

## REGULAR MEETING

November 19, 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 November 19, 2001, at 6:35 p.m.

### ROLL CALL:

Present were Mayor Drake, Counc. Fred Ruby, Evelyn Brzezinski, Dennis Doyle, Forrest Soth, and Cathy Stanton. Also present were Chief of Staff Linda Adlard, City Attorney Mark Pilliod, Human Resources Director Sandra Miller, Finance Director Patrick O'Claire, Community Development Director Joe Grillo, Engineering Director Tom Ramisch, Operations/Maintenance Director Steve Baker, Police Chief David Bishop, Library Director Ed House, Development Services Manager Steven Sparks, Emergency Manager Mike Mumaw, Project Engineer Joel Howie, and City Recorder Sue Nelson.

### OTHER BUSINESS:

Mayor Drake announced that AB 01360, a Public Hearing on the Proposed Use of the Local Law Enforcement Block Grant, would be pulled from the agenda and continued to a future Council meeting in December, 2001. He stated that the public hearing was not bound by the same notice obligations as land use laws.

### CITIZEN COMMUNICATION:

Jim Cape, Portland, said he was concerned about the Sunset Highway annexation. He said the issue came up fifteen years ago and there had been a community discussion, debate, and vote by the citizens. He said the community had said thanks, but no thanks. He commented that there did not seem to be any crisis or emergency to encourage an expedited annexation. He said there was no printing of a public notice on the annexation and no adjacent property owners were notified. He said the Citizen Participation Organization (CPO) and the Local School Committee (LSC) agenda were not included. He said they deserved more respect than an expedited annexation with no public notice, no adjacent property owners notified, and no hearing.

Mayor Drake said he appreciated Cape being at the meeting that evening. He asked if the Community Development Director or the City Attorney could address specifics about the hearing Cape referenced. He noted that the public meeting Cape was referring to was the Sunset High School Local School Committee Meeting held on April 15, 1987 (document in record). He noted that Cape had been a local school committee member at that point (referenced in the document) and there were seven people at the meeting including the student body president. He said he assumed that was what Cape called a community meeting.

Cape said the issue was on the CPO and LSC agendas 15 years ago. He said the community did not want the annexation. He asked why the annexation process would be different today.

Mayor Drake said he would not engage in a discussion on why things were different today and he asked staff to respond to Cape's specific issue: the lack of an annexation hearing.

Joe Grillo, Community Development Director, said the term *expedited* was a term actually coined by the METRO code and was not terminology the City had phrased. He said expedited only meant that all of the underlying property owners had consented or were not opposed to an annexation. He said in cases where there were underlying property owners, whether it was the county, the school district, the park district, a church, or an individual property owner (or in the case of the project north of Highway 26, Morrisette Development), a written consent to annex was presented to the City. He explained that when permission was given, annexations could be processed as expedited annexations. He said that was how the City had handled some of the more recent annexations. He said if the City did not have the consent of all of the underlying property owners, it would not be an expedited annexation, but would require a different hearing before the City Council. He concluded that all underlying property owners had agreed; therefore no notice was required.

Coun. Stanton asked Grillo if expedited annexations were on a different timeframe than standard annexations.

Grillo replied that there was no requirement to have the annexation completed in any number of days. He said there was no time requirement other than the City's time requirement to notice service providers under the Metro Code, but beyond providing that notice there was no requirement for the Council to act within a certain number of days.

Coun. Stanton questioned if adjacent property owners did not have to be notified if property owners agreed to the annexation.

Grillo said that was correct. He continued as long as the property owners agreed and gave their consent, adjacent property owners did not have to be notified. He said the City did send a notice in compliance with the Comprehensive Plan in land use changes as per the Urban Planning Area Agreement (UPAA) with the County. He concluded that the City was required to give the most comparable zoning to the annexed piece of property.

Coun. Stanton said she agreed and noted that was state law under Ballot Measure Seven.

Grillo said there was no leeway in compliance with the UPAA, and the City still provided that notice.

Cape said at the State of the City address given at the Chamber of Commerce, the Mayor had spoken about how the City went beyond the state limits and would notify property owners within 100 feet of a proposed project. He said in this case no one within one foot was notified.

Coun. Stanton reminded Cape that this was not a land use action. She said annexation was just an annexation and did not go through the Planning Commission.

Cape stated that it was a land use action because it impacted the use and value of the adjacent properties.

Mayor Drake commented that the Council was not there that evening to debate annexing public properties. He said the Council valued citizen's comments even when they were not residents of the city.

