

REGULAR MEETING  
December 17, 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, December 17, 2001, at 6:35 p.m.

ROLL CALL:

Present were Mayor Drake, Couns. Fred Ruby, Evelyn Brzezinski, Dennis Doyle, Forrest Soth, and Cathy Stanton. Also present were Chief of Staff Linda Adlard, City Attorney Mark Pilliod, Human Resources Director Sandra Miller, Finance Director Patrick O'Claire, Community Development Director Joe Grillo, Engineering Director Tom Ramisch, Operations/Maintenance Director Steve Baker, Police Chief David Bishop, Library Director Ed House, Assistant City Attorney Ted Naemura, Building Official Brad Roast, Principal Planner Hal Bergsma, Senior Planner Barbara Fryer, and City Recorder Sue Nelson.

CONSENT AGENDA:

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

Minutes of the regular meeting of October 15, 2001

- 01383 Liquor License: Greater Privilege – Monty's Tavern
- 01384 Boards and Commissions Appointments
- 01374 Final Order Denying Appeal And Affirming The Decision of The Planning Commission Upholding The Planning Director's Decision Approving A Subdivision Modification Request (Sterling Park); Order No. SB 2001-0002/APP 2001-0017 (\*Moved From 12/10/01)
- 01385 Approval of the Hart Rd (165<sup>th</sup> Avenue – Murray Boulevard) Project
- 01386 Bid Award – Purchase One (1) New 2002 19,000 Lbs Gross Vehicle Weight Cab-Chassis Truck (pulled)

Bid Award – Purchase One (1) New 2002 ¾ Ton Extended Cab Pickup Truck (pulled)

Question called on the motion. Couns. Doyle, Stanton, Brzezinski, Soth and Ruby voting AYE, motion CARRIED unanimously. (5:0) Couns. Stanton and Brzezinski abstained from voting on AB 01374 because they were not present at the hearing.

Coun. Soth referred to the minutes of October 15, 2001, and gave the corrections to the City Recorder.

Coun. Stanton referred to the minutes of October 15, 2001, and gave the corrections to the City Recorder.

#### CITIZEN COMMUNICATION:

Mayor Drake announced there would be discussion on a remand in regard to Ordinance 4187 and Agenda Bill 01391.

David Kamin, Beaverton, announced he was the chair of the Five Oaks Triple Creek Neighborhood Association (NAC). He referenced a letter dated December 10, 2001, from Pat Russell. He explained the NAC was asking the City Council to remand Ordinance 4187 back to the Planning Commission because of the lack of public input at the Planning Commission hearing.

Hal Oien, Beaverton, commented the NAC did not receive notification of the original remand for the Beaverton School District property. He explained the property originally came into the City in November, 1999, and was eventually designated by the City as Campus Industrial property because it was surrounded by Campus Industrial property, in an area that was designated as Employment property. He noted on March 5, 2001, the Beaverton School District requested the issue be remanded back to the Planning Commission, but the NAC was not noticed. He said the NAC was requesting that the property be designated Campus Industrial and remanded back to the Planning Commission for a full public hearing and citizen input.

Rachel Nettleton, Aloha, said she became active in her NAC because she liked seeing citizen involvement. She added that she hoped the Council would consider the remand.

Mayor Drake asked Principal Planner Hal Bergsma to read a prepared memo he had written to the Council concerning Pat Russell's letter dated December 10, 2001, written on behalf of the Five Oaks Triple Creek Neighborhood Association.

Bergsma stated that the City had provided required notices throughout the process. He said the issue originally came to the Council after the amendments relating to land use were recommended to the Planning

Commission. He said at that point the Council remanded a number of items back to the Planning Commission for reconsideration. He explained the initial notice of the Planning Commission hearings were provided citywide and to all of the NACs as required by the Comprehensive Plan. He said at the time the issue was remanded, the affected property owners, including Beaverton School District, were notified. He added the City was under no obligation at that point to re-notify other parties.

Bergsma continued after the Planning Commission reconsidered the matter they changed the recommendation regarding the proposed designation of this property from Employment to Industrial. He added the present designation was Industrial. He noted this kept the property at the present designation. He noted staff originally proposed an Employment designation because most of the surrounding properties were designated Employment. He explained the Planning Commission recommended that the property retain the original designation. He stated the Council considered the recommendation on May 14, 2001, and at that time there was no opposition or appeal of the Planning Commission recommendation. He stated once the Planning Commission recommendation was approved there was no further opportunity for remonstrance.

Coun. Stanton asked why the city did not have to renotice when the Comprehensive Plan Amendments were remanded back for review.

Mark Pilliod, City Attorney, replied Ballot Measure 56 and the statute required notice prior to the public hearing date.

Coun. Stanton said she assumed citizens did not submit either oral or written testimony. She asked if they had submitted written or oral testimony would they have been notified.

Pilliod replied they would not have been notified.

