

REGULAR MEETING

April 2, 2001

CALL TO ORDER:

A regular meeting of the Beaverton City Council was called to order by Mayor Rob Drake in the Forrest C. Soth Council Chambers, 4755 SW Griffith Drive, Beaverton, Oregon, on Monday, April 2, 2001, at 6:45 p.m.

ROLL CALL:

Present were Mayor Drake, Couns. Fred Ruby, Evelyn Brzezinski, Dennis Doyle, Forrest Soth, and Cathy Stanton. Also present were City Attorney Mark Pilliod, Human Resources Director Sandra Miller, Finance Director Patrick O'Claire, Community Development Director Joe Grillo, Engineering Director Tom Ramisch, Operations/Maintenance Director Steve Baker, Police Captain Wes Ervin, Library Director Ed House, Senior Planner John Osterberg, Development Services Manager Irish Bunnell, Support Specialist II Deborah Baidenmann, and Deputy City Recorder Sue Nelson.

CITIZEN COMMUNICATION:

There was no one who wished to speak.

COUNCIL ITEMS:

There were none.

STAFF ITEMS:

Linda Adlard, Chief of Staff, gave an update on the Red Light program. She said by the end of the week all five intersections would be constructed and four of the five would be ready to issue citations. She noted that they expected all intersections would be activated by the following week. She explained that the bill at the legislature was returned to committee from the House Floor over a flaw in the language, but would be back out this week for a vote. She explained that it would then go over to Senator George in Transportation. She said she would be calling on the Councilors in the next week for some strong lobbying efforts.

PROCLAMATION:

Records and Information Management Week (April 2 – April 6)

Coun. Soth complimented Sue Nelson, Deputy City Recorder, on the work she has done for the City with City Records. He said she had done a tremendous job with the Records Program.

Coun. Stanton said Nelson should be singled out, because she was on a National Board that oversaw Records Management issues. She commented that Nelson was known nationwide for her expertise and abilities in the records area.

CONSENT AGENDA:

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

- 01096 A Resolution of Intent to Condemn Properties Abutting SW 155th Avenue for Use as Public Right of Way
- 01097 Liquor License Renewals – Annual Renewals
- 01098 Social Services Funding
- 01099 CUP 2000-0026 Murrayhill Pump Station Conditional Use Permit
- 01100 FS 2001-0003 Murrayhill Pump Station Flexible Setback
- 01101 Legislative Text Amendments to the Comprehensive Plan Chapter 7 Natural Resources and Open Space and the Development Code Section 20.20.90. File Nos. CPA2000-0011 and TA2000-0008
- 01102 Legislative Text Amendments to the Comprehensive Plan Chapter 8 Environmental Quality and Safety File No. CPA2000-0010
- 01103 Bid Award – Purchase of One Trained Male German Shepard or Belgian Malinois Dog

Contract Review Board:

- 01104 Ratify Work Performed and Authorize Contract Change Order – Legal Assistance for *The Round* at Beaverton Central
- 01105 Bid Award – Ratification of Contract Award for Red Light Enforcement at SW Walker Road and SW 158th Avenue
- 01106 Contract Change Order – Ratification of Surveying Services for the Henry Street Extension Project
- 01107 Contract Change Order – Right-of-Way Appraisal and Acquisition Services for the Fanno Creek Multi-Use Path Project

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

Coun Doyle excused himself from the Public Hearing. He said he was the Executive Director of a group that was conducting business with the appellant. He wished the other Councilors well in making a difficult decision. He said he had not shared his opinions on the preliminary information and had discussed his decision with the City Attorney and the Mayor.

RECESS:

Mayor Drake called for a brief recess at 6:50 p.m.

RECONVENED:

The regular meeting reconvened at 6:55 p.m.

Mayor Drake opened the public hearing.

Joe Grillo, Community Development Director, said the Council was ready to open the public hearing on the appeal of the Board of Design Review (BDR) decision regarding the appeal by The Hoop (Appeal 2001-0002). He read a prepared statement (in record).

Coun. Stanton said she was a member of The Hoop, and her children went there to play basketball only.

Grillo asked if any Councilors had any *ex parte* contact.

Mayor Drake said he would vote only in the event of a tie. He said he had driven through The Hoop parking lot.

Coun. Ruby said he had not been to The Hoop, but he lived in the Royal Woodlands area and he was familiar with the premises.

Coun. Soth said he had driven by, but had no other contact.

Coun. Brzezinski said she had also driven by.

Grillo asked if anyone objected or challenged the Council's authority to hear this matter.

There was no one.

Mayor Drake noted that the City had received 30 to 40 emails in support of the appeal.

Irish Bunnell, Development Services Manager, and John Osterberg, Senior Planner, gave a brief staff report.

Bunnell said he would go back to the beginning of the project in 1994 and give a brief history. He explained that there was a Pre-Application for a basketball facility in September 1994, and the application was completed in January 1995. He said between those dates the representatives from the Sivers Company, the developer, and The Hoop presented to the City an argument that they weren't really a full recreational facility, but were limited to basketball only. He referenced the Development Code from 1994 in effect at the time the original application was made. He referred to the Campus Industrial Zoning (page 37 of the Development Code) and read "private recreational facilities such as fitness clubs, racquetball or handball clubs, tennis courts or swimming pools, exclusive of spectator sports facilities were permitted use." He noted that in the parking requirement at that time, there was a category called "recreational facility." He identified that it matched well with land use designation under Campus Industrial for recreational facility. He said they had used that parking requirement, which was for one space per one hundred feet of floor area, which equated to 445 spaces. He commented that the developer had said they weren't really a recreational facility, but a private basketball facility only. He said the code allowed for them to apply for a Planning Director's Determination for another parking requirement. He recounted that they argued that they only needed 182 spaces based on a detailed analysis of what would occur at The Hoop facility. He said CIDA Consulting submitted documentation on January 10, 1995, which reported that The Hoop was a basketball facility only, and they were specific about the activities including basketball and how many people would be present at any given time and that was what the parking requirement was based on. He said the fact that The Hoop asked for and received a different parking requirement than what was normally required in the Code bound their approval to the land use that they said they were. He pointed out that the agreement was made with the City and went on to the Board of Design Review (BDR) for approval. He stated that it was approved and an appeal was filed. He said the City had experienced a 120-day requirement problem in the process and a Writ of Mandamus (Writ) was filed and granted.

Bunnell said granting of the Writ gave the developer the right to develop the property as the Hoop as proposed and as conditioned by the City. He explained that dances came along later and the City notified the property owner because all that had been requested and approved had been basketball. He said The Hoop submitted a request to broaden the allowed uses to a range of other uses including dances. He explained that the public hearing concerned an expansion of the uses from basketball to dances and dances only. He noted that he had indicated during the BDR hearing that there were several provisions in the Code that someone could seek a different determination from requirements. He said one provision would be a Planning Director's Interpretation (PDI), which meant that the Code allowed something and if it was not clear in the Code the Planning Director could make an interpretation and publish that interpretation and allow an appeal on it as well. He said someone could pursue (under the PDI) that The Hoop operated as a basketball

facility, had dances, but did not operate as a recreational facility. He pointed out the Planning Director's Determination dated Jan 11, 1995, specified another parking requirement. He noted that the subject of the appeal was that The Hoop said they should have a different parking requirement and it should only be limited; they should not have to supply the Code requirement for a recreational facility. He said another way to seek relief from the Code was to have shared parking with another use on the same lot or a different lot and a variance requested for more spaces. He noted that a fifth way to get the full range of uses allowed (under a recreational facility) was to provide the parking the Code required, which was 220 spaces for the square footage of this use.

Bunnell commented that no one in the City was opposed to basketball, dances, racquetball, or any other of the uses that were allowed under *recreational facilities*. He specified that the parking needed to be required or somehow accounted for and that was the only issue.

Bunnell addressed a letter dated March 28, 2001, from Steven Schell, and summarized by pointing out that the letter said a Writ of Mandamus had originally approved a recreational facility in 1995. He corrected Schell's statement by pointing out that what had been approved was a private membership basketball only facility. He said it was not a recreational facility; otherwise 440 parking spaces would have been required. He referred to the letter again and recapped that it said that in 1995 the Code did not have a category for parking for recreational facilities as it currently did. He noted that he had informed Council earlier that evening what the Code said about recreational facilities, so in fact, Schell's statement was not accurate, and the Code did have a requirement for recreational facilities. He said Schell's letter stated The Hoop was approved on the basis as a use for basketball with 182 parking spaces. He said that was a true statement and under the Writ the 182 spaces were approved and allowed to be constructed. He pointed out that Schell's next statement said, "...because that was the dominant and heaviest use..." while in reality, basketball was the only proposed use. He read another paragraph on the next page, "...to say that the parking reduction was justified on the basis of a basketball facility and therefore is all that can go on at that facility is an error and the equivalent of a partial *taking* of the existing use of the land". Bunnell said the only thing that was approved was what was asked for, and he did not know how the City could *take* something that was not asked for.