Cape said the concern was that a citizen had asked for a hearing; but a hearing was not scheduled. He said Commissioner John Leeper also was concerned that there was no hearing.

Mayor Drake said the Council would not debate the issue that evening. He reminded Cape that he had not shown up at the Council meeting, where the Council would have been willing to listen to his comments. He concluded that John Leeper had not asked for a hearing.

Cape asked if a hearing was a formal agenda process or was it just someone showing up at a Council meeting.

Mayor Drake said that type of annexation did not mandate a hearing as explained by the Community Development Director.

COUNCIL ITEMS:

Coun. Soth congratulated Mayor Drake on his election as Vice President of the League of Oregon Cities. He expressed his appreciation to Mayor Drake, who attended the Chamber of Commerce's Recognition of Public Safety Employees. He explained the event was in recognition of people who went out of their way to provide services that residents and citizens appreciated, but too often were not given an opportunity to express their appreciation.

STAFF ITEMS:

Linda Adlard, Chief of Staff, reported that 22 signs were picked up in the City Code Enforcement sign sweep on the previous Saturday. She said the majority of the illegal signs were garage sale signs. She said over half were in the West Beaverton Neighborhood Association area, with a few in the Sexton Mountain Area and two in the Southwest Beaverton neighborhood. She said the City would continue the sign sweep each week. She noted the City was making some progress in contacting citizens who posted the signs.

Coun. Brzezinski clarified that garage sale signs were legal on private property for a short period of time. She asked if the signs were picked up on a public right-of-way and if they were for garage sales that had already occurred.

Adlard said the signs that were picked up were placed illegally either on utility poles or on the public right-of-way. She said if they were for current garage sales staff went to the address and informed the citizens how to display a sign legally.

Coun. Brzezinski said temporary signs could be posted within a week before an event, but not more than that.

Coun. Soth agreed with Coun. Brzezinski.

Coun. Brzezinski commented that she had noticed some prominent signs had been posted two weeks before the actual event.

PRESENTATION:

01343            Revision of the Terrorism Appendix of the City's Emergency Response and Recovery Plan

Mike Mumaw, Emergency Manager, read his statement (in record). He said terrorism had always been a potential threat that the City had faced and noted that the City's previous threat assessment had focused primarily on domestic terrorism and the potential use of explosives.

Mumaw said with the events of September 11, 2001 (and the subsequent incidents involving Anthrax), people were scurrying to develop terrorism plans. He said the City already had a terrorism plan in place.

Mumaw explained that Hazard Appendix 10 was the terrorism component of the City's Emergency Response and Recovery Plan (ERRP). He reported that it was originally developed in November 1998, and Council had approved the majority of the other Plan sections as the City's new ERRP on May 17, 1999. He noted that all parts of the ERRP were reviewed on a two-year cycle and the Terrorism Annex had been reviewed in May 2001. He said the review identified the need to revise the appendix to reflect changes in how the Federal Government responded to terrorist incidents and to provide additional guidance and information on responding to the use and the threatened use of weapons of mass destruction. He explained that another goal of the review was to make it easier to find information and use information the ERRP contained. He said parts of the revised appendix had already been posted on the City's Intra Web as guidance for staff. He noted that approval of the proposed terrorism appendix was part of the agenda that evening.

Mumaw explained that terrorism, whether it involved conventional explosives or exotic weapons, was not unlike other hazards or threats. He said the primary difference was that the City had studied and experienced most of the natural disasters that occur in the Pacific Northwest. He explained that while the Northwest had experienced natural disasters in the past, it had been insulated from past occurrences of terrorism and it was not a daily concern for the Northwest like it was in other parts of the world. He put the current threat into perspective by stating that based on historical data; winter storms and flooding still remained the Northwest's main hazards. He explained that based on data currently available earthquakes were still the most devastating hazard faced in this region. He noted that how the City prepared for natural disasters and manmade hazards (like hazardous material incidents) was the same, as the City would prepare for Terrorism. He commented that while terrorism might be in the news and foremost in our thoughts, the City still needed an emergency response plan, training, and an exercise plan.

Coun. Soth said he appreciated Mumaw's presentation at the League of Oregon Cities. He reported there had been an increased number of calls to the 911 Centers as a result of the September 11, 2001, event and it was gratifying to know the City was capable of dealing with disasters.

Coun. Brzezinski thanked Mumaw for writing clear prose for the ERRP. She said she was very impressed and would pass it on to her employer, Portland Public Schools.