Mayor Drake noted the reason was because no final decision was made.

Pilliod said the Comprehensive Plan and the statute mentioned notifications to the NACs, Neighborhood Office, Publication, etc. but did not address renotification upon a remand. He said he did not find anything that would require renotification.

Coun. Stanton stated she felt that was a flaw in the plan.

Coun. Soth explained the City did not have an Institutional zone and what the City required was that any public use could be developed under a Conditional Use Permit (CUP) in any zone in the City, providing they adhered to the codes and ordinances.

Bergsma said his understanding was that the kind of operation that was proposed by the School District for this site was an allowed use under the

Industrial designation and the light industrial zone, which presently applied to the property. He added that the City was drafting an Institutional designation for consideration next year by the Planning Commission and the City Council. He said it was the Industrial designation and light industrial zone that applied to the property and were the appropriate use.

Coun. Soth noted the Industrial zone was adopted.

Bergsma replied it was subject to existing standards. He said the Beaverton School District submitted a development application in the present zoning and had 180 days to complete the application. He added if they were in the time frame, they were subject to the existing standards no matter what was done with the Comprehensive Plan.

Coun. Soth said that in the present zone it was an allowed use. He noted under any changes, an allowed use depended on the zone change. He added they would have the opportunity to develop the property with whatever rules applied. He said when the notice of NAC activities were published and distributed it listed the proposed land uses by any of the boards or commissions. He added the general land use summary went out with the meeting notices. He asked if that would have been included in the summary land use notice.

Bergsma said they provided information monthly to the CCI on division activities. He said he was unsure if the notice went through that process.

Coun. Brzezinski said she agreed with Coun. Stanton that in other cases the City went beyond the letter of the law. She said she felt it was not consistent with the spirit of the City not to inform the citizens of changes. She said if a substantial change was proposed on a remand she felt citizens should be informed to encourage them to both participate and trust their government. She asked if the NAC's received the City Council agenda packets.

Bergsma answered that was correct.

Coun. Brzezinski noted this issue was stated in the city council packets for March 5, 2001, and May 14, 2001. She said assuming the packets were looked at it, it seemed hard to overlook the fact that it was going back to the Planning Commission for this specific reason and that the School District wanted to use it for this particular purpose.

Coun. Brzezinski said she disagreed with the fact that the City did not officially notice the hearing. She stated she would have liked the notice to be distributed to the NAC. She said she did agree that it was legally correct and the City had not done anything to change the legally correct approach. She added there was an alternate method for knowing what was going on by looking at the City Council Agenda Bills. She said she did not want to vote either way.

Coun. Stanton asked if the people who originally submitted oral or written testimony were noticed when an item was remanded back to the Planning Commission.

Ted Naemura, Assistant City Attorney, said a notice would be sent to people participating in the matter and the property owners who were subject to the action.

Coun. Stanton asked if someone who provided written or oral testimony on the issue the first time would be noticed.

Naemura said that was correct. He said one of the general ideas was that when a process like this went through a couple different procedural twist and turns, it was a mark of fairness that the people that participated were renotified so they could participate a second time. He said these ordinances did not come as a total proposal all at one time and that chunks of the policy came to the Council at different times. He stated the notices for the various chunks of policy proposals would describe changes that were being proposed. He said these were legislative proposals, they were broad-based and many policies were affected at one time. He said the discussion could flow more freely in front of the Planning Commission than it would with a quasi-judicial hearing.

Coun. Stanton clarified her question was on the remand, which had to do with site-specific properties, not housing or economic elements of the Comprehensive Plan.

Naemura explained those were not as much site-specific as they were putting the final touches on broad based policy proposals. He said this was not in the context of a site-specific action because that would be a quasi-judicial matter. He said this was a legislative matter that took care of a few details that related directly to the policies.

Bergsma commented they had discussed adopting a new land use map for the City of Beaverton and in doing that they needed to look at some of the detailed individual properties. He questioned where the line was drawn between the different designations. He noted at times decisions were reconsidered. He added that was the nature of the kind of issue that was associated with the Yamamoto property.

Coun. Stanton stated she remembered the remands were site specific.

Bergsma replied that was correct and noted there were seven remand issues. He said initially when they looked at the map they were looking at site-specific issues and when the Planning Commission came to a conclusion, it was recommended to the Council. He added as they continued to look at the maps, they began to rethink some of them. He said the nature of this kind of mapping process included dealing with several site-specific issues all at once.

Coun. Stanton asked what the process for notification would be in the future.

Barbara Fryer, Senior Planner, noted in regards to the remand areas, they noticed each individual property owner with a site-specific map, which indicated that it was going from Industrial to the proposed Employment. She added they sent specific notices to the property owners and to the people who testified regarding that particular area.

Pilliod added there would have been a notice of recommendation given to the people who participated in the hearing process as required by the Comprehensive Plan