

## REGULAR MEETING

June 18, 2001

### CALL TO ORDER:

A regular meeting of the Beaverton City Council was called to order by Mayor Rob Drake in the Beaverton City Library, 12375 SW Fifth, Beaverton, Oregon, on Monday, June 18, 2001, at 6:50 p.m.

### ROLL CALL:

Present were Mayor Drake, Couns. Fred Ruby, Evelyn Brzezinski, Dennis Doyle, and Forrest Soth. Coun. Stanton was excused. Also present were Chief of Staff Linda Adlard, City Attorney Mark Pilliod, Human Resources Director Sandra Miller, Finance Director Patrick O'Claire, Community Development Director Joe Grillo, Engineering Director Tom Ramisch, Library Director Ed House, Administrative Analyst Holly Thompson, Project Engineer Mark Bouglawski, Senior Planner John Osterberg, Support Specialist II Deborah Baidenmann, and Deputy City Recorder Sue Nelson.

Mayor Drake explained briefly about a fire that occurred at City Hall on June 18, 2001. He noted that the fire did not close down City Hall and staff had been working very hard to keep City services running. He said the Community Development Department would be up and running the following day in temporary space in the City Hall Building. He explained that Community Development would move to an additional temporary short-term lease office space located on Griffith Drive, just down the street from the City Hall location. He noted the fire caused the loss of approximately 15,000 square feet of office space just in the Community Development Department alone. He asked that citizens bear with City employees for the next 30 days. He complimented staff on the work they had done in the last 18 hours to continue operations at City Hall. He noted that the following day the Planning Department would be located on the third floor of City Hall in the old Fire Marshall's office.

### CITIZEN COMMUNICATION:

Susan Featherstone, Beaverton, addressed Council concerning the Carollon Condominium Storm Drainage Project. She said she was representing the Board of Directors for Carollon Condominiums and was before Council that evening to express their disappointment and anxiety that the Storm Drainage Project was postponed. She said the coming winter might bring rain and flooding and they were very concerned about the condition of the storm drain as it related to their property.

She asked the City for assurance that the project would indeed move forward. She referred to the actual bid for the project and said her understanding was that it had come in too high. She asked for the City's cooperation to get the bid out in a timely manner for maximum exposure and a broader range of competitive bidders.

Mayor Drake thanked her and said he shared their frustrations that the project was not done. He recalled that unfortunately the problem existed before the Carrollon Condominium area was annexed into the City. He explained the City had budgeted funds for the project, but the bid came in \$175,00 over the staff estimate. He noted that the bid was classified as non-responsive in terms of dollar amount.

Featherstone said she understood that the contractor knew he had the only bid and no competition and the bid was advertised only one day. She asked how the exposure could be increased and the time line extended. She said another contractor had been interested in bidding but the work season had already started for the year and they were not able to get the required bid materials submitted in a timely manner. She said Carrollon Condominium was committed to waiting for the next season for the project, but they were very concerned about the bid going out too late. She asked the City to assist with the bids and to increase the exposure to contractors.

Tom Ramisch, Engineering Director, agreed that what had been said was factual. He explained that the bid the following year would be done in a timely manner before the season actually started when the contractors were in a lull. He said the problem this year was not contractor availability, but material availability. He said there had been grave restraints, which specifically included a shallow cover over pipes in the street from Tualatin Valley Water District. He said a steel pipe was needed as a covering and that pipe had not been available. He stated that staff was reasonably confident the materials would be available next year.

Henry Kane, Beaverton, said he was there regarding the 1998 Library Bond Issue. He stated that he thought the Resolution accompanying the bond issue was unnecessary. He said part of the Resolution he considered objectionable included legal proceedings, a dollar amount of \$2.9 million and reducing funds to cover emergency contingency. He said that issue was on appeal to the circuit judge and was not proper. He commented that he wished the City would think of the consequences.

COUNCIL ITEMS:

Coun. Soth reported that at a press conference that day the line for the Urban Services Boundary (USB) between Beaverton and Hillsboro had been announced by the County Administrator. He explained that Senate Bill 122 required proceedings to take place every three months and included all the service providers in the area. He said there were no annexation plans, and the USB line was not for that purpose except to forewarn and classify which cities or special districts would provide services. He said it had been a three-year project with a lot of staff time involved. He noted that he was pleased that Washington County had an unusual situation where the jurisdictions got along very well and the line generally was at the boundaries between Beaverton and Hillsboro School Districts. He said he looked forward to finalization of the project and he complimented Hillsboro's Mayor Hughes for working so well towards a common goal.

Coun. Brzezinski raised an issue regarding illegal signs on utility poles. She asked what action, if any the police would take if they witnessed someone attaching an illegal sign to a pole.

Linda Adlard, Chief of Staff, said she would be surprised if an officer would stop to issue a citation. She noted that the officer might make note for the Code Enforcement Office.

Coun. Brzezinski said it would be obvious a patrol car would not stop if they were responding to an emergency, but would they stop as a matter of routine patrolling. She asked if City Operations would automatically take down an illegal sign.

Adlard said that generally speaking Code Enforcement would be informed. She said Operations took signs down off utility poles if they were in the area, rather than take a trip out later. She noted that if a sign had been placed in a right-of-way on a State route, Code Enforcement would be called and they would inform the proper state authorities.

Coun. Brzezinski asked what could be done if the same company continued to place signs in certain areas and if fines had been issued in the past.

Adlard said she was not aware of the City issuing fines to companies, but there was a City ordinance that provided opportunity for fines to be issued. She noted that it had a great deal to do with priorities and it was on the City's horizon to develop a process that would be more effective.

Coun. Brzezinski suggested an article be written for the *Your City* publication to let people know what was legal. She said she assumed that signs on poles would not be legal.

Adlard said nothing should be placed on a telephone pole.

Coun. Brzezinski asked that at some point could Council have an explanation of how priorities were set in Code Enforcement.

Adlard said she would be happy to do that and noted that it would take approximately 45 days to develop that policy by working with a consultant. She asked for suggestions for rewriting parts of the ordinance that would allow the City to be more effective. She said many other larger cities did not use police officers, but instead they used parking specialists to patrol areas. She said the City was looking at those issues and noted that she would share the results with Council.

#### STAFF ITEMS:

Adlard said the City just received a marketing tool compact disk from the State of Oregon, which included statistics for Economic Development. She noted the disk would be available if Council was interested.

Adlard gave an update on Senate Bill 763, the Vertical Housing Bill. She said there would be a hearing the following day and she was delighted that the hearing was finally scheduled. She noted that she thought there would be sufficient votes to get it out of committee and she explained that there were additional amendments, which the City would not recommend. She explained that the amendments allowed special districts to opt out of the bill and she thought that overall throughout the state that was the wrong direction to go. She said the portion of the Bill that the City was particularly interested in was the opportunity to purchase land through public partnership. She noted that if the Bill passed they could revisit it in two years and try to fix the other pieces. She said she would keep Council informed of the vote.

Mark Pilliod, City Attorney, reported that all the pieces were in place to take title to *The Round at Beaverton Central*.

#### CONSENT AGENDA:

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

- 01211      A Resolution Affirming and Ratifying the Explanatory Statement Filed in Connection With Ballot Measure 34-78 of the November 1998 General Election

#### Contract Review Board:

- 01212      Reject Bid – Carrollon Condominiums Storm Drainage Project (Project No. 8003)

Contract Award for the Hall-Watson Beautification Project

Coun. Soth referred to AB 01212 and asked staff about the Carrollon Condominium rebid. He said he assumed that the bidding documents would specify that the opportunity to secure the materials would be before the start of construction and within a certain window of time.

Ramisch said that was correct.

Coun. Brzezinski abstained from the minutes of June 7, 2001, because she was absent from the meeting. She referred to AB 01213, The Hall Watson Beautification Project and questioned if the dates were out of order.

John Engel, Redevelopment Project Manager, said Coun. Brzezinski was correct and the dates should be in chronological order.

Coun. Ruby referred to AB 01211, and asked if there would be a problem with him voting since he was not a member of the Council in 1998.

Mark Pilliod, City Attorney, said he had no problem with Coun. Ruby voting on that matter since he was currently a member of Council.

Question called on the motion. Couns. Doyle, Ruby, Soth, and Doyle voting AYE, the motion CARRIED with Coun. Brzezinski abstaining from the minutes of June 7, 2001. (4:0)

PUBLIC HEARINGS:

01214A

APP 2001-0007. Appeal of the Approval of CUP 2001-0005; Sexton Mountain Village PUD Modification, by the Planning Commission (Replaces AB 01214)

Mayor Drake asked Joe Grillo, Community Development Director, to read the public hearing conditions (in record).

Grillo read a statement regarding public hearing conditions (in record).

Grillo asked if any Councilor wished to abstain due to impartiality.

No one on the Council wished to abstain.

Grillo asked if Council had any Exparte contact.

There was none.

Grillo asked if anyone in the audience challenged or objected to City Council's authority.

There was no one.

Grillo said Senior Planner John Osterberg, was available to give a brief overview.

Osterberg introduced himself to Council and the audience and said he would be happy to answer any questions.

Mayor Drake asked Council if they wanted a presentation or if they would just like to ask staff specific questions.

Council consensus was not to have a presentation, but to ask questions.

Coun. Soth asked if it was his understanding the appeal was based on two matters. The first matter was the removal of the original approval and the second matter was the possible presence of contamination of the site.

Osterberg said those were the two issues of the appeal that evening. He said that both applications had a condition for approval, and the appellant had stated that they felt the Planning Commission (PC) should consider a recent review by the Department of Environmental Quality (DEQ), and that was an important issue for the approval. He explained that Staff felt that particular issue was not relevant (but that did not mean the DEQ review was not important).

Mayor Drake said if Council denied the appeal and DEQ found something at the site, the property owners would have to remedy the situation before they could be issued building permits.

Osterberg said the developer was subject to all state ordinances and regulations. He said that the scope of the ordinances with that review was outside of the land use issue. He said the applicant had a two-step process, the first step was City land use decisions and the second step was DEQ considerations.

Coun. Soth pointed out that staff position was that Condition Four, which was the subject of the appeal, and the approval of the proposal were no longer applicable and the PC finding was the removal of Condition Four.

Osterberg noted the applicant had met Condition Four.

Coun. Ruby asked if there was an update pertaining to the DEQ's review of the data.

Osterberg said he did not have a current sheet, but thought the applicant could provide that information. He noted that each Council packet contained DEQ's recent Fact Sheet Number Two (in record).