CONSENT AGENDA:

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

Minutes of the regular meetings of June 18, 2001, September 10, 2001, and October 1, 2001

- 01344 A Resolution Approving the Revision of the Terrorism Appendix of the City's Emergency Response and Recovery Plan
- 01345 A Resolution Adopting an Intergovernmental Agreement with Metro Regional Government for Implementation of the Annual Waste Reduction Plan
- 01346 Resolution Approving Amendments to the League of Oregon Cities (LOC) Intergovernmental Agreement
- 01347 Liquor Licenses – Change of Ownership: Thai Apsara Restaurant  
Lyon's Restaurant
- 01348 CUP2001-0014 Waterhouse Commons Hours of Operation Conditional Use Permit
- 01349 CUP2001-0020 Voice Stream Monopole Extension at 13707 NW Science Park Drive Conditional Use Permit
- 01350 Bid Award – Movable Wall (Hinged Panels) for Lunch Room at Operations Center
- 01351 Bid Award – Purchase one (1) Sign Truck Body
- 01352 Bid Award – Purchase of One (1) DEQ Emission Analyzer
- 01353 Bid Award – Purchase One (1) New 2002 Dump Truck
- 01354 Development Code Text Amendment Pursuant to Metro Code Chapter 3.07 Title 4 to Regulate the Size of Retail Uses in the Campus Industrial Zoning District

Contract Review Board:

- 01355 Contract Change Order – Ratify Work Performed and Authorize Additional Work to Construct the Fountain Landscape Remediation Under the City Park Expansion Contract
- 01356 Waiver of Sealed Bid – Purchase and Installation of Workstation

Furniture From the State of Oregon Price Agreement

- 01357 Contract Change Order – Authorize Additional Work Under an Existing Personal Services Contract for Space-Planning, Architectural and Design Services
- 01358 Exemption from Competitive Bids and Authorize a Sole Seller/Brand Name Purchase of DiscChek DC-900 Robotic Disc Evaluator/Cleaner
- 01359 Exemption From Competitive Bids and Authorize a Sole Seller/Brand Name Purchase of Library Shelving from Spacesaver Specialists, Incorporated

Coun. Brzezinski noted there were two corrections on the minutes of June 18, 2001. She abstained from the minutes of September 10, 2001, stating she was not in attendance at that meeting. She noted that she would like some information corrected on the minutes of October 1, 2001, and she would give her corrections to the City Recorder.

Coun. Brzezinski commented that she was still interested in Code Enforcement's overall procedures and how priorities were set, as she had requested in the June 18, 2001, minutes.

Coun. Stanton abstained from the June 18, 2001, minutes stating she was not in attendance at that meeting. She requested staff to clarify the minutes by referencing agenda bill numbers in Council discussions during the Council meetings. She said she had some clarifying statements for the minutes from September 10, 2001, and she would give them to the City Recorder.

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

PUBLIC HEARINGS:

- 01360 Public Hearing on the Proposed Use of the Local Law Enforcement Block Grant (PULLED)

Mayor Drake opened the public hearing for AB 01315A.

01315A APP 2001-0015 Hall Boulevard Bike Lane and Street Lighting Improvements; Continued Hearing on Appeal of the Board of Design Review Decision (BDR 2001-0079) (continued from 10/08/01)

Steve Sparks, Development Services Manager, gave a brief history of the appeal and said that Council had heard APP 2001-0015 on October 8, 2001. He noted Council had questioned if proper notice of the appeal hearing had been provided. He said while staff was confident notice had been provided, there was not an affidavit of the notice so another notice was mailed and the subject property owner had been contacted by telephone.

Sparks said a second Council question concerned setbacks for the subject parcel. He pointed out that Agenda Bill 01351A had referenced the setbacks at 10 feet, and that a flexible setback would remedy that situation. He said there was a memorandum from Associate Planner Scott Whyte, dated November 13, 2001, (in record) with new information. He noted the new information was that the property was a subject of the ordinance for a Conditional Use Permit (CUP) Planned Unit Development (PUD), which established the setbacks at 25 feet. He said any amendments would require an amendment to the PUD application that was approved in 1973. He noted that if the Council were to require a right-turn lane, the remedy for the property owner would be to file a CUP PUD modification application and not a flexible setback or a variance.

Sparks also noted that the Council had requested more information from the Engineering Division regarding costs associated with the right-turn lane construction. He pointed out that information had been included in the November 13, 2001, memorandum from Whyte.

