He said he thought it was the hardest thing lawyers were asked to do was to come up with something from scratch when there was not an existing statue.

Pilliod explained that they did borrow ideas and information from others.

Coun. Brzezinski said she had a question on page 4, c2, and said the syntax had her confused.

Pilliod noted that he had his ordinance double spaced and c2 covered an entire page.

Coun. Brzezinski said it was only the lead sentence.

Pilliod reviewed the sentence and explained that they needed a street address and tax lot description of the property that was owned by the claimant, including any property that was directly connected with that property. He noted that would include property that shared a property line or was separate by another parcel that reasonably could be treated as a single unit. He explained that this was to avoid piecemeal claims because a property owner happened to have several tax lot numbers; they needed to be in a single claim if possible.

Coun. Brzezinski recalled that based on earlier discussion the evening, the City's belief was that, if the City regulation did not affect a piece of property, then you could not make a claim. She gave the example that if she did something on her property and that impacted the next property, that next property could not file a claim.

Pilliod said that was a different principle.

Coun. Brzezinski continued that if they had a contiguous piece of property, but it was not impacted by the regulation being appealed, why would they need to have this. She asked if it should be stipulated that if another piece of property that the claimant owned, either contiguous or close by, would be impacted, the claimant would have to lump it all together, but if it was not impacted, why would they need to do this.

Pilliod explained that at the front end of the application they would not know that, would not know a particular regulation did not apply. He said for example, if there was a zoning boundary that went along a property tax lot number and on each of two adjoining tax lots you had a different zoning designation, it was conceivable that you would have impacts on one but not the other. He agreed that Coun. Brzezinski was correct that they would have to essentially parse one parcel, treating it as one that was suitable for a claim and not the other. He explained that the intention was to require a property owner assemble or treat for purposes of a claim an assemblage of discrete pieces that might be treated by the property tax folks as distinct tax lots or parcels. He said the idea was to avoid if possible, a piecemeal approach to claims based upon how many tax lots they had.

Coun. Brzezinski noted that she realized that he had not had a lot of time to put this together and there might not be time between that evening and the next week to make changes such as this which she considered cosmetic. She said she would give him any suggestions she had.

Pilliod stated he welcomed any other suggestions.

Coun. Soth said he had a couple of suggestions and noted that on page 8, on 2.07.030 B, he felt it should read as follows: “at the beginning of the public hearing under this chapter a statement shall announce that.” He said on page 9, D, sub d, the second line, he suggested they delete one “prior to,” since it looked like it was repeated. He commented that tiw as a tremendous job and complimented Pilliod on his work.

Coun. Doyle noted, on page 6, 2.07.015, C12, he wondered why this was there. He wondered if it was preemptive.

Pilliod said they were trying to account for possible interpretations by the court, which was why the ordinance was three times longer than might be necessary. He pointed out that they even provided for the refund of the application fee, if it was determined that the applicant was entitled to compensation. He said the idea was that if the applicant proved they were entitled to $50,000 and the fees were $2,000, they would only be getting $48,000, so this would compensate the full amount.

Coun. Doyle said on 2.07.020, he did not have a problem with letter B, with the 100 feet that had been discussed earlier. He said for 2.07.030, B 3, third sentence, he wondered if they could make definite time limitations for these hearings so the Mayor would not be on the hook every time they have a hearing. He explained that would eliminate the concern that some people got more time than others.

Mayor Drake pointed out that the Council rules allowed for variation, and they could disagree with the Mayor’s recommendations. He clarified that when he made those time limitations it was to not to be partial, but in reality to get through the process at a reasonable hour. He noted that people did have the right to submit unlimited written testimony. He suggested they keep it flexible, and look at it on a case by case basis.

Coun. Doyle explained that he was trying to make it better for the Mayor.

Mayor Drake said he knew that but felt they needed the flexibility, and noted they might get a large number of these hearings and if they specify to much or to little they could be locked into something that did not work well.

Coun. Doyle said he was just suggesting it if it would help.