Coun. Soth said that he recalled that allowed uses in Campus Industrial Zones (other than office space/light manufacturing) such as the previous allowance for retail establishments, were to be directed toward the occupants of the Campus Industrial sections in which they existed. He questioned if that had been changed since 1995. He noted that some of the use had been expanded, but the majority of those uses were the few uses (other than those outright permitted uses) directed toward people within that particular area.

Bunnell said in that category in 1994, the Code that was applied under (and in the current Code) Campus Industrial Zone had broad areas. He explained that the first area said that 100% of area could be for a specific list. He noted that there was another group of uses that said up to 60% of the land area in a development control area might be devoted to uses which provided office employment activities and or services to employees and establishments within an industrial park, including privately owned parks and recreational facilities that The Hoop application came in under.

Coun. Soth said the intent was restrictive in the sense of the majority of effort should be directed to those businesses and offices within that Industrial Park Zone, specifically to that area. He questioned if there was anything (other than basketball) in the approval that allowed for fitness equipment or instruction in the original application.

Bunnell said there was nothing in the approval that allowed for fitness equipment or instruction.

Coun. Soth commented that whatever was brought in outside of that use was against the original application and not in conformance.

Bunnell described the only thing that was originally approved was a private membership basketball facility.

Mayor Drake asked if exercise equipment was an accessory to basketball.

Bunnell said he didn't know if exercise equipment was part of a basketball facility and it had not been mentioned in the original application, but it would be expected at a recreational facility.

Coun. Stanton asked if the little gym at The Hoop was a nonconforming use or in violation of the original application.

Bunnell said that what was in violation of the original approval were some of the uses that had been occurring at The Hoop. He said the gym was not in violation because it was approved for basketball and was approved for so many square feet.

Coun. Stanton said she was referring to the workout room at The Hoop.

Bunnell said he didn't find it mentioned in the 1994-95 proposal for a private basketball facility.

Coun. Brzezinski said that what Bunnell had quoted from was the Design Review narrative dated January 10, 1995, and the associated parking analysis. She commented that what seemed important to her was what The Hoop said they were going to do and why they had 182 parking spaces. She clarified that they were there that evening not to talk about whether The Hoop should have been doing things that they were doing

nor were they talking about closing The Hoop or the dances. She said if they had walked into the BDR with a list of the expanded activities and some way to show that they had 220 parking spots, they probably would not be at a public hearing before Council that evening.

Bunnell agreed and said if The Hoop had shown that they had 220 parking spaces, the public hearing would not have been necessary that evening.

Coun. Brzezinski reported that there was a large number of emails and correspondence asking Council not to close The Hoop. She reiterated that Council was not trying to close The Hoop; they were trying to get them to comply with the City's requirements. She said she hoped those testifying that evening would remember that fact.

Coun. Ruby said in 1995 The Hoop was pitched as a specialized basketball facility and not as a full blown recreational facility. He pointed out that if it had been presented as a recreational facility then 440 parking spaces would have been required. He asked where the 440 parking spaces number came from.

Bunnell said the code had been changed since The Hoop originally applied in 1995. He said the current Development Code called for 220 parking spaces for the square footage at The Hoop. He noted that the code in 1995 had the category in parking of recreational facility with a requirement of one space per 100 square feet of floor area, which would have resulted in 445 spaces.

Coun. Ruby asked if that kind of parking was available at that site. He noted that 440 parking spaces could not be accommodated at that facility, so if it were presented to the City as a full blown recreational facility in 1995, The Hoop probably would have had to look at a different location.

Bunnell said he couldn't draw that conclusion because there was another building on the same parcel of land as The Hoop and he did not know how much more parking could be garnered if that building was not there.

John Osterberg, Senior Planner, said he would state the nature of the appeal and take questions about it. He explained that the hearing that evening before Council was an appeal of the BDR decision. He said the BDR had approved a portion of the applicant's request to approve dances on a limited basis with strict limitations on days and hours of operation as it related to an analysis of the peak parking demand in relation to the other businesses on site. He said the BDR did not approve a greater range of additional recreational activities. He reiterated that the BDR approved dances in a limited way and did not approve recreational activities.

Coun. Ruby referred to Osterberg's quote in the *Oregonian* about "the noise mitigation efforts at The Hoop." He asked Osterberg about The Hoop spending \$12,000 for noise mitigation equipment, what the understanding was between The Hoop and the City and what was supposed to take place and were there any time requirements for the expenditure to be made.

Osterberg said he was not involved in the code enforcement issues that had recently occurred. He explained that a Type One Design Review application was submitted to the City to place noise baffles. He said the City approved that proposal and it did not contain any condition of approval that required that it be done by a certain date. He explained that the issue of noise was ongoing and the City was receiving correspondence from neighbors regarding the noise primarily from music at the dances. He said the issue came before the BDR; there was an agreement and the applicant would place the noise baffles at the conclusion of the BDR decision including any appeal that might stem from that decision. He said The Hoop had gone on record stating that they would place the noise baffles at the conclusion of the appeal. He explained The Hoop said the purpose of the noise baffles was to minimize the sound coming from the building.

Coun. Soth questioned that if the appellant should desire to expand to all the uses which they had suggested, then under the City's current regulations and the Development Code would that require a new submission and application with all the intended analysis.

Osterberg affirmed that was one of the alternatives. He noted that Bunnell had listed several examples of how the applicant could proceed forward. He said they knew there was a parking problem on the site, and he was not sure what a new design application would gain for the applicant.

Bunnell said there were five ways a new application for a recreational facility with all uses might be allowed under Recreational Facility. He explained the five ways: 1) Planning Director's Interpretation; 2) Planning Director's determination of parking requirement, other than what was already in the Code and if it was not already listed in the Code; 3) Provide shared parking such as an agreement with the neighbor); 4) Seek a variance from the required number of parking spaces; 5) Provide the parking (220 spaces) either on this site or on another site fully dedicated to this use.

Coun. Stanton asked if it could be another permitted use in the Campus Industrial Zone or if the criteria were matched against a particular recreational facility or something else.

Osterberg said the application (BDR 950006) was proposed as out right permitted use and no Conditional Use Permit (CUP) was needed. He said that however, in conjunction with that The Hoop requested a special

parking determination made by the planning director. He said that was the only unique thing about the application at that time (1995).

Bunnell explained that design review was required. He commented that this was the point that was the crux of the matter and that it kind of acted like a CUP, but it was not. He explained that what limited the private recreational facility, as an outright allowed use in the Campus Industrial Zone, was the applicant's request for a different parking requirement. He said they limited the use allowed there by their own request for a private basketball only facility.

Coun. Stanton clarified that The Hoop chose not to be viewed as a recreational facility.

Bunnell said that was true in terms of parking.

APPELLANT:

Mayor Drake explained that the next part of the public hearing was the appellant's presentation. He noted that Steve Schell was listed as the Appellant and there were five people for the appellant's side who would like to testify. He said Schell had given him a list of witnesses that he wished to testify in the following order: Dennis Sivers, Property Owner, Larry Steele, Dr. Steve Sims, Lans Stout, and Steven Schell.

Mayor Drake reported that Jim Howe had submitted a document (in record) on March 28, 2001, and noted that Council did have a copy of the document, because it came in after the staff report had been released.