Grillo said Project Engineer Jim Duggan had met with consultants who were associated with the project and asked them to stay on schedule to produce a report. He noted that he did not know if DEQ would have

additional questions about the report. He said the consultants were encouraged to get the report completed so City staff and any other interested parties could see it as part of the record.

Mayor Drake said the document was not completed and was not at a point of being released for public information.

Grillo said he did not know what additional comments they might have but Duggan had asked them to get back on track and get it completed.

Coun. Ruby said Fact Sheet Number Two was dated April 2001, and it contained information from the DEQ over the past three months regarding additional Methane monitoring data. He said the report stated that DEQ had reviewed data from advanced Methane monitoring and those monitoring results looked more favorable to the DEQ than the prior test. He questioned if the data was from the independent consultant.

Grillo explained that the information was over and above what the independent consultant was producing.

Mayor Drake said the City was working aggressively and closely with DEQ to get answers. He said that in defense of the applicant, the DEQ and the citizens had a good exchange of information and obviously there were different views initially, but DEQ was an impartial third party. He noted that the City and the applicant were interested in getting the answers.

Mayor Drake asked Osterberg what the deadline was on the 120-day period.

Osterberg said it was June 28, 2001.

Mayor Drake pointed out that they were under a time constraints and needed to get the process moving.

Mayor Drake asked the applicant to step forward.

**APPLICANT:**

Fred Gast, Polygon Northwest, Portland, thanked Council for their time and said the sole purpose of his application was to modify one condition of approval (Condition Number Four) on both applications. He gave an update on the status of both developments and said as of the previous week site development had been started at Beard Court. He said that the Land Use Board of Appeals (LUBA) had ruled in the City's favor on all accounts and staff performed a diligent review of the criteria and agreed in their analysis.

He noted that Polygon Northwest wanted to provide assurance to the community that residential development would occur at both locations.

He said that in June 2000, the PC ordered Condition Number Five, which consecrated the developments being constructed independently. He explained that Polygon appreciated the relationship they had with the Haggen Store and at this time they were formally separated from Haggen in the land use process, but would continue to work together in all other matters. He said they prepared an executive summary for PC clearance with the express purpose of showing assurance to the community the Comprehensive Plan changes were a done deal. He said Sexton Place and Beard Court had received unanimous approval from the PC and there were no appeals filed on any of the development applications. He noted that there were no other connections and Sexton Place could proceed with the public facilities process and the infrastructures. He said there were no changes requested in the application concerning storm drainage and sewer and they would like to proceed with the construction as approved and were prepared to do so.

He said regarding the appeal items, there was PC consensus to proceed with development. He noted that the site was independent from the Haggen site. He noted that the appellant stated that the staff report and subsequent findings from the modification should have considered the recent review of the Cobb Rock site by the Department of Environmental Quality (DEQ). He pointed out that issue was an important one, but was a completely separate issue. He said the City approved the development as a wetland project and it was a separate entity. He commented that it was a false statement that development would occur without DEQ approval. He said Polygon was not in business to violate any laws.

Coun. Soth asked if DEQ would let them proceed at their own risk.

Gast noted that they had City land use approval.

Coun. Soth questioned if the process required public notice and needed to be reopened.

Gast said Polygon had approval of the modification in a Type Three hearing.

Coun. Doyle commented about the linkage between the applications and he asked Gast to expand on why it was sought by both parties.

Gast said the initial purpose of the application was to provide assurance to the community that the developments would move forward and not be commercial developments at both sites.

Coun. Doyle asked if that was done in reaction to City and neighborhood concerns.

Gast said that was correct.

Witnesses in Support of Applicant

Steve Sanders, Beaverton, said he supported the applicant's request to delete Condition Number Four. He said the PC unanimously approved the request following a favorable recommendation from City Staff. He said the development process should be allowed to move forward on development applications that were approved and not appealed. He said the original intent of coupling the Sexton Mountain Village and Beard Court applications together was to ensure fair and effective work on the parcels at the Sexton Mountain Village site that now incorporated commercial and high density residential zoning and the Beard Court site which incorporated single family residential zoning. He said the Comprehensive Plan amendment had been successfully concluded during the past four and one half years.

He said that because of on-going delays perpetuated by the opposition, Haggen/Polygon were attempting to de-link the applications so that some development could move forward. He said that with the Comprehensive Plan finalized and approved, commercial and high-density residential designations were now assured. He stated that these designations would not be reversed to prior designations should Haggen not receive their store. He commented that in addition the commercial site was zoned specifically for development of a grocery store. He said the opposition had attempted to link Sexton Place with an alleged grave situation. He noted that the DEQ's investigation of hazardous substances in the request to de-link were two separate processes and the DEQ's investigation should have no bearing on this application.

He reported that additionally those commitments and covenants detailing approved zoning and Board of Design (BDR) applications for Sexton Place would remain intact should subsequent development be withheld and the Haggen store not be built. He said that both City staff and Polygon had indicated that should that event occur all conditional approval would be denied. He said that many of his neighbors, upon learning of the opportunity to de-link the town home and single family developments were pleased to hear that at least some of the development at Sexton Mountain Village and Beard Court could move ahead.

He summarized that there was no legitimate reason to deny any of the applications. He noted that over the past years the Haggen/Polygon applications had undergone scrutiny, which had been intense and considerable. He said the applications before Council were ready to happen and he asked for Council's approval regarding both applications and the decision on this matter be made public.