Sparks said that staff continued to recommend approval of the appeal and elimination of Condition No. 7 of the Board of Design Review in Land Use Order Number 1432. He noted that the basis for the recommendation was that there was no factual evidence in the record supporting the inclusion of Condition No. 7 that would add a right-turn lane on Hall Blvd. (right turn on to Greenway).

Coun. Soth referred to the memorandum dated November 13, 2001, and said that if the City proceeded, the property in question would become a non-conforming use. He asked if this would require a modification to the original conditions placed upon the Glenbrook Apartments located on Hall Blvd. He said that would then eliminate the non-conforming use portion.

Sparks replied that it would not be a non-conforming use, but it would be a non-conforming structure. He explained that the property owner would be able to continue to use the property and the structure as it currently existed. He noted that the only impact would be that if the structure was to burn or be destroyed more than 50% of its assessed value; replacement/reconstruction of that structure would be required consistent with current code and the provisions of the original 1973 PUD approval. He specified that the original PUD approval was 25 feet. He said if the property owner agreed to a non-conforming structure it would not impact the City in how the property was dealt with in any regard, but the property owner could apply to amend it and then the non-conformity would disappear.

Coun. Soth asked for a ballpark dollar figure on what it would cost the property owner to request a hearing before the BDR or the Planning Commission (PC) or both.

Sparks replied the owner could request a hearing before the PC and the fee for CUP Modification was approximately \$600.

Coun. Stanton asked if the City could waive that fee.

Sparks clarified that the Council had the ability to waive the fee.

Coun. Brzezinski commented that it seemed wrong that the onus for filing the paperwork rested with the landowner, when it was the City that wanted the project. She asked if there was precedent for handling it another way.

Sparks said he was not aware of any precedent that would allow the City to effectively act as an applicant for a property the City did not own. He said he would defer to legal counsel, but it seemed the City could act as an applicant if the property owner gave the City permission to pursue the application.

Coun. Brzezinski commented that it was not just the cost of the fee that the property owner would bear, but fees incurred through legal counsel or time spent in filling out applications. She reiterated that it did not seem right that a property owner would have to bear the burden for something the City wanted to do.

Coun. Brzezinski referred to the memo dated November 13, 2001, and asked if the City was not doing the other work and just constructing a right-turn lane, what would that type of project cost.

Coun. Stanton answered Coun. Brzezinski's question by stating that according to the Capital Improvement Program (CIP) the costs would be

approximately \$500,000. She said the costs associated with AB 01315A were 10% of the CIP costs and there were other costs added to the intersection improvement.

Sparks said it was a larger number because there had not been an appraisal of the property at that time. He explained the number currently included the appraisal of purchasing the property.

Coun. Brzezinski asked if it would be \$209,000 more than it would be if the City did not put in the right-turn lane.

Mayor Drake commented that it was important to bear in mind that the project would not be done anytime soon, because it was not in the foreseeable future of the CIP. He said this project did not exist as a CIP because the warrants were not there for it and it was not in the plan based on Council priorities. He noted that it was not in the internal CIP process, the public comment process, and ultimately what the City Council adopted.

Coun. Brzezinski noted that the issue was whether the City was getting everything it could from funding the project. She commented that since the intersection was already being redone, could additional work be performed that would make the area better. She said if the City was just going to construct the right-turn lane with no other improvements then she agreed that was not in the CIP. She commented that what appealed to her was that for a modest amount of extra dollars the City could accomplish something that could be added to a future CIP.

Mayor Drake said a representative of GSL Properties might have some additional information for Council.

Mark Pilliod, City Attorney, reminded the City Recorder that another memo dated November 19, 2001, (memo in response to Council questions) should be added to the record.

Mayor Drake explained that part of the normal agenda process was for Council to ask questions of staff in advance. He noted that there was a question that related directly to AB 01315A in the staff response memo dated November 19, 2001.

Coun. Stanton asked about the right-of-way acquisition versus condemnation. She said if a property owner sold the City the right-of-way, then condemnation procedures would not have to be enacted.

Sparks said that was his understanding.

Coun. Soth referred to the intersection in question and stated the only project would be painting the bike lanes and no other major improvements would be made.

Sparks said that was correct.

Coun. Stanton clarified that sidewalks, utility poles, and signals would be moved.

Sparks replied that was correct.

Coun. Stanton said it would be a good time for additional project work to be done at the intersection, because the utility poles were being moved anyway. She pointed out that the cost would be negligible to move the utility poles another three feet once they had already been pulled up.

#### APPLICANT:

Tom Ramisch, Engineering Director, explained the Hall Blvd. bike lane project was conditioned by the BDR to add a right-turn lane in an effort to make the bike lane travel safer for both bicyclists and autos turning right from Hall Blvd. on to Greenway. He said that in conjunction there was also a condition to add blue paint to the bike lane. He explained that the blue paint was a special feature employed in the Metro area at dangerous or highly traveled intersections that were traveled by bicycles and autos. He explained the result of the right-hand turn analysis from the last BDR hearing was a higher dollar estimate of approximately \$200,000. He said staff continued to be concerned, because none of the obvious funds (more specifically the street fund) had that amount of money available given the programmed projects that were currently in the CIP. He explained that the other funding source that the City could consider would be to apply to make the project eligible for Traffic Impact Fee (TIF) funds. He reported that currently Hall Blvd. was not an eligible street for TIF. He said the impact on the apartments on Hall Blvd. was spelled out in more detail in the memo of November 13, 2001, and the capacity study indicated that the intersection was not currently failing.

Ramisch noted that Traffic Engineer Randy Wooley would answer questions about what it really meant to have warrants for a right-turn lane and that it was not unlike the process to put in a stop sign or a traffic signal. He said the warrants were not a formal national standard for a turn lane.

Joel Howie, Project Engineer, referred to Development Code section 60.60.25 and said it was acceptable to have a Level of Service (LOS) of E. He described moving the existing curb and gutter and building a retaining wall in an effort to not impact the planter strip. He pointed out what the turn lane would look like with a 200-foot length with a 165-foot taper. He noted the existing curb and gutter and the existing right-of-way line and he indicated the new right-of-way.

Coun. Soth asked if the utility poles to be moved as a result of the bike lane project were on the other side of the street down towards the creek.

Howie said that was correct.

Coun. Stanton referred to the right-turn and asked how many cars would fit into the 120-foot lane versus a 200-foot turn lane.

Howie replied that they estimated 20 to 25 feet per car, so six cars could queue in a 120-foot lane.

Coun. Stanton clarified that 10 cars could line up in a 200-foot lane. She asked for justification on a 200-foot lane instead of a 120-foot lane. She said if there had been no turn lane previously, why would it be necessary to go to a 200-foot turn lane instead of a 120-foot turn lane.

Howie said that the 200-foot turn lane was proposed as an ideal condition. He explained that a 120-foot turn lane would work in some instances, but there would be queues during the peak p.m. hours.

Coun. Stanton commented that there were queues in that area all day long. She explained that that was her neighborhood and whether there was one car or ten cars in front of her it only took one car to mean her car would not go anywhere until the light changed as opposed to a queue that would have allowed her car to move over. She said that in the AM/PM peak hours the cars in the right hand turn lane backed up all the way to Green Lane.

Coun. Stanton asked if the intersection was currently at LOS E. She commented that according to the Transportation System Plan (TSP) conversations it was questionable as to whether or not the City would accept LOS E/F.

Randy Wooley, City Transportation Engineer, said the current code expressed LOS E as being the requirement at signalized intersections. He noted that the conversation was still before Council about adopting the TSP updates. He reported the question to be whether the City wanted to stay at LOS E or go to a higher LOS or go to LOS F as tolerated in the Regional Plan.

Coun. Stanton agreed that the Regional Government had said LOS E-F was the standard.

Coun. Stanton referred to the possible 125<sup>th</sup> extension and the fact that Nimbus might be extended to Denney, and in that case the right-turn lane on Hall would not be needed. She asked why it would be in the interest of the Citizens of Beaverton to make the improvements since the Nimbus extension to Denney was not in the CIP and the 125<sup>th</sup> extension was in the CIP, but without funding.

Mayor Drake replied that there were a lot more needs than there were funds, and every year the Council did a diligent and intelligent job of prioritizing capital expenditures. He commented the citizens of Beaverton

needed to be informed that there were a lot of needs that far exceeded funding.

Howie said based on the current standards in the Development Code the intersection operated at LOS E, which was acceptable. He said in planning over the next twenty years, one could assume the 125<sup>th</sup> extension as well as the Nimbus extension would be built and including both of those assumptions, the intersection operated at an acceptable LOS.

Coun. Stanton asked if the 125<sup>th</sup> extension was not built, what level of assurance would she have as a resident of that neighborhood that in the next 20 years it would be built.