Dennis Sivers, Portland, said his company owned The Hoop. He stated that he would like to address Bunnell's "selected memory" where he put in the term "basketball only facility". He said when he went to high school they called the place that the marching band practiced, the baseball team ran wind sprints, and the track team worked out, a football field. He pointed out that was because it had lines and stripes for football, but that did not mean they expected people could not use it for other activities. He said that the Writ of Mandamus which used the words "recreational facility building and parking lot and tree preservation plan" referred to a Staff document, which included the term basketball facility and not basketball only facility. He said it was not an exclusive use. He reported that The Hoop building had 36,000 square foot of floor laid out as six basketball courts with goal standards and free throw shooting, etc. and it was a basketball facility. He said basketball was the largest part of what happened at The Hoop, but was not everything. He noted that notwithstanding their representations of this, the Conditions of Approval voted by the BDR on Jan 25, 2001, included language, which said, "uses other than basketball and dances are not allowed". He said that was a significant change from the approval as a basketball facility. He commented that there was no argument in the record for any restriction for basketball. He noted that The Hoop had told the City how many

people would be there for basketball games, but they did not say that those people would only be playing basketball. He advised Council that they would hear that evening how The Hoop was used for Futsal (indoor soccer), volleyball, training, and other things and they would see the way The Hoop said it would be used was exactly what was currently happening, contrary to the staff report. He noted that they were there that evening to repeal the harsh and unnecessary restriction on the definition of what a private basketball facility was all about. He said the language was a blatant attempt by certain members of the City staff to shut down The Hoop. He asked Council to not use the convoluted reasoning set forth in the documents. He said the same people who were against The Hoop originally being located on the site were the same people who were still fighting to get rid of The Hoop. He commented that those people obviously had a lot of attention from City staff. He said the Council could correct some of the injury intended to this facility by the staff's action and he urged Council to do the best for their City and allow The Hoop to continue. He explained that the people that were there that evening were addressing the appeal issue right on point and they would show that the use of this facility for Futsal, training and other activities was right for a private basketball facility. He noted that the parking conditions that were approved by staff were correct and that was what was appropriate for this private basketball facility. He commented that if they painted themselves into a corner by showing the facts of how it was going to be used, then that was something that should and could be remedied by the Council that evening by allowing The Hoop to continue to serve the City's friends and neighbors.

Larry Steele, Lake Oswego, read his letter into the record. He said his company (Community Sports Inc.) had taken over management of The Hoop. He explained that his company was involved in sports complex developments all over the United States and many groups sought them out to develop facilities similar to Beaverton's Hoop. He said the facilities provided programs and uses that frequently were not available at other community sponsored recreational facilities, such as the Tualatin Hills Park and Recreation District. He commented that their concern was what the BDR and staff did in adding the sentence of the first condition of the BDR approval, which referred to uses other than basketball and dances were not approved. He noted that fitness training had been part of The Hoop's program from the beginning and programs like Legacy Health Systems Relationship were integral to how business was done at The Hoop. He commented that other uses, such as volleyball, were very important to a viable, economic enterprise and he asked Council to recognize those limited uses. He said they understood if some other use was proposed they would need to return to the BDR or staff to look at whether the parking could accommodate that use. He commented that his understanding was that the limitation on use was based strictly on parking. He noted that when The Hoop was built, the City determined that 182 parking spaces were adequate for basketball. He said they had hired professionals to indicate where the parking was going to be stretched by the uses beyond basketball and dances and the best

evidence they had was that parking would not be limited if the extra uses we allowed. He urged Council to reject the staff recommendation and adopt the limited use recreational facility limit on parking that The Hoop had put forth.

Dr. Steven Sims, Corvallis, said he was the Vice President for Development for Community Sports and Events and General Manager at The Hoop. He pointed out that The Hoop was a family oriented facility and although basketball was the main emphasis of business, The Hoop also offered other activities. He said those activities included Futsal, wrestling, etc. but not an increase on the demand of the facility. He said both males and females used The Hoop and several celebrities had used the facility over the last five years. He said they had hosted Women's national basketball camps as well as Olympic skiers and prominent basketball players, including members of the Portland Trail Blazer team. He said The Hoop offered quality and content to the community and served the athletic needs in the Portland area. He commented that The Hoop would not remain viable if it was not able to offer a variety of activities; the other activities were needed to utilize the current space because basketball alone did not generate the revenues for a business of this size and caliber. He said that the 182 parking spaces were adequate for the maximum number of cars expected for basketball and he explained that The Hoop had never exceeded the demand for available parking. He said most people dropped off their kids at camps and tournaments. He said the dances had put a demand on traffic control and The Hoop tried to accommodate those issues, but it was important to understand that it was not a parking issue. He noted that it was difficult to understand why there was a condition of non-adequate amount of parking. He emphasized the approval was very important to the facility and the facility offered a unique opportunity. He read Council Goal Number Six, which referred to managed growth and livability and he said The Hoop was trying to do the same thing and mirror the goals of the City.

Lans Stout, Portland, said he was a Planning Consultant with CIDA, Portland. He noted that CIDA was involved in the original submittal of The Hoop and he submitted a letter into the record. He asked Council to note a letter from Schell dated March 28, 2001, which had Stout's letter dated March 12, 2001, attached (in record). He said the whole issue was related to parking, and the peripheral matters of noise and lighting and all of the other things that the neighbors were concerned about were addressed. Siverson had agreed to take care of all of those issues. He said The Hoop had asked for the full range of recreational activities to be addressed by the BDR and they had emphasized dances, because that was what had been relevant at that time. He noted that in the course of discussion with BDR, they felt there was not enough information presented in their record to go beyond dances. He said that in discussion with staff it was agreed that there were four ways to address the additional uses. He said The Hoop agreed to the condition and prepared the parking study (dated March 12, 2001 and in record). He said The

Hoop was advised that there was no way that City staff could administratively approve it because it was not enforceable due to procedures in the Code. He noted that was contrary to the condition The Hoop had agreed to originally. He said city staff also advised that a variance would not succeed because of code criteria that would have to be met. He reported that providing parking was not an option since there was no land to put the parking on, even though there was a shared parking agreement with the neighbor next to The Hoop for off peak times. He pointed out that The Hoop was faced with Bunnell's five options, but he felt none of them would work and that was why The Hoop was appearing before Council that evening addressing the parking issue. He said that in terms of operations at the Hoop, they were proposing a limited list of uses. He said he had specifically asked the operators of The Hoop to give CIDA a list of all the activities that might possibly be considered for the facility and the parameters by which parking could be evaluated. He said that on the basis of that analysis CIDA picked those activities, which would stand on 182 (or less) parking spaces. He said The Hoop stood on 182 spaces and so any activity within The Hoop that had a demand of less than 182 spaces was consistent with the original intent of the City's determination that basketball at that level was acceptable with that amount of parking. He said CIDA had presented parameters, calculations and data to staff to show that the City's determination could be amended to be within the intent of that decision and still address the needs of The Hoop. He said the problem was they could not get there from a procedural standpoint to the comfort of City staff. He asked Council to approve the revised condition as Schell had addressed to recognize that activities could occur without over capacity issues on parking. He addressed the question of hoods over the vents and noise bafflers and said they had submitted a Type One permit request and he noted that the permit to construct those was ready to pick up at the City, but they could not get the permit until the appeal process was concluded.

Steven Schell, Beaverton, said he was representing Mr. Sivers and The Hoop. He commented that there was a genuine issue on interpretation as to what went on and The Hoop people had thought that from the beginning that a basketball facility included other things. He said the City apparently thought that basketball facility did not include other things. He noted that there was a mezzanine built at The Hoop and there was use anticipated for the facility and it had always been there as part of the plans that were approved. He said the City now took the position that basketball meant only dribbling down the floor and that simply was not the idea that the submitters of the original application had. He said the City had asked The Hoop to come in on a procedure and that had been done. He reported that The Hoop representatives had been asked by the City to go through the process of design review to establish what appropriate uses were and that because of the fight over basketball and dances it seemed imperative to talk about these other limited uses. He explained that the uses were limited as evidenced by earlier testimony and The Hoop had no intention of opening a 24-hour Fitness facility or

have country club activities. He pointed out that Bunnell was right in referring to the 1997 code and he apologized if his letter dated March 28, 2001, was incorrect. He said The Hoop originally intended for the stated auxiliary activities to be part and parcel of the operation. He noted that the material that CIDA had prepared had shown that the 182 parking spaces would service all of the specified activities and the proposal was that there would only be indoor uses and no other uses would occur. He said the issues were limited, and the noise and light issues had been decided and those were the focus of the BDR. He reported that the neighbors did not appeal those issues and the only issue left was one of parking. He urged Council not to misuse their power by applying this requirement for an outright use (namely a recreational facility) in an arbitrary way.

RECESS:

Mayor Drake called for a brief recess at 8:00 p.m.

RECONVENE:

The regular meeting reconvened at 8:10 p.m.

Coun. Soth referred to Sivers testimony and commented that what one called the football field at Sunset High School had no bearing on what the issues were before Council that evening. He declared that one could not compare issues. He said he objected strongly to Sivers letter dated March 28, 2001, regarding his statement about the City's blatant attempt by City staff to shut down The Hoop. He emphatically said that statement was totally false. He explained that what Council was doing that evening was reviewing an appeal of a BDR decision and as to whether or not any business in the City of Beaverton or anywhere else chose to continue or not to continue was a business decision. He said it was not up to Council to enter into business decisions. He commented that business owners had their own prerogatives and he would be the last person to deny them their prerogative. He said there were distinguishing marks between a recreational facility and what was originally proposed in the 1995 characterization, and it was definitely stated that this was not a recreational facility. He asked Sivers if he was changing his mind or changing the characterization of the facility as it existed in 1995 and as it existed now.

Sivers apologized to Coun. Soth for possibly offending him and said the comparisons were very apt. He stated that there was no change in the facility and the term "basketball facility" was not to be construed as basketball only in spite of Bunnell's interpretation. He said what The Hoop was doing was part and parcel of the facility that contained six basketball courts and hence could be designated as a basketball facility, because that was its predominant use. He noted that the facility could not survive with the condition of basketball only and The Hoop would not even be able to make the attempt. He said he was sorry if he had to bring that up, but it had to be addressed in terms of justification to the

members and others if Council decided that the BDR decision to police what was meant as a basketball facility was justified. He said the staff did not have the prerogative to make the determination that the uses fell into the original intent. He noted that the City had asked about maximum use and they were never asked to provide all possible uses, only the maximum use for parking. He said The Hoop did their best to provide that information and their intent was not to change the facility.

Coun. Soth asked Schell about his letter dated March 28, 2001. He referred to a statement on page two, beginning paragraph, number four, and he commented that that statement was totally irrelevant. He said that whether or not this was an economically viable concern was a business decision made by the owners and it was not up to the City Council to guarantee the success of any business. He referred to page four; the second paragraph in the same letter and said he strongly objected to the second sentence. He said it was a "bait and switch" argument and was irrelevant. He addressed other statements in the letter concerning the economic situation at The Hoop and commented that was not a concern of Council although they hated to loose businesses. He asked about another statement in the letter referring to the opinions of hundreds of preteens. He asked if a survey had been taken.

Schell asked if Coun. Soth had attended any of the dances at The Hoop. He noted that there were hundreds of preteens at those dances and they had indicated strong interests in the activities.

Coun. Soth said he had not attended any of the dances, but stated that was the information he wanted to know.

Coun. Stanton said she was a mother of a preteen at one time who had attended many dances at The Hoop. She commented that the dances were well attended and there was a great need in the community for this type of activity that the schools could not always provide.

Coun. Soth referred to page five about the City forcing The Hoop to close. He reiterated that the City was doing nothing of the kind, but what they were doing was deciding on an appeal from the BDR decision, which had nothing to do with the economics of the case.

Coun. Soth asked Stout to clarify his analysis of the parking requirements and the activities. He asked if Stout thought all the activities would be occurring at the same time or at different times during the operation of The Hoop and if so, had those activities been outlined.

Stout replied that was a very good question and one that they had struggled with in terms of how to address the whole issue. He noted that the key was that the activities occupied the same floor space so one would not have a basketball game and a volleyball game going on at the same time. He said as long as one can look at it from the standpoint of density of parking requirement, so as the density of any single activity is

less than the parking cap of 182 spaces total, and even if that activity acts at 100% of the floor area they knew they had enough parking. He explained that with that concept in mind, it didn't matter if the activity was 10% volleyball, 80% Futsal and 10% basketball, the total amount of parking was adequate.

Coun. Soth said at 5:00 p.m. basketball concluded and something else took the floor space. He asked if then the parking would include both the lag time and the arrival of the new players.

Stout said there was a contingency in the basketball number of about 20% which was to cover people coming and going from games and to cover the time when people were showering or getting ready to play.

Coun. Stanton referred to Stout's April 2, 2001, letter, point seven, the last sentence that read "To our knowledge there has never been an overflow parking situation during normal business hours as a result of activities at The Hoop." She asked for clarification about when normal business hours took place after 6:00 p.m. for tournaments and on Saturdays.

Stout replied that the intent of his statement was that when The Hoop was in operation and the other businesses in the neighborhood where in operation there always had been enough parking on each site.

Coun. Stanton said maybe that was because of the warehouse parking space available. She noted that people would not park in the warehouse space on Harvest unless all of The Hoop and auxiliary parking was taken. She said there had been problems with parking especially at tournaments.

Stout replied that parking was covered by the shared parking agreement with the warehouse for tournaments on off peak hours. He noted that 95 spaces were available there.

Coun. Stanton reiterated there had been an overflow parking situation because she had walked to The Hoop from quite a distance away when she parked on Harvest. She said Stout's statement was not technically correct all the time because people would use the parking on Harvest before they went to the warehouse.

Coun. Stanton referred to Schell's letter dated April 2, 2001, page four, which read, "...Volleyball required 148 spaces..." She stated that there were more players on a volleyball team and she asked if they took up more court space vs. the amount of players on a basketball team.

Coun. Stanton corrected herself by saying that she had just been informed there were six players on a team instead of nine.

Coun. Brzezinski asked Siviers if he recalled in writing if The Hoop had not been intended to be just basketball.

Siviers said he would have remembered if the term "basketball only" had been used in any of the language. He said they used basketball for the basic reason that The Hoop had six basketball courts. He stated that it was true that the plans for the building permits included the fitness area, a restaurant, and a sitting area. He noted that among the first events were "pass and throw" football team activities and he did not have any insight about other uses. He stated that the other uses did not impact the parking.

Coun. Brzezinski referred to the CIDA parking analysis dated January 10, 1995, and said the material read that the developer had intended the building to be used as a private recreational basketball facility. She pointed out that the analysis also stated there would be six basketball courts, administrative offices, restrooms, locker rooms, and a lobby foyer. She asked if that information was in error.

Siviers responded that he did not know if that was the final answer. He referred to page 162 of Agenda Bill 01108 and said the Planning Director had determined a specific minimum parking requirement of 182 spaces. He went on to say that the Planning Director's statement said the parking spaces were intended to accommodate the customers and employees of The Hoop facility as currently proposed. He pointed out that the parking was cited in the record and if the staff intended for it be "basketball only" in their approval, they somehow left the gap in it. He said that Council was inferring that because basketball had been discussed that The Hoop meant basketball only. He said if that was so, then he asked Council to change it. He said he was sorry if the viability of the facility was not relevant to Council, because it was relevant to others attending the meeting that evening. He asked Council to help him amend the situation and not place traps on The Hoop.

Coun. Brzezinski said she was making judgments based on what was presented for their company in 1995.

Siviers said if the record was clear and unequivocal that it was a basketball only facility and Council had to close it down, then he would live with that decision.

Coun. Brzezinski replied that the City was not closing the facility down.

Siviers said he would close the facility down.

Coun. Brzezinski asked if The Hoop was viable in 1995 or were they doing all the potential activities in 1995 and she asked if the market had changed.

Sivers said they were not doing Futsal, or volleyball, but they were doing baseball, cheer leading, and football. He said the market had changed in that Volleyball and Futsal had become an important part of the facility. He said that the kind of training that The Hoop did had certainly changed. He noted that the facility needed to function in a certain way, which was inconsistent with the term "basketball only" in the approval. He said he would take the responsibility, but Council had the option to approve the appeal, and he did not think that would be any offense to the staff or the original intent of The Hoop.

Coun. Brzezinski referred to Sims letter (record exhibit No. 7) and asked about his statement saying he had been on site for one month, but had been involved for longer. She asked for clarification.

Sims replied that he supervised some of the sponsorship activities and he was on site dealing with activities and what was going on. He said the point was he was aware of the type of activities and he was not just coming in on site in the last 30 days to be able to understand what the ramifications were. He said he was on site all day.

Mayor Drake commented that he had worked with Sivers in the past and he had always been very positive and responsive. He stated that he had to comment about Sivers remarks about City staff. He explained that as Mayor of the City of Beaverton he was responsible for staff and he pointed out that Sivers made a reference to Bunnell and stated that Bunnell had "injury intended by staff" in the staff report. He assured Sivers that City staff was dispassionate about the application. He said Sivers was entitled to his opinion, but he thought the statement needed a comment from the person who managed this group and worked with them. He noted that staff was not passionate about issues and they looked at this issue as a planning issue only. He said he had detected nothing personal toward Sivers, Schell or anyone else, and he thought Sivers' statement was out of character. He said he would not have made the comment if Sivers hadn't made the comment. He said he hoped that in the future, that issues did not become personal and he felt Sivers comment was very personal.

Sivers commented that the staff report was a convoluted set of reasoning. He said that he took issue to the fact that no matter how dispassionate staff had been, they had been in contact with a very vocal group of opponents of The Hoop who opposed it before it was built and he thought the staff had taken up their argument. He said the staff arguments in the record mirrored the arguments of the opponents. He remarked that The Hoop had tried to serve a broader constituency than just the small neighborhood and The Hoop had been passionate on behalf of the youth of the community. He said there were other people running dances for youth, but they had perhaps a drug dealer agenda. He stated that The Hoop had always tried to be an asset to the community of Beaverton.

Mayor Drake said he was very aware of how The Hoop handled the dances. He stated that this was nothing personal on staff's part, and he would classify it as a disagreement. He said he took the brunt of all of it, not only from The Hoop, but from the neighbors as well and he understood what Sivers was saying. He remarked that he had to make a comment in defense of staff because the issue had not been personal and he would not tolerate that.

Coun. Stanton referred to the CIDA parking analysis dated March 12, 2001, and asked about one activity at a time on the open floor space. She asked for clarification on if any given amount of open floor area could only be used for one activity at a time. She asked if basketball and volleyball could be on the floor at the same time.

Stout said that question went back to Coun. Soth's previous question about what happened if there was more than one activity in the building at any one time.

Coun. Stanton clarified that there would only be one activity on the floor space at any one time.

Stout said that was correct.

Coun. Stanton asked if they were planning to apply for other activities like rock climbing at The Hoop.

Sivers said they did not plan on doing rock climbing. He said there were two courts for volleyball and four courts for basketball and other combinations, so it was not true that only one activity occurred at a time. He said one activity occurred per court or per half court.

SUPPORT FOR APPELLANT:

Patty Jayne, Tigard, said she was the director of the West Metro Volleyball Club, which trained at The Hoop. She clarified usage of court space and said that if one or two courts were being used for volleyball, then that meant less people were playing basketball, so there was still a maximum number of participants within the building. She pointed out that the majority of volleyball players at The Hoop were underage or grade school or high school age and they didn't drive and did not require parking.

Coun. Stanton asked what the age range was in the Westside Metro Volleyball Club.

Jayne replied the age range was nine to eighteen years old.

Coun. Stanton commented that as a parent with young children in sports she would usually stay at the facility where her children were involved in

activities. She asked Jayne if most parents dropped off their kids and then left themselves.

Jayne said in the twelve and under group, only three parents might stay for the practice session. She said that parents did drop their kids off and then came back to pick them up.

Coun. Soth asked if all Jayne's students were residents of the City.

Jayne replied that not all were residents, but all were members of the Club.

Martina Hagan, Beaverton, said she was a member of the West Metro Volleyball Club and represented her team. She said they wanted to continue to be able to practice at The Hoop.

Coun. Soth complimented Hagen on representing her case.

Nic Costa, Beaverton, described The Hoop as a recreational facility and asked Council not to take away the facility because of the athletes that trained there. He said if The Hoop closed, people's time, effort and money would be taken away. He said The Hoop was a place to get away from the influences of drugs and alcohol. He questioned the 24-Hour Fitness facility on Allen Blvd. calling itself a recreational facility. He mentioned that training at The Hoop was instrumental in advancing athletes toward scholarships.

Coun. Stanton asked Nic Costa how often he went to The Hoop just for a pick-up game and had to wait for enough people to participate in a game.

Costa said he only went to The Hoop to play football, lift weights and run.

Coun. Brzezinski referred to Costa's comment about The Hoop being a recreational facility and she noted that the City was saying the Hoop was a recreational facility. She said they were all in agreement that it was a recreational facility, but if it was a recreational facility the Code said it had to have a certain number of parking places.

Costa said there were always more parking spaces, especially with 92 parking spaces right next door to The Hoop.

Coun. Brzezinski said the recreational facility issue was not up for discussion.

Coun. Soth clarified that a parking agreement was subject to cancellation on 14 days notice. He said it was not included as part of the deed restrictions on either property. He reiterated that it did not go on the land with either property as a permanent easement.

Kathi Costa, Beaverton, said that her son Nic Costa had been going to The Hoop for several years. She said they had played basketball there for three years and had never had problems parking. She said she was in support of everything they did at The Hoop and it did keep the kids off the street. She stated that many parents did not stay after they dropped their kids off, because The Hoop provided chaperones. She said The Hoop was a great facility and she did not want to see them close.

David Kampfe, Portland, said he was 11 years old and had been going to The Hoop for five years. He said there had been no time his parents had not been able to park and watch him play. He said if Council took away The Hoop, then his brother and other kids that trained there would lose their opportunities for college scholarships. He urged Council to keep The Hoop open.

Coun. Stanton complimented Kampfe on his testimony.

Geoff Hankerson, West Linn, said he was 15 years old and there was not any problem with parking.

Matthew Kampfe, Portland, said he had been attending The Hoop for five years; when he wasn't able to drive his older brother would carpool with him and his younger brother or their parents would drop them off. He said parking had never been a problem and he had been there on weekends and during tournaments. He said that within a basketball facility there were many components, which included speed training, lifting weights for strength and cardio vascular training. He said that without his training at The Hoop he wouldn't have been able to achieve the level of athletic ability he was at currently. He said he was a varsity basketball and football player and the training at The Hoop had really helped him.

Mayor Drake asked what high school he attended.

Kampfe said he went to West Linn High and commuted 30 minutes to The Hoop because it was the best facility around.

Coun. Soth asked if Kampfe or Hankerson attended dances there.

Each replied that they did not, because they were too old.

Mayor Drake noted that Henry Kane had completed a testimony card, but was not currently present in the audience. He also noted that Kane had presented two letters (in record) to Council. He gave them to City Attorney Mark Pilliod.

Floyd Humphrey, Beaverton, said his daughter played volleyball at the Hoop and he worked out there. He noted that once in a while the parking lot could be fairly full, but parking was not an issue. He said his daughter

used to go to the dances and a he felt it was a safe environment and The Hoop was a very good thing.

Coun. Stanton said The Hoop would not lose any uses, and their goal was to have more uses.

Humphrey said he worked out there and that might be taken away.

Lori Neal, Tigard, said she was the mother of a child who was a member of The Hoop. She said she often stayed and watched them play and felt it was a very safe environment because the staff knew her child and they cared about their kids and kids in the community. She noted that The Hoop offered camps and it allowed them safe places to go. She noted that cross training was important, whether it was strength training or stretching, it was very important to warm up. She remarked that a matter of thirty-eight parking spaces should be a minor issue.

Judy Davis, Beaverton, said whether it was a basketball facility or a recreational facility, it shouldn't matter. She said no matter if it was used for cross training or another sport, it did not use any more parking spaces whether one called it a basketball facility or a training facility. She said that things always changed over time and that in 1995, 440 parking spaces we needed in order for The Hoop to be called a sports center and so they changed the name to survive. She noted that in 2001 there was more blacktop, more run off, more drainage, and the issue was five years from now would 222 parking spaces really be required or would the City look at it in a different light and say 150 parking spaces would be sufficient for the square footage. She explained that The Hoop provided a place to play volleyball during the winter season, since the court space at the schools was taken up with other sports at that time. She said she supported The Hoop's multiple use.

Coun. Brzezinski commented that Davis's point about things changing over time was a good point. She said she heard her point, but in her mind she also heard an issue of fairness, and if the City had required other facilities to have a certain number of parking spots based on their square footage, how could they not require The Hoop to do the same?

Davis said she thought she understood that the new 222 parking space requirement was under the same label as what used to be 400 parking spaces.

Coun. Brzezinski replied that if someone came in to the City and applied to open a 44,516 square foot recreational facility and asked how much parking they needed, they would be required to provide 220 parking spots and would have to find that parking.

Davis said one could use the Grandfather Clause, which meant to her that the same things were going on in the building that had been going on there all along and the original parking lot was the same one that was

there now. She said that suddenly parking had become an issue, but the same things that had always gone on at The Hoop were currently still going on. She said she did not understand why it became an issue of how many parking places were there, because it was the same originally built building and the same multi-activities went on there. She said the facility hadn't changed, the parking hadn't changed, and the number of people who were served there hadn't changed, so she was confused as to why it was such an issue.

Coun. Soth asked Davis and Neal where they lived.

Davis said she lived within the city limits.

Neal said she lived in Metzger.

Coun. Soth said one had to look at the requirements of the City's Development Code, which applied to anyone who came into the City for a development of any kind. He said the requirements varied with those applications and the submitted uses. He pointed out that in this particular case what was being looked at was the question of does this conform to the rules and regulations. He compared the development rules to those rules, which would govern sports. He said what might or might not occur at The Hoop might or might occur to any other place located in the City of Beaverton. He specified that the City could not take a site-specific issue and apply the rules differently in one place than they could in another.

Neal said she represented the owners of the Fallberg Industrial Park, which was located on Fallberg Place where 24-Hour Fitness was located. She said that 24-Hour Fitness had been a good neighbor although they constantly had parking problems. She said they serviced over 500 people every day and they had 76 parking spaces for a 14,000 square foot building. She said she did not feel The Hoop was getting treated fairly in arguing over 38 parking spaces when the people at 24-Hour Fitness were constantly using the other buildings parking spaces without the building owner's permission.

Coun. Soth responded by saying that at the time that facility was permitted they had to meet parking requirements fitting what their application called for. He said The Hoop issues were not a case of discriminating against one for another based upon use. He pointed out it was based upon the application that was submitted and the requirements of the Development Code at that time.

Neal asked if it would depend on the number of persons occupying a building at one time. She questioned if too many people in a building would be a fire hazard and noted that 24-Hour Fitness constantly advertised for new members.

Coun. Soth noted that any occupancy was subject to the Fire Marshall's rules. He affirmed that applied to any other business or space within the City of Beaverton.

Stu Johnson, Tigard, said he had been at The Hoop for four years and had seen it all. He said he worked as a trainer and was there from 6:00 a.m. to 10:00 p.m. every day. He said he had never seen a parking problem and was surprised that parking was an issue. He commented that The Hoop was a big help to the community and it would be more of a benefit if the parking problem could be resolved. He noted that the use of the facility had not really changed and it was important that the facility was fully used. He noted that the most important issue was that the number of people had not increased when the facility was full.

Corey Woods, Beaverton, said he had not had problems with parking at The Hoop. He said he was interested in clubs that had all sports at the same time. He noted that he had been to different clubs and there was only one court available, while at The Hoop many courts and parking were available.

Patty Arn, Portland, said she had three boys that attended Wilson High School and they belonged to the Hoop. She noted that she was there quite often and seldom had problems parking. She mentioned that she knew the Council was not voting to close The Hoop, but she thought Council was taking a very small amount of parking places as an issue. She said the issue would greatly impact the community and her family. She said her boys went to the dances and really liked them.

Edwin Hueni, Portland, said he was 67 years old and had experienced two heart attacks, both at The Hoop, doing what he loved. He said he had joined when The Hoop opened, and had completely and thoroughly enjoyed his time there. He noted that working out at The Hoop had made him physically able to withstand those heart attacks and he just wanted his story told. He said he would not be in favor of anything that would close that place up or make it unprofitable so they could not operate.

Matthew James, Beaverton, said he came to The Hoop in 1996, bringing his NIKE speed and agility personal training program to the facility. He said with summer camps and teams (outside of The Hoop) that thousands of kids in the area had experienced his program. He compared the different activities at The Hoop to his high school gym and said there were many uses like bake sales and PE class that went on at the gym at different times. He commented that there were not many places for athletes to go and the majority of kids that he worked with were too young to drive. He said the kids carpooled or their parents dropped them off, because the parents felt it was a safe environment. He said he was appealing the main issue not only to Council, but also to Siverson that there was a space requirement needed for the type of training that he taught to youth and athletes. He noted that he and the people he trained could not go to a facility like 24-Hour Fitness because there was only one

court available there. He said they had nowhere to go. He commented that the Trailblazer Basketball Team had a well-equipped training facility and a professional trainer. He said his program could be squeezed out of The Hoop if Council made a wrong decision.

Coun. Soth commented that the Trail Blazers had enough money to provide their own space and were not dependent upon anything. He said they had built their own facility and they could not be used as a real comparison to The Hoop.

James said his comparison related to The Hoop being considered as a Basketball only club while the Trail Blazers with their professional speed, weight, and other kinds of training could be considered a basketball only team. He pointed out that in their facility they had more than just courts and that was what he meant by the comparison.

Coun. Ruby asked about James' speed training program and if it was related to basketball training. He said Council couldn't say whether limiting The Hoop to basketball only would necessarily put James' operation out of business. He said he understood there was a close relationship with all of the new development toward weight training and skills that were related to basketball. He said that when he looked at the other proposed expanded uses for The Hoop he could easily identify that golf skills development, tennis, or cheerleading did not have anything to do with basketball.

James responded that a lot of the activities went hand in hand as far as the usage of the facility, because what could happen (from Sivers decision) was that without the other entities it might not be financially possible to keep The Hoop doors open. He said the financial aspect of The Hoop reflected on everything else.

Alberto Salazar, Portland, said he worked at Nike in sports marketing. He commented that was not representing Nike that evening and Nike had no sponsorship of the Hoop. He noted that James was under contract with Nike to teach courses throughout the country. He said his interest in The Hoop stemmed from having two sons who had been training there for several years. He informed Council that he was a high school coach at Central Catholic High School. He said that currently athletics and fitness in youth was at it lowest ever in the United States, with only 42% of kids in PE classes at any one time in high school. He commented that The Hoop provided the programs for kids that weren't making the high school teams and provided them an opportunity to be involved in sports. He noted that it was evident that parking was not the issue and it was also evident that there were some serious questions about zoning issues. He said it was important that the City had rules so the livability of the area was not ruined and he commended City staff for enforcing those rules. He noted that it was important to use common sense about what was best for the community. He said the rules were supposed to protect the community, and he thought everyone was looking for justice and the right

thing to do. He remarked that it was clear that The Hoop provided a great service for youth and he felt there was a way to resolve this issue.

Coun. Stanton referred to the 42% statistic that Salazar had talked about and asked if that was nationwide.

Salazar said that was nationwide.

Keith Westgaard, Portland, said he had worked at The Hoop for five years (part of those years as Operations Manager) and he had seen it develop and change. He noted that one point he wanted to make was that it was a basketball facility and in order for it to stay open they had to bring in other sports. He used the example of Saylor's Steak House Restaurant as not only serving meat, but also serving vegetarian dishes as well. He said they served different menu items other than what their name specified (steak) and it was the same kind of thing at The Hoop.

Coun. Soth said the other business that Westgaard described was operating under a restaurant business license and the name did not necessarily have to describe everything that went on at the restaurant in terms of food. He noted that was a decision made by the business owner.

Westgaard asked that unless the contract with the City said basketball only, was The Hoop only required to have basketball only.

Coun. Soth said in the case of The Hoop it was a condition of the application and the approval and in testimony it was described as a basketball facility and not a recreational facility.

Joe Sottile, Beaverton, said he was hired by The Hoop to start an indoor soccer program call Futsal. He said they started their training sessions at outdoor facilities and often heard the children being dropped off by parents and then the parents driving away. He said carpooling was the basic way that children were transported to The Hoop.

Sheryl Jaihouni, Beaverton, said she had two children who participated in extra uses that the Council was talking about eliminating at The Hoop. She commented that she understand this issue was about 38 parking spots and she had yet to hear from the City how this potential parking problem had impacted any of the businesses around The Hoop. She asked if any of the businesses had complained. She commented that it was possible that issues other than parking were going on and after five years the City found that parking was something that could be brought up as a way of approaching those other issues. She said she lived on Green Lane and had attended several Council meetings and she had heard developers talk about how many parking spaces they would need and they asked for variances all the time. She said everyone had to guess what would happen with the developers, but in the case of The Hoop there was an opportunity to look at a facility and a building that was

already being used and living very well within the spaces it currently had. She urged Council to look at this site in a positive way.

Mayor Drake responded that there were ongoing noise complaints from the neighbors surrounding The Hoop and that was what brought the City and the Hoop together.

Jaihouni said she thought the issue addressed that evening was about parking. She noted that parking issues did not impact the neighbors surrounding The Hoop.

Mayor Drake addressed Jaihouni's question about why the City addressing the parking issues after five years. He said this issue was not about something new and the noise issue was not totally resolved. He reiterated that the City originally got involved because it was responding to neighbors.

Jaihouni said she thought someone was using the parking issue as the problem, when she thought there was no parking issue at The Hoop.

Coun. Soth said Jaihouni had said that under a proposed development one did not know what would happen. He noted that all of the plans and specifications were public records and the inspectors made sure the building was constructed in accordance with those plans that were in the files.

Jaihouni commented that she was referring to developments that she had watched such as Burger King, where the developer had tried to convince the City that they wouldn't need all of the parking spaces and everyone had to guess what would happen. She said The Hoop was a case where one could go over and see what was happening.

Coun. Soth reminded Jaihouni that it was part of the design review process, where all of the parking spaces were outlined on the plans. He said those plans could be reviewed at any time once they became public record.

Mayor Drake asked if there was anyone else who wished to testify in support of the appeal.

Mayor Drake asked Mark Pilliod about Henry Kane's letters.

Pilliod said that Kane's letters (dated April 2, 2001) stated that he was opposed to granting the appeal, and supported the BDR condition as stated.

RECESS:

Mayor Drake called for a brief recess at 9:45 p.m.

RECONVENE:

The regular meeting reconvened at 9:45 p.m.

Jim Howe, Beaverton, thanked Council for taking time that evening. He said he lived in the Royal Woodlands area, which was adjacent to The Hoop. He noted that he was there because The Hoop had appealed a decision by the BDR on its earlier request to hold dances. He said The Hoop had City approval for basketball and dances and that was all. He said in addition to those two activities they also had a number of others, which they conducted without City approval. He said the City or the neighbors had no way of knowing what other activities The Hoop would venture into in the future. He commented that the most recent example of The Hoop's decision making was to land a helicopter in their parking lot as part of some kind of promotion tied into the dances. He noted that he had received a call from the former manager informing the neighbors that a helicopter would be landing and when asked if he had checked with the City, he had replied he had not because it was just a one time thing. He commented that several of the neighbors were alarmed when the helicopter landed and someone called the police to investigate the incident. He said Osterberg was quoted in *The Oregonian* as saying the City could not be approving activities that it could not police and control. He noted that the neighbors thought that control could not be expected over The Hoop, because they had shown in the past that they were inclined to make decisions and then see what happened with the City rather than following the City Codes to begin with. He pointed out that if one checked with the City of Vancouver one would find the same kind of problems existed with the Vancouver operation of The Hoop. He noted that a television report that week reported that neighbors (in Vancouver) were in the midst of a two-year battle with The Hoop over noise. He said all the while The Hoop's manager stated that they were trying to be a good neighbor, which the neighbors in the Royal Woodland's area had heard dozens of times. He said that originally The Hoop had asked for a membership only basketball installation. He said it was called a recreational basketball facility and it was approved. He noted that soon after that the dances started without a permit to do so and City officials said they did not have a permit for the dances. He said The Hoop requested a permit for dances for every night as well as a growing list of other services. He asked how one knew where the list was going to end, because The Hoop could not be depended upon to follow City Codes and stay within the rules. He noted that they had not done it in the past and he doubted that they would do it in the future. He said they had shown they could not be trusted to play by the rules of the City. He commented that the property owners in the Royal Woodland's neighborhood lived by the City Codes as they related to their homes and they did what they could to maintain their homes to the best of their abilities and for their maximum value. He said the adjoining property owners must do the same thing. He said most of the development along Arctic Drive appeared to be a great addition to the City with very little or no adverse impact to the neighborhood around it. He urged Council to reject the

request to go beyond the basketball and dances at this controversial location.

Coun. Soth referred to a \$12,000 noise baffle requirement for The Hoop and asked Howe how long the noise requirement had been in effect.

Howe replied that he had asked for the noise baffles. He said he thought the decision came from the BDR and they would be installed following the appeal.

Coun. Ruby asked if Howe spoke for other neighbors as well as himself in the Royal Woodland's neighborhood.

Howe said there were 14 properties affronting The Hoop's property and the six or eight closest neighbors were of the same mindset.

Coun. Ruby pointed out that Howe or the other neighbors could have appealed the BDR decision and they did not.

Howe said they could have appealed, but they did not. He said the neighbors had never approached the City with an attorney or a consultant, but had come before Council as neighbors and homeowners to carry on the conservation.

Barb Johnson, Portland, said she was against the approval for The Hoop additional recreational uses. She said she had owned a home on Allen Ave. for 37 years and had heard a great deal of testimony that evening. She said the area The Hoop was located in was originally an industrial park and zoned for offices and light manufacturing and not a teenage nightclub. She stated that The Hoop should stay a basketball facility as it was originally zoned for and should adhere to the original specific minimum parking requirements. She noted that she had heard a good deal of testimony about the facility but those testifying did not have to live with the loud music. She reported that she was not sent a notice that there would be dances; otherwise she would have attended that meeting. She said she could not understand how this could be allowed in a very quiet neighborhood that had been established for 40 years.

Mayor Drake asked Johnson if she had two addresses.

Johnson said they owned two homes and they rented their home near The Hoop. She said their renters had called and objected to the noise coming from The Hoop.

Mayor Drake said the code required a notice to properties within 500 feet and the notice would come to the rental house. He said he wondered if it had gotten lost with the renters.

Coun. Soth asked Johnson if she did not receive notice at the time the dances commenced or was it more recent.

Johnson said neither she nor the renters received anything about the dances held at The Hoop.

Mayor Drake asked if anyone else would like to testify in opposition to the appeal.

Rebuttal:

Schell talked about the issues raised in regard to the various functions that went on at The Hoop site. He commented that there was some misunderstanding that occurred in 1996. He said the City thought that basketball meant dribbling a ball on the floor, but the people who actually play basketball don't see it that way. He said the debate was perhaps over that discrepancy. He said it was clear that the speed and agility and cross training and other kinds of activities were integral to how people who participated saw a basketball facility, but it might not be how the City saw the situation. He said he hoped the City would give The Hoop the benefit of a doubt in realizing there was at least a legitimate difference involved with the issue at the beginning. He said they were not at the beginning, but at a period five years later, and the question was whether or not the parking was adequate for the uses proposed. He pointed out that The Hoop was not a Gold's Gym or 24-Hour Fitness facility, it was a sports facility with limited uses. He noted that what was being discussed that evening was the limited use of the facility. He advised that the proposal was to try and specify the limited uses and find the right measurement for those uses in a way that made sense to the City and to the people who were participating. He said the simple situation was that the City invited The Hoop to come in and talk and the BDR process was suggested. He noted that it was also suggested several times to the participants that there was a viable way to go in this situation. He said the testimony had been clear that there was enough parking under almost all circumstances with 182 spaces alone. He pointed out that there were an additional 27 spaces at Creative Gymnastics and on the adjacent lot there were another 95 spaces, making 304 spaces, not 220 spaces available. He mentioned the extra 95 spaces were available on weekends and in overflow situations beyond 6:00 p.m. He said there was some feeling that the rules should be followed here, but he offered the rules that were already present in the situation. He noted that one could consider the volume of participation in determining what kinds of parking should be available. He said that was found in Subsection Four, and one could look at the adequacy of the parking on the spot and that was what was in subsection Eight cited in the material. He said one could look at Subsection Nine and determine how those spaces were calculated. He remarked that all of those sections were laid out and the rules were in place currently to make a determination that was fair in this situation. He said the rules were in place to allow the Council to interpret the limited uses that were not mentioned as specific entities within the recreational facilities and therefore provided mechanisms for interpretation. He said Futsal was not mentioned in recreational facilities. He commented that

country clubs were mentioned and the procedure that was laid out was to make that interpretation and the staff was unwilling to make that determination and the BDR put in the clause regarding other uses not being approved. He said all The Hoop was asking for was clarification as to what could go on in that situation. He said there were several points that had been made including the helicopter situation. He pointed out that noise was not an issue in this situation, however the person who made the decision about the helicopter was no longer with The Hoop. He said there was an attempt to comply in good faith with both the concerns of the neighbors as well as the legal requirements. He concluded by saying he appreciated the opportunity to participate and he hoped an amicable decision could be made that was best for everyone involved.

Coun. Brzezinski referred to an attachment to the letter dated March 28, 2001, and asked Stout where the numbers for his activities came from. She asked how it was decided that 40 cheerleaders were the maximum that would ever be there.

Stout replied said it was the same formula that was used in the original analysis and the contingency formula was basically the same. He said the assumptions about how many players and coaches came from the Management of The Hoop. He said he had asked if The Hoop had volleyball, how many people would be there and how many courts would there be, etc. He said that data was put through the formula to see how it worked.

Coun. Brzezinski said she understood there were tournaments for basketball and she had gone to tournaments for cheer leading and dance and there were more than 40 participants involved.

Stout said the tournaments would be held in the off hours where the overflow parking would come into play. He said he analyzed the parking for normal operations during typical business hours.

Coun. Brzezinski referred to the overflow parking arrangement and said it did not satisfy the required parking, because that could be taken away at any time.

Bunnell said that was correct and the current agreement was limited in hours and days. He said the agreement did not cover 24-hours a day, seven days a week currently and the agreement could disappear anytime.

Coun. Stanton asked if The Hoop had 225 parking places, would the current uses be allowed or because of the BDR decision would there be basketball and dances only.

Bunnell said the previous decision would have to be modified, but there was no question that if the required amount of parking were there, then all uses that would fit under the umbrella of "recreational facility" would be

allowed. He said he believed all of the ones they had heard about would be allowed as well.

Coun. Stanton asked if the Code requirement would be met if The Hoop bought 38 parking spaces from the businesses establishment next door to them.

Bunnell said The Hoop would absolutely have to control those parking spaces. He stated that they would have to be available at all times for The Hoop and not be revocable.

Mayor Drake asked if that could potentially put the warehouse in violation of their agreement.

Bunnell said the warehouse would have to have their own required parking.

Coun. Soth asked if it would count if The Hoop striped on-street parking.

Bunnell said it would not count, because the Development Code required that all parking required for a business be provided on site or shared on another site, but not on-street parking.

Coun. Soth said he assumed that The Hoop had been addressed by the Fire Marshall as to the number of people at any given time. He said that in the original application and the others that they had heard about there was a statement by the applicant that they provided 20 spaces within the facility for other than employees and participants. He pointed out that they had also said it was a membership only basketball facility. He questioned whether in a tournament situation there were more than 20 observers and asked if that had been addressed in the staff report.

Osterberg noted that there were 20 people assigned to the mezzanine level as additional people and spectators and people going up there to rest. He said that figure was included in the information submitted by the applicant.

Coun. Soth noted that in the case of a tournament where 200 or 400 people showed up with only 20 spaces provided, were they in violation of the Fire Marshal's permit.

Osterberg said he thought Coun. Soth was asking about parking and the tournaments. He noted that tournament parking took place at the Chadwick warehouse lot.

Bunnell addressed the overall notion of spectators at The Hoop. He said that the land use category under Campus Industrial included privately owned parks and recreational facilities (such as golf courses, racquetball or hand ball clubs, etc.) exclusive of spectator sports facilities. He said the definition of recreational facilities was limited to 50 spectators and

once that limit of 50 spectators was exceeded it was no longer any kind of sports facility and certainly not a privately owned park or recreational facility.

Mayor Drake noted that there had been some parking complaints related to commercial rigs parking their trailers on Harvest or Arctic. He asked if there were complaints about parking on Harvest or Arctic Street other than by the commercial rigs.

Osterberg said he had not heard of any parking complaints on Harvest or Arctic.

Mayor Drake commented that in the past he had watched his son play sports and at those tournaments there had always been more spectators than were allowed at The Hoop site. He asked if that discussion had been brought up.

Bunnell replied that submittal in 1995 from The Hoop and Sivers said that each court capacity would have 20 players and four coaches for a total of 144 person using six courts. He went on to say that the submittal also said that employees on site would be eight or less and with a 20% allowance casual membership bystanders and the total peak users would be 182. He said the 20% allowance for casual member bystanders (in the submittal) was the spectators.

Coun. Brzezinski said if there weren't rules about parking spaces, how would you respond to the argument about the basketball use as the most intensive use in terms of the number of people who would be in that facility.

Grillo said that the dances were the most intense use of the facility currently in terms of how many people could potentially be in the building. He said the dances would include predominately non-drivers and there was nothing in the BDR decision that precludes dances of people of driving age, so it was not clear what that might mean in terms of parking. He said there were other possibilities such as court rentals. He noted that he was not sure what that term meant, and it could mean someone renting out the whole facility. He said he could only respond with the information staff had seen so far as well as information handed out that evening.

Mayor Drake said if Council were to grant the appeal did they have any authority to put a time line on the placement of the noise baffle. He asked if that would be a code enforcement issue emanating from design review.

Pilliod said that was correct.

Mayor Drake closed the public hearing.

Coun. Ruby MOVED, SECONDED by Coun. Soth to deny the appeal, thus upholding the conditions of approval adopted by the BDR.

Coun. Soth said there was a number of issues other than the original issue brought to Council that evening. He said he was discounting all of the pleas that had been for the ongoing activities other than the basketball and dances, because those were long past. He said he wanted to mention that those uses were not part of the original application, which said it would be a private basketball membership only institution and the other features (such as weight training) were added at a later date and apparently under the misconception that anything The Hoop wanted to bring in could be related to some sort of basketball activity, even though in many cases it wasn't. He said they were bound by their own City Codes and while this might seem overly restrictive, it must be remembered that anything here was equally applicably to anyplace else in the City, whether or not it was a recreational facility or a limited facility, such as was proposed in 1995. He said there was no basis for granting the appeal particularly in view of the fact that the overflow parking was not subject to a deed restriction or crossover easement or something of a permanent nature and at all hours. He said Council had been told that additional parking was available when those businesses were not operating. He said he would support denial of the appeal.

Coun. Stanton said she wanted to support the appeal and she wanted the Code to support it, but there was no code written to support it. She said one of the people who had given testimony that evening referred to supporting multiple uses and the City was required by Metro to look at densities and increase use of land and put more people into tighter places creating multiple use districts. She said it made sense to have a multiple use facility within the confines of basketball and all ancillary activities although what she really needed was Code, which she couldn't find. She said she would support the motion.

Coun. Brzezinski said she had to agree with Coun. Stanton. She thanked Davis for her point about times changing and parking requirements changing over time and the possibility that there might be a different requirement in two years. She said she thought Salazar had an excellent point about common sense prevailing here, but the problem was that Council had to uphold the laws and the codes of the City of Beaverton and she could not find anything that would support her saying that The Hoop could have a certain number of parking when someone who walked in tomorrow who had the same sized facility would have to have a different number of parking spaces. She reinforced what Coun. Ruby said earlier that she was quite flexible as to what she thought a basketball facility was and she completely understood the need for aerobics and fitness training and strength conditioning activities that went on as part of that. She said that The Hoop had crossed a line to be a recreational facility with their other activities and the City had a code, which stated that a certain number of parking spots were needed for it.

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

ORDINANCE:

Suspend Rules:

Coun. Soth MOVED, SECONDED, by Coun. Stanton the rules be suspended, and that the ordinances embodied in AB 01109, 01110, 01111, 01112, 01113, 01114, and 01115 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 Council. Couns. Brzezinski, Ruby, Soth, and Stanton voting AYE, the motion CARRIED unanimously. (4-0)

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

First Reading:

- 01109 An Ordinance Adding Certain Provisions to Chapter Five of the Beaverton Code
- 01110 An Ordinance Amending Ordinance No. 2050, the Zoning Map, From (R7) to (R2) for Property Known as Connor Commons; RZ 2000-0010/APP 2001-0001
- 01111 An Ordinance Amending Ordinance No. 1800, The Comprehensive Plan Map, From Urban Standard Density Residential to Urban Medium Density Residential Designation for Property Known as Connor Commons; CPA 2000-0008
- 01112 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
- 01113 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
- 01114 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
- 01115 An Ordinance Amending Two Documents: Ordinance 2050 the Development Code; and Resolution 3434 The Engineering and Design

Manual; to Add Text Protecting Significant Riparian Corridors and
Wetlands Identified in Beaverton's Local Wetland Inventory, TA 99-00005

OTHER BUSINESS:

Mayor Drake distributed a Tualatin Hills Park and Recreation District information sheet for Fanno Creek Phase II Multi-use Path for an application they were making to Metro for funding and asked for feedback the following week.

ADJOURNMENT:

There being no further business to come before the Council at this time, the meeting was adjourned at 10:35 p.m.

Sue Nelson, Acting City Recorder

APPROVAL:

Approved this 10th day of September, 2001

Rob Drake, Mayor