Jane Athanasakos, Beaverton, said she believed that the entire criterion had been met and approved previously and that Condition Four had served its purpose to assure effective residential zoning. She said by de-

linking the application, Polygon was not being excluded from complying with whatever the DEQ investigation required.

Appellants:

Mark Holady, Beaverton, said he was secretary for Neighbors for Livability (NFL). He said the NFL had asked for a full review of Condition Four because the primary emphasis was that Condition Four was not merely a technical or an administrative condition that was attached, but rather a fundamental element of the original decision of the Council as a zone swap. He noted that the property at Beard and Murray was already zoned residential and the applicant could have requested a rezone. He said in the original minutes the Council stated that it was a commercial relocation. He commented that he believed that the intent of the parties was to make sure that there was a shifting of the residential and commercial areas. He said that linkage gave the neighborhood a high level of assurance of the type, size, and scale of the development.

He urged Council to go back and review their decision and to think about the original criteria. He noted that there must be compatible use with the neighborhood and also residential objectives of safety. He noted that the NFL asked that Council not wash their hands of the original criteria and violate their responsibility to the Comprehensive Plan. He said that there was new evidence that had come through the process that Chris Rich would relate to Council.

Christopher Rich, Portland, said he was an attorney representing an organization of individuals called CLEAN and the appellant. He noted that there had been a great number of questions about what the environmental conditions were at the site. He distributed handouts to Council (in record). He noted that currently the DEQ was engaged with a few developments at the former Cobb Quarry landfill site under what was known as a voluntary cleanup program. He explained that a voluntary cleanup program was technically under the non-regulatory side of the DEQ. He said it was a program for people to sign up to work through a process. He explained that it was not mandatory and there were no penalties associated with it. He commented that it was a softer program than some of the regulatory programs.

He said the reason DEQ was engaged was that in January 2000, a preliminary assessment was prepared (and was the document that Rich previously distributed to Council). He said the preliminary assessment was not prepared by the applicant, but by DEQ based on their review. He pointed out the assessment confirmed that there was a release of a number of hazardous substances including petroleum and heavy metals. He said the assessment also talked about groundwater seep contamination as well as contamination by Methane gas.

He stated that the report was based on prior reports that were submitted to DEQ, but most reports were incomplete. He said the reason the

voluntary clean up program investigation was going on was because there were conditions that were not known about the site. He reported that the site was over 30 acres of illegal landfill. He said no one knew how deep it was, or the full extent of the materials deposited there. He commented that because of those unknowns, a complete evaluation needed to be conducted before a development was approved.

He said this was an application that decoupled Condition Four from the Conditional Use Permit and he explained that there was a direct connection with the DEQ because the site was a former landfill. He described a landfill as a single unit and issues such as ground water and contaminates migrating through soil as well as Methane gas migration need to be addressed. He said that those issues could not be addressed on a single parcel of land without having the surrounding parcels be addressed as well. He noted that he had a copy of a letter sent to Osterberg dated September 14, 2000, from the DEQ and he explained that the letter said the DEQ was concerned about Methane gas concentrations measured at the site. He said DEQ noted that dangerous Methane gas concentrations had been detected in some subsurface probes. He stated that the DEQ letter stated that landfill gas was a serious threat to public safety, especially with renewed activities occurring at the landfill.

He noted that four years ago two employees were badly injured in a Methane gas explosion and the State Fire Marshall's Office had conducted an investigation, but could not determine how the Methane migrated from the landfill to the building involved. He went on to say the DEQ letter noted that weather conditions and soil properties, among other conditions surrounding the development and the landfill's own environmental characteristics all affected the rate and extent of Methane gas movement. He noted that the information he just described was a letter from the DEQ to the City of Beaverton. He questioned why DEQ would write a letter to the City when the DEQ could act on their own. He said it was a serious question aimed at DEQ about their regulatory authority about Methane gas. He said that Methane gas in a landfill site, especially a landfill with unknown materials and in an area of Columbia River Basalt, could migrate through the landfill to different areas and from one site to the other. He said the DEQ had said they did not believe they could regulate Methane gas as a hazardous substance, which would be their regulatory hammer. He noted that was the reason DEQ appealed to the City to look out for the health, safety and welfare of the individuals living on or around the former landfill. He said because of the fact that Methane gas migrated any development would have grave implications. He said the purpose of decoupling was to allow the site to be filled.

He said that any suggestion that he was there that evening to prevent the development from going forward was not credible based on the evidence. He said that if an investigation was done, there would be an opportunity to understand what the true conditions were and if problems were found, they could be co-mitigated. He noted that if one did not know what the

problems were then they could not be mitigated. He said if the development went forward and there was a possibility that Methane gas was still venting from that site, then it could migrate from one site to another. He pointed out that currently there was extremely limited data on Methane. He said that the City had hired Squire Environmental to review the site and they had made it clear that the most recent Methane Data was limited and more extensive review was needed. He pointed out that the data was not submitted in any type of report the appellant had been able to review.

He noted that the City Council in good conscience could not allow the decoupling of something that had a direct relationship on land use and the environment. He questioned what the City's job was on the environmental issues, which he said were health and safety for citizens. He noted that an investigation should be completed and safeguards, including control methods, should happen first on the entire site. He said currently there was no data on Methane gas and any development at this time would be very risky. He commented that no one knew what other hazardous substances were in the landfill and the investigation had not even begun. He specified that development might cover up impervious surfaces and thereby affect the ability to clean up the area. He explained that groundwater required seasonal sampling, as did Methane gas. He said the decision of the Council would directly affect the people who lived and worked in the area, since the DEQ approach was only through a voluntary clean up program.

Coun. Soth asked about Rich's qualifications and if he was an expert in environmental studies.

Rich explained his background included over five years as an environmental law specialist for DEQ. He said a great deal of his work involved closely working with technical staff and understanding technical as well as legal issues. He said he had consulted extensively with DEQ on the issues.

Coun. Soth asked if the NFL's entire premise was that the City should not allow the development until DEQ had completed their investigation.

Rich said Coun. Soth was correct and the burden was on the developer to prove that the decoupling of that condition could be done consistent with the criteria. He said they didn't need to prohibit that from happening, but the question was if the applicant could meet their burden of demonstrating that the project could be decoupled and could move forward in a manner that was consistent with those criteria.

He commented that they could not move forward, because that kind of assumption could not be made based on a lack of knowledge about the site. He said at some point in the future there would be answers to those questions, but now was not an appropriate time.

Coun. Soth recounted that the original condition involved assessment by an independent third party.

Rich said that he agreed with Coun. Soth.

Holady said the parties involved had been working on this for a number of years and had testing been done, this last minute rush would not have been necessary.

Coun. Doyle asked how long the process would take to monitor the site.

Rich said there was not enough information to make that decision. He noted that a work plan had been submitted and DEQ commented on that work plan. He noted that a revised plan was drafted. He noted that DEQ was in a good position to understand the issues, however there was a great deal of pressure to move forward. He said the Methane gas issue was a jurisdiction issue and it put the City in a position of trust. He suggested the Methane issue might rest with the Fire Marshall.

Coun. Doyle asked why it was a voluntary approach rather than mandatory.

Rich explained that technically there were two programs. He said there was a voluntary program or a regulatory program.

Coun. Doyle asked why the voluntary approach applied in this situation.

Rich replied that it was requested by the developers to engage in a voluntary program. He said the voluntary program was often a way for development to move ahead more quickly. He said in a voluntary clean up program the developer would pay to produce reports and provide comment. He noted that if the DEQ felt the voluntary program was not adequate they could move into the regulatory program.

Coun. Doyle questioned if that statement was true in the area of Methane study.

Rich noted that was an area of genuine concern. He commented that the DEQ had said they were on uncertain ground when it came to Methane issues. He suggested that was why the DEQ had written the letter mentioned earlier to the City, so jurisdictions could have influence in the matter.

Coun. Doyle said it was confusing that an agency that monitored other environmental issues would not have a clear policy on Methane.

Rich said it was an issue related to the definition of hazardous substance under ORS. He said their definition of what constituted a hazardous substance was what DEQ was unsure about when it came to categorizing Methane.

Coun. Doyle noted that studies had been going on at the site for ten years.

Rich said that was correct, but many of the studies had been geotechnical in determining the feasibility of development. He commented that a real focused environmental study was what was needed at the site. He noted that anytime there was a situation where ground water could migrate off site or any hazardous substances or a landfill of unknown material were present, it would be prudent to have a thorough environmental study.

Coun. Brzezinski questioned if it was additional news that DEQ was concerned with public opinion about methane gas. She asked Rich why the appellant went to DEQ for information about methane gas.

Rich replied that he wanted to be sure he understood the question; he asked on what basis was she referring to about the appellant seeking information from DEQ.

Coun. Brzezinski said as everyone knew, the project had been going on for a long time, but after City Council had passed the development, the opponents of the development approached DEQ and asked for help.

Rich said other chemicals and hazardous substances needed to be addressed at the site as well as the Methane Issue. He noted that even if there was no Methane gas at the site, because of the other hazardous substances, a substantial amount of the landfill might have to be removed and replaced with clean fill. He said until the interaction between Methane gas migrations was known it would be appropriate to say the burden had not been met.

Coun. Brzezinski said if they had to wait for all kinds of atmospheric conditions to prove if Methane gas and other hazardous substances existed at the site, they could be waiting for ten to twenty years.

Rich said sites were analyzed all the time and he did not believe it would have to go on for years. He said some testing could have been done last winter and there was no reason it could not be done this winter.

Coun. Brzezinski asked about the potential beginning of action for June 25, 2001. She asked what action would happen on that date.

Rich referred to a June 25, 2001, Work Plan of the Developer and read from the work plan about scheduled dates of development. He noted that his comment to DEQ was that the work plan appeared to be a grossly inadequate and unrealistic schedule, which assumed that all investigative work had been done on the entire site. He said this was the kind of issue that caused great concern, because there appeared to every inclination to move this through as fast as possible as opposed to what the NFL believed to be the best approach, which was to be as careful with the investigation as possible.

Coun. Brzezinski said if the June 25, 2001 date dictated the schedule and if everything before that date was not finished then they could not proceed until those items were completed.

Rich said it was an example of an extremely tight timeframe in moving forward toward development.

Mayor Drake questioned Rich's selectivity of exhibits. He referred to the December 14, 2000, exhibit from DEQ and noted that there was a lot of information supplied by DEQ since that date. He stated that in some cases DEQ had disagreed with some of the December 14, 2000 comments. He said Rich was being a little disingenuous in his comments and the DEQ had really backed off their comments about arsenic at the site. He said as far as Rich's referral to the Squire report, neither he nor staff had seen it and it was not part of the formal City documents that were incorporated into a report. He pointed out that report was not done and Grillo had already reported on that issue and anything Rich brought up about the Squire report would still be at the City working document level. He noted that Rich had referred to a work plan and he pointed out that Rich said he had been troubled by that work plan. He said that was a work plan that the DEQ would have to approve and he noted that Squire was behind in their work. He commented that he was a little troubled in how selective Rich had been in some of the documents.

Mayor Drake said the City wanted to get at the facts and Grillo said that Polygon had two options, which were to have the property listed or commit to the voluntary clean up. He noted that staff reported that Gast and Haggan had chosen to work with DEQ to get the answers as to what could be done and he emphasized that there was no bad guy. He said he had heard something very different from DEQ regarding Methane and he believed that DEQ did have a hammer with Methane. He said DEQ had applied that to the City. He said the DEQ had referred to a landfill in Clackamas and the potential of a Home Depot Store development on the site. He stated that the City did care about Methane issues and he personally cared very much about that site and drove by it almost everyday. He said he cared about the people who lived behind that site and he commented that Rich implied something that was not there on the part of the City. He noted that this was really an issue about the removal of Condition Four and not about possible contaminates. He pointed out that Osterberg had said the applicant did have to satisfy DEQ's concerns before construction could begin.

Rich commented that any level of disrespect on his part was absolutely not intended. He said he did not want to suggest the City did not care about Methane, but he was concerned about cities in general not being able to regulate landfill mass, since it was a complicated technical issue. He noted that the Home Depot site that was referred to earlier in the meeting was an example of a regulated, permitted landfill that the DEQ regulated, because it was a permanent landfill. He said when the DEQ

issued a permit for a landfill; they followed through with a number of set conditions pertaining to that landfill. He said he raised the following issue as a concern and not an implication, but DEQ apparently bifurcated the solid waste regulations pertaining to the cleanup law. He said that was a case where they were setting the motive for the clean up law and they believed the solid waste rates applied when referring to a permanent landfill, but they were uncertain when it came to a non-permanent landfill.

Mayor Drake said he disagreed with Rich and noted that was not what he had understood from DEQ. He said he did not know who facilitated that initial discussion between the applicants and DEQ, but he knew that DEQ had a significant hammer regarding Methane.

Rich said he believed it was a question of how it would resolve itself. He commented that he was not sure whether DEQ did or did not have a significant hammer. He said it was a state issue, but it was a question that should be resolvable.

Mayor Drake referred to Rich's statement that he had worked for DEQ for over five years, and asked if he really could not answer that question.

Rich said there was apparently at one time a temporary rule in place, which allowed DEQ to regulate Methane as a hazardous substance. He commented he understood that temporary rule was no longer in effect.

Mayor Drake asked Rich if he was suggesting that DEQ was faking it.

Rich said he was not suggesting that. He said arsenic was consistently found in natural background levels and that might turn out to be the case for a number of things. He said this was more a question of knowing as much as possible before decisions were made without presuming what the outcome of that would be. He said development might be done at the site, and his clients wanted it done in a safe environment.

Holady noted that some of the neighbors had contacted the DEQ.

Mayor Drake asked Holady if he was aware that DEQ had looked at the property in the past.

Holiday said he was not sure.

Mayor Drake said he thought that information was in the record from the past.

Maura Malone, Beaverton, read her statement into the record. She said she thought that to remove Condition Four was just foolish, because there was not enough information. She said she suffered from Multiple Sclerosis (MS), which robbed her of time with her children and other aspects of her life. She said she wanted to insure the safety of the

development in question that evening so another child would not have to live with MS.

Coun. Soth referred to Malone's reference to a law case involving a Beaverton citizen named Pollack (in Malone's statement in record). He commented about Malone's statement in her letter and said runoff problems would be up to the developer to make sure that kind of problem was mitigated.

Malone said she was concerned that the development zipped through the PC to the City Council without clear terms on drainage issues. She said she was worried that if drainage and runoff issues were not resolved it could result in litigation at a later date.

Coun. Soth said when the construction plans were submitted to the City; anyone was welcome to examine them.

Charles Cook, Beaverton, said he had testified before Council regarding several concerns with the Haggan project and the other developments at the site. He asked when Council would go to the simple rules of consistency and also look at long-range decisions.

Mayor Drake complimented Cook on his abilities as a businessman in the community. He noted that what had struck him the most about Rich's comments was if the 120 days response time limit was enough time to respond. He said from a business viewpoint – it might be considered too much time, but from a neighborhood perspective it might be considered too little. He said he could not blame the neighborhood for trying to find a solution and from his perspective the issue that evening was simply a decoupling and that was all. He noted that Design Review would deal with many of the issues, plus the additional hammer of the DEQ. He said he had invited DEQ in to talk about the issues and he thought the best solution was the voluntary program. He commented that from a business perspective, they were simply trying to get through the process and it had been a very long process. He said nothing was being rushed, in fact it seemed very slow paced.

Cook said he disagreed and that his company laid out a plan that they thought was right and fair and just and they tried to follow that plan through to the best interest of all involved. He said he would like to know what was in the landfill. He said it did not seem right that the City could come in and establish a rapport working with the neighbors and go through a number of steps, and then when the City wanted to move on, the neighbors were all left behind.

Coun. Brzezinski commented that at the beginning of the presentation a comment had been made about letting DEQ do their job because the City was not set up to do that job. She said the appellant was telling Council that DEQ did not have a hammer so the City had to do the job. She asked Cook if those two ideas were consistent.

Cook said the City was not equipped to deal with the landfill issues and it was relying on the developer's engineers to come forward with information. He said having DEQ review the developers own geotechnical data did not lend a lot of credibility and the City did not have the staff or the resources to do the job.

Susan Cook, Beaverton, said back in 1998 the original plan seemed to be a good one on the surface, with the best interest of the community in mind, but little did she realize at that time there might be flaws. She said she was concerned about the Methane issues and concerned citizens in the neighborhood had asked for outside protection from DEQ because they did not understand all of information that had come forward. She said she did not understand why everything wasn't questioned more thoroughly. She commented that health and safety must come first and without further tests on the landfill, people were in jeopardy.

Mayor Drake asked Cook if she would support the project if Methane were not an issue.

Cook said she would support the project, however she was concerned about what would happen to the water system when construction began. She asked why it was necessary to push the development forward when there were still questions to be answered.

Mary Petersen, Beaverton, said her property abutted the site. She noted that when she was buying her home she saw nothing about a water problem and the day after she moved in and again in the spring of the following year, she was totally inundated with water. She attributed the drainage problem on her property to fluctuation of water table levels in the area and possible contaminated water run off from the landfill. She compared her water problem with what could happen on the development site in question. She said she was very concerned that that the water flow problems would only get worse and she wanted to know what kind of materials were in the landfill. She asked if the landfill issues and water run-off issues had already gone through the BDR.

Grillo said the project had gone through the BDR, but had not yet gone through the Site Development permitting process.

Elise Smith, Beaverton, distributed a handout dated October 2000 from GEO Design, Inc. (in record). She pointed out the Methane readings for Sexton Place and explained that citizens were asking why there was Methane on the site and what it meant.

Smith said there was information that she believed the neighborhood had not received until a much later date, which gave very little time for action on that information. She said the neighbors would like clarification and she asked for the information to be brought to light. She said pressure information on the site had never been given to residents and she wanted

to know more information about pressure and safety issues. She commented that DEQ was doing a good job and the uncoupling came about because there were more questions about the site. She said development was premature and the sites should not be decoupled at this time and personal testimony was important because the site itself was very unusual.

Andy Rapp, Beaverton, said in the past the neighborhood had made a deal with the City, and the Haggen developers. He said the deal included full document disclosure. He noted that the rezones had always been appealed and the problem was when the Council went beyond the law and required that only Haggen could be the sole occupant of the property. He said it went to the Land Use Board of Appeals (LUBA) and that broke the deal. He said the City could no longer assure the citizens that Haggen would be an occupant at the site and if DEQ found the site could not be built on then the surrounding properties should not be rezoned.

Coun. Brzezinski asked Rapp why he had gone to the DEQ.

Rapp explained that he made original contact with Haggens at the same time the other neighbors had. He said his family suffered significant financial impact, because they were contractors that developed property surrounding the site and they had trouble selling the property because of the Haggen development. He said he had been concerned about dynamic compaction on Murray and what it would do to the reservoir in that area. He contacted the City for answers and he was told that an environmental clean up had been done there and DEQ had the records. He said he contacted DEQ for advice through a City employee. He explained that if an employee had not said anything, the neighbors would never have known anything about the site. He said he did not belong to the NFL or CLEAN and he felt he had helped Haggen to be compatible with the neighborhood through several suggestions he had made.

RECESS:

Mayor Drake called for a brief recess at 9:15 p.m.

RECONVENE:

The meeting reconvened at 9:30 p.m.

Mayor Drake asked if any public agencies were present to testify.

There were none.

REBUTTAL:

Gast explained that he would address specific issues and concerns brought up by the neighbors and legal council during the public hearing. He said some of the issues were not specific to the removal of Condition Four. He noted that some issues and concerns were best suited for the DEQ and that was why his company had signed up for the Voluntary Cleanup Program. He commented that he wished they had a different

name for it, maybe something like Voluntary Investigation Program, but they did not. He said regarding Methane, that there was no change in the issues that were last brought before Council. He noted that the City had put in place certain conditions of approval that specifically addressed environmental issues with the employment of an independent third party. He said he was concerned that the neighborhood did not recognize Polygon's commitment to proceed on the development until the issue was cleared up. He commented that it was a significant issue not just for his company, but also for the people who worked for his company as well as the homeowners in the area. He said Polygon had a successful track record for building homes for satisfied customers and that was their number one objective. He referred to the schedule that was brought forth earlier in the meeting, and said his company had put forth a business objective as part of the schedule as any good business would likely do. He said it was an optimistic schedule and that was a good way to get feedback from others to see if it was a realistic schedule. He concluded by saying that DEQ was a separate issue, and an important issue, but not material to Condition Four. He stated that Condition Four was no longer necessary and should be removed.

Coun. Brzezinski stated that when Council issued a new condition regarding geotechnical information with a third party review the development would not proceed without having that information in the findings. She asked if there was anything about Condition Four that removed that new condition from Polygon's ability to proceed.

Grillo said removing Condition Four would not change the previous condition. He noted that if Council chose to remove Condition Four on both applications that did not remove the condition that Council placed on the design review application. He said from a staff perspective the Council's condition was taken very seriously. He noted that condition also said that if at any time something was discovered, even after the work was done, then staff believed they could recondition the site development permit to add whatever that condition might be.

Coun. Brzezinski reiterated that by removing Condition Four, Polygon would still be subject to Council's previous condition.

Grillo said that was correct.

Coun. Soth questioned that since there were two appeals before Council that evening, testimony would apply to both.

Mark Pilliod, City Attorney, replied that was correct.

Mayor Drake closed the public hearing and asked for Council decision.

Coun. Soth MOVED, SECONDED by Coun. Brzezinski that Appeal 2001-0007 be denied and the Planning Commission's approval of the modification CUP 2001-0005 be upheld.

Coun. Soth said there were two separate issues, neither of which was dependent on the other. He pointed out that since the rezones had been accomplished it rendered Condition Four unnecessary. He noted the environmental issues were of great concern to the neighbors and that was something the City had no control to set, since a third party had been hired to ascertain the environmental conditions. He said that was under the control of DEQ and anything a developer would do in those areas would be subject to DEQ's approval or findings upon completion of the third party's analysis. He agreed with earlier testimony that the City did not have the expertise to make a determination in those areas and the services of an impartial third party were required.

Coun. Brzezinski noted that eight people spoke in favor of the appeal that evening and the strongest voice that came from those eight people was that the development should not proceed until it was known what was in the landfill. She said she was convinced the prior condition that had been established (and would not be removed by removing Condition Four) would allow everyone to have that information. She said the prior condition stated the site development permit could not be issued without resolution of certain issues. She pointed out that if a site development permit was not issued then nothing could be developed. She said she had asked previously if there was anything in removing Condition Four that would remove Polygon from that requirement and she reiterated that the answer was that Polygon was still bound by the previous condition. She said because of those circumstances, she would be willing to remove Condition Four. She noted that the rezones had already happened and so the need for Condition Four was not necessary.

Coun. Doyle said he would like to echo what Coun. Brzezinski had said. He noted that from testimony that evening there was no sense that a developer was trying to override environmental regulations. He stated that safe guards for the citizens were there and when the study came out it would afford everyone an opportunity to access the information. He said if one thought in terms of liability, building on a site that had potentially unsafe factors would be something a builder would not do. He said he felt Council was looking at two business situations and how each entity chose to proceed would be their individual business. He said the discussions that ensued at Council meetings over the years would make it safer for everyone in the end, because questions lead to answers. He commented that he sensed a very sincere effort on everyone's part to get to the right answer.

Coun. Ruby stated that he would like to join in the comments that had been made. He said he did not believe the act of decoupling the segments of the project impaired its environmental oversight. He said he shared a little of the frustration about the City's role with the DEQ. He commented that the City was entitled to expect DEQ to do its job, to evaluate the environmental conditions (including Methane). He noted that it was not conclusively established that evening that the evaluation of

Methane did not fall under DEQ's scope, when in fact he thought it did. He said the City should expect the DEQ to evaluate that issue among all the others that would be evaluated through their involvement and through the independent analyst as well. He said he would support the motion.

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

01215 APP 2001-0008. Appeal of the Approval of RZ 2001-0009; Sexton Place Zone Change Modification, by the Planning Commission

Coun. Soth MOVED, SECONDED by Coun. Brzezinski that APP 2001-0008 the Appeal of the Approval of RZ 2001-0009, Sexton Place Zone Change Modification be denied and the Planning Commission Decision be upheld.

Coun. Soth remarked that the comments he would make towards this appeal would be the same as the previous appeal and therefore he would not repeat himself.

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

#### ORDINANCES:

Coun. Soth MOVED, SECONDED, by Coun. Brzezinski that the rules be suspended, and that the ordinance embodied in AB 01216 be read for the first time by title only at this meeting, and for the second time by title only at the next regular meeting of the Council. Couns. Brzezinski, Doyle, Ruby, Soth, voting AYE, the motion CARRIED unanimously. (4:0)

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

#### First Reading:

01216 An Ordinance Amending Ordinance No. 4133 Which Amends the Zoning Map For Four Parcels Located at the Northeast Corner of SW 155<sup>th</sup> and SW Beard Road (Beard Court Rezone Modification); RZ 2000-0001

Pilliod read the following ordinances for he second time by title only:

#### Second Reading and Passage:

01209 An Ordinance Amending Ordinance No. 1800, the Comprehensive Plan Map and Ordinance 2050, the Zoning Map for Property at 16079 SW Scholls Ferry Road; CPA 2001-0010/RZ 2001-0012

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01210

An Ordinance Annexing A Parcel of Land Lying Generally Outside of the Existing City Limits to the City of Beaverton; ANX 2001-0004 (16079 SW Scholls Ferry Road)

Coun. Soth MOVED, SECONDED by Coun. Ruby the ordinances embodied in AB 01209 and 01210 now pass. Roll call vote. Couns. Brzezinski, Ruby, Soth, and Doyle voting AYE, the motion CARRIED unanimously. (4:0)

ADJOURNMENT:

There being no further business to come before the Council at this time, the meeting was adjourned at 10:00 p.m.

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Sue Nelson Acting City Recorder

APPROVAL:

Approved this 19<sup>th</sup> day of November, 2001

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Rob Drake, Mayor