Howie said the County had a major streets/transportation improvement program and in the years 2010 to 2020 they had a draft plan that included the 125<sup>th</sup> extension. He said he did not know if Nimbus was included in that plan. He said he hoped that within 19 to 20 years it would be built.

Ramisich pointed out that there were regular reminders of the 125<sup>th</sup> extension from many people who would like to see that street built. He explained that they were looking for funding from every suggested opportunity for a list of projects that would fit into a certain package of funding. He said they evaluated the 125<sup>th</sup> extension project against every funding opportunity and if there were any opportunity to build that street the City would take advantage of it.

Coun. Stanton remarked that she had lived in her neighborhood for 20 years, and the right-turn lane might not aid residents in her neighborhood to get out on the street, because it would provide a steady stream of on-coming cars. She said she thought the Nimbus extension to Denney would be completed before the 125<sup>th</sup> extension.

Coun. Soth said that with the present schedule and proceeding, the intersection improvement at Greenway/Brockman was the first phase of the 125<sup>th</sup> extension. He said funding was allocated for it and it would go forward. He agreed with Coun. Stanton and said the 125<sup>th</sup> extension had long been needed and \$209,000 would make a big dent in the project.

Coun. Brzezinski asked for clarification about dollar figures in the November 13, 2001, memo. She asked if the costs were for constructing the bike lane only.

Howie said the costs were for constructing the right-turn lane.

Coun. Ruby asked for clarification about the burden that would shift to the property owner if the right-turn lane was implemented. He said there had been discussion about the fact that it had not been a 10-foot setback requirement, but instead a 25-foot requirement. He said Whyte had explained in the memo dated November 13, 2001, that if the City was to

acquire the subject property the result would be that at least one structure on the subject property would be a non-conforming structure with regard to setbacks.

Ruby said the fact that the City action would create a non-conforming structure would not eliminate or diminish the property owner's ability to continue to use the non-conforming structure. He said it would be the option of the subject property owner to determine if they wished to file an application to eliminate the non-conforming status. He commented that if the City took the property to put in the right-turn lane (which might require a condemnation procedure or agreement to compensate the owner) was the owner stuck with now being non-conforming and in a position to have to do something to be able to use his own property.

Sparks replied that Coun. Ruby was correct that the property owner would be the applicant to file that application. He said through the course of negotiation with the property owner in acquiring the property, the City could work out an agreement on how to proceed if the property owner chose to remove the non-conforming status as a result of the acquisition of the property. He reiterated that would be an option for the property owner.

Coun. Ruby said he understood the property owner could continue to use the property, but would need to do something to memorialize the non-conforming use. He asked if there was damage or a loss, the property owner would not be fully compensated on the loss unless there was some kind of document in place.

Mayor Drake explained if more than 50% of the structure burned down they couldn't legally rebuild unless the non-conforming status was removed.

Sparks agreed with Mayor Drake and said that was correct.

Coun. Stanton said as long as the structure was intact it would be non-conforming and grand fathered in, but if the structure burned down they would not be able to rebuild that structure.

Mayor Drake said he was not certain the property owner could make a revision to the structure even if it wasn't burned down, if the structure was non-conforming.

Sparks said the property owner could make a design review application to modify the structure. He explained that as long as the revision did not increase or compound the non-conformity the project could go forward. He said if the property owner added on to the structure away from the street (on the west side) there would not be a problem. He said it would

become an issue if the addition was on the Hall Blvd. side of the street where potentially the non-conformity would be compounded.

Coun. Soth referred to the appraiser's report in the memorandum dated November 13, 2001, and asked about possible economic damage to the property owner. He asked what impact that lessening of the distance from the sidewalk or the street to the building would have on the economic value of the property.

Pilliod said he agreed with Coun. Soth that element was not referred to in the report that was distributed. He said it would need to be evaluated as well. He explained given the likelihood that the property could not be purchased for voluntary sale it would go to condemnation. He said it would probably not be in the City's interest to discuss that in regular session, but rather in executive session. He summarized that it was an element with potential additional cost that was not reflected in the report.

Coun. Doyle asked how far the distance was to the first cross street that intersected the area.

Howie said that Ridgecrest was the first cross street; approximately 600 feet from the area.

RECESS:

Mayor Drake called for a brief recess at 7:40 p.m.

RECONVENED:

The regular meeting reconvened at 7:55 p.m.

Coun. Stanton asked if any right-of-way would be acquired just for the bike lane.

Howie replied that a small amount of right-of-way had been acquired.

Mayor Drake asked what would be the impact.

Howie said two to three feet in width to accommodate the retaining wall.

Coun. Stanton clarified that three feet were taken and she asked how much additional right-of-way would need to be taken for the right-turn lane.

Howie said an additional 11-12 feet would need to be taken and for a much longer distance.

TESTIMONY IN SUPPORT OF THE APPEAL

Mayor Drake called David Bantz to testify (from his written testimony card in record) and asked if he was in favor of the staff's appeal of the right turn lane.

David Bantz, Portland, said he was the development manager for GSL Properties, owners of the Glenbrook Apartments. He said he was in favor of the appeal. He explained that GSL had approved the original right-of-way acquisition and the bike lane, but it was the right-turn lane that presented a problem. He noted that the non-conforming issue was minor compared to the diminished value of the apartment units, which would be impacted by having a right-of-way within seven feet of the improvements. He said the apartments would be impacted not only by a seven-foot right-of-way, but also a two-foot setback from the temporary construction easement. He said that impacted eight units of the apartment buildings. He explained the units were two stories and there could be construction within two feet of the units. He said he did not have a chance to review the memorandum dated November 13, 2001, but it appeared that there was \$5000 for corrections to damage that may occur to the apartment landscaping, lighting, signage, and irrigation. He said he could not evaluate if that amount would be a fair value or estimate the diminished value of the buildings since he was not an appraiser. He guessed that it might add 50% to the budget that had been imposed on the project. He said it appeared if it was LOS E, a right-turn lane would not be necessary and maybe by the time it was necessary, people would be willing to live within seven feet of a sidewalk, but he believed they would not be willing to do that currently.

Jim Persey, Beaverton, said he was a Neighborhood Association Chair and had received complaints from citizens who lived in the neighborhood and could not safely pull out on to Hall Blvd. because of on coming traffic. He commented that he believed it would be eight to ten years before 125<sup>th</sup> was extended and that was a long time to wait for a safe way to exit his neighborhood. He said he was concerned about the property impacts and suspected there were more costs involved than just the appraised value or diminished value of property. He said he had testified in favor of the turn lane at the BDR hearing, but now that he had more information he was in favor of the appeal.

Bantz commented that it would not be fair for the applicant to come back and pay application fees for a building to be rebuilt if it was to burn down or damaged more than 50%. He said it was not just the cost of the fee, but it would include the cost of consultants, attorneys, land use people, and engineers. He said if the right-turn lane was constructed and GSL was required to file for an application, there should be no cost to GSL.

Kat Iverson, Beaverton, said the right-turn lane was proposed as a safety measure and not as an LOS improvement. She drew a picture on the white board that described a possible alternative to the currently proposed

bike lane. She said her idea was to end the bike lane 300-feet before the intersection and narrow the road at that point. She said a wider road improved life for bicyclists and for motorists. She reiterated if the bike lane was ended before the intersection, safety would still be maintained and no cost would be incurred from a right-turn lane. She commented that she supported the appeal on the condition that the bike lane would end 300-feet before the intersection, along with a sign posted that indicated the bike lane ended, and to merge left.

Mayor Drake commented that Iverson had been active on the Bike Task Force. He asked if the Bike Task Force had commented on the project.

Iverson said the Bike Task Force had discussed the proposed project and the information had been conveyed to Wooley and Howie. She said that officially the Bike Task Force would support the bike lane and the blue paint even though the Task Force committee was split on their feeling about bike lanes in general.

Coun. Ruby said he liked to ride his bike on the bike lanes on Hall Blvd. He said when the bike lane on Hall Blvd. ended at Allen Blvd. he felt exposed to traffic. He commented that Iverson's point was well taken about the inherent danger with bike lanes and right-turn lanes. He said some bicyclists liked the bike lanes, because it was better than not having them at all.

Iverson commented it was generally true that novice bicyclists liked bike lanes, because they didn't know any better.

Coun. Ruby replied that there was some reason why the government was requiring bike lanes.

Iverson said motorists liked the bike lanes, because they kept the bicyclists out of their way. She said there were no studies that indicated bike lanes reduced accidents. She said the only kind of accident that bicyclists had any effect on was rear-ending and that was only 2% of the car/bike accidents. She reported bike lanes could actually increase accidents at intersections because the bicyclist was less visible that close to the curb.

Mayor Drake said he felt better riding his bike in a bike lane, but felt nervous when he rode on Hall Blvd. or Allen Ave. He said he liked riding his bike in a bike lane because he believed he was set apart from the cars.

Iverson commented that the problem was a bicyclist felt safer in a bike lane when in reality they were not safer.

Mayor Drake pointed out that the Bike Task Force committee was split on their decision about bike lanes and that made it difficult for the Council to accept a recommendation from them.

## TESTIMONY IN OPPOSITION TO THE APPEAL

Mayor Drake asked for testimony from any one who favored the right-turn lane.

There was no one who wished to comment.

## ADDITIONAL COMMENTS:

Coun. Brzezinski referred to the AB 01315A under Recommended Action and asked for clarification on the statement regarding additional information and staff direction to proceed with modification to the Hall Blvd. Bicycle Lane Project.

Sparks replied that the recommendation was to eliminate Condition No. 7 and the statement in question meant that after considering information provided by Howie and Ramisch, Council might also disagree to proceed with the modification to dedicate more funding to put in a right-hand turn lane.

Coun. Brzezinski clarified that it meant only if Council denied the appeal, then something else must be done.

Sparks said that was correct.

Mayor Drake said no rebuttal would be allowed since there was nothing to rebut.

Mayor Drake closed the public hearing.

Coun. Soth MOVED, SECONDED by Coun. Doyle, that referring to AB 01315A that Council grant the appeal, thereby modifying the BDR appeal for BDR 2001-0079 contained in Land Use order no. 1432, eliminating the first part of Condition No. 7, that required the addition of a right-turn lane at the intersection of Hall Blvd. and Greenway, but retaining the remainder of Condition No. 7.

Coun. Soth said it appeared that the right-turn lane was not a part of the original application and the BDR went beyond what the original application had contained to require that condition. He commented that he sympathized with the citizens in that area, and also believed \$209,000 would provide a substantial portion of the 125<sup>th</sup> extension.

Soth continued that due to the raised awareness of the necessity of the 125<sup>th</sup> extension, more funding would be available from somewhere. He said he believed that staff was continually looking for a way to fund the 125<sup>th</sup> extension. He commented the extension would have a modifying effect on the Hall/Greenway intersection.

Coun. Doyle said he would support the motion. He said the discussion that evening was one that was necessary, because on the first inspection it looked like a cost effective use of dollars to solve a problem. He commented as they delved into the financing it became more apparent that the \$200,000 was close to being correct, but the economic impact to the business on Hall Blvd. would have driven the dollar amount up substantially. He said he was uncomfortable with putting the residents of the Glenbrook Apartments so close to the traffic pattern.

Coun. Stanton said she supported the motion, because she believed that if the right-turn lane went in, the residents in the surrounding neighborhood would be forced to go out of their neighborhood a more inconvenient way. She disagreed that LOS E/F was acceptable and she believed that Bantz made the best point when he said to put in the right-turn lane in the future when citizens were used to having a curb three feet from their front door. She referred to Iverson's comments about changing the bike lane and said she was not comfortable with that suggestion. She said the City's traffic engineers could assess the area in conjunction with the state standards. She commented that under duress she would support the motion.

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

#### ORDINANCES:

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

#### ORDINANCES:

Second Reading and Passage:

01340 An Ordinance Annexing Five Parcels of Land Lying Generally Outside of the Existing City Limits to the City of Beaverton; ANX 2001-0006 (SW Cedar Hills Blvd./Sunset Highway)

01341 An Ordinance Amending Ordinance No. 1800, the Comprehensive Plan Map and Ordinance 2050, the Zoning Map for Five Parcels; CPA 2001-0014/RZ 2001-0015

Coun. Soth MOVED, SECONDED by Coun. Doyle, that the ordinances embodied in AB 01340 and 01341 now pass. Roll call vote. Couns. Brzezinski, Ruby, Soth, Stanton, and Doyle voting AYE, the motion CARRIED unanimously. (5:0)

#### EXECUTIVE SESSION:

Coun. Soth MOVED, SECONDED by Coun. Brzezinski, that the Council move into executive session in accordance with ORS 192.660 (1) (h), to discuss the legal rights and duties of the governing body with regard to

litigation or litigation likely to be filed. Couns. Brzezinski, Ruby, Soth, Doyle, and Stanton voting AYE, the motion CARRIED unanimously. (5:0)

The executive session convened at 8:30 p.m.

The regular meeting reconvened at 8:34 p.m.

ADJOURNMENT:

There being no further business to come before the Council at this time, the meeting was adjourned at 8:35 p.m.

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Sue Nelson, City Recorder

APPROVAL:

Approved this 4th day of February, 2002

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Rob Drake, Mayor