Coun. Soth said Mayor Drake was right and recalled times when there had been a room full of people who wanted to testify on a particular matter and they limited them to three minutes in some cases, depending on the number of people wishing to testify. He said this was more considerate of the large numbers and allowing them all time to speak.

Coun. Doyle said if it was not necessary to put it in, that was fine.

Coun. Doyle asked, regarding 2.07.060, (Conditions Related to Court Decisions) page 12 of 13, A & B, what was the basis for this. He said it reminded him that the Tualatin Hills Parks and Recreation District (THPRD) was now collecting fees, which was being challenged in court, and he wondered how long would a person who did receive a favorable decision and the money was paid; then four years later the court ruled this is nonsense and they had to give the money back; what was the time frame for this.

Pilliod explained that the conditions they were talking about, in general, stated that if the City of Beaverton made an award, or if it chose to waive the effect of the regulation as to that property owner, and some time later a court decided that Measure 7 was invalid, then the point behind this provision was that the claimant did not get to keep the money. He said it would go back to the point in time just before they were granted those rights from the City. He noted that someone could argue that the provision was unenforceable, the City would want to have the right to argue that it was enforceable. He suggested that someone taking the money might be careful with what they did with it.

Coun. Doyle noted that given the unusualness and the lack of decisiveness in the Measure, he could understand why it was there, he just found all of it unusual. He said he had just wondered if Pilliod had got this from another situation.

Pilliod explained that this would be treating an award that someone got as invalid, and he said that would not be unconstitutional about a retroactive law as long as it was not ex post facto, which did not apply there.

Coun. Doyle pointed out that most ballot measures today had retroactive law.

Pilliod said it struck people as unfair and he shared that feeling, but it was not something unlawful for the City to adopt.

Mayor Drake said that they could send revisions to Pilliod for review.

Coun. Soth reported that they had talked to a staff person at the National League of Cities (NLC) and he indicated they were aware of this and were in contact with the LOC. He said there was federal legislation much like this and the NLC's position was to oppose it. He said this would be discussed as part of the NLC conference in Boston the next week.

Pilliod said he would try to have a red line/strike out version by Wednesday or Thursday for their review. He asked for their comments or revisions either on the phone or via e-mail as soon as possible.

ORDINANCES:
Suspend Rules:

Coun. Soth MOVED, SECONDED, by Coun. Doyle that the rules be suspended, and that the ordinance embodied in AB 00-397 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, and at that reading, incorporate the amendments to the ordinance that would be made. Couns. Soth, Doyle, Ruby, Stanton and Brzezinski voting AYE, the motion CARRIED unanimously. (5:0)

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

First Reading:

00-397 An Ordinance Establishing a Process for Evaluating Claims for Compensation Under the Amendments to Article 1 Section 18 of the Oregon Constitution Approved in the 2000 General Election and Declaring an Emergency

RECESS: Mayor Drake called for a brief recess at 9:20 p.m.

RECONVENED:

Mayor Drake reconvened the meeting at 9:30 p.m.

Mayor Drake noted that Coun. Stanton had stepped out of the room.

EXECUTIVE SESSION:

Coun. Soth MOVED, SECONDED by Coun. Brzezinski, that Council move into executive session in accordance with ORS 192.660 (1) (h), to discuss the legal rights and duties of the governing body with regard to litigation or litigation likely to be filed. Couns. Soth, Brzezinski, Ruby and Doyle voting AYE, motion CARRIED unanimously. (4:0) (Coun. Stanton was out of the room when the vote was taken.)

The executive session convened at 9:31 p.m.

Coun. Stanton returned to the executive session at 9:35 p.m.

The executive session adjourned at 9:43 p.m.

ADJOURNMENT:

There being no further business to come before the Council at this time, the meeting was adjourned at 9:44 p.m.

_____
Darleen Cogburn, City Recorder

APPROVAL:

Approved this 8th day of January, 2001

_____
Rob Drake, Mayor

MINUTES
NOVEMBER 27, 2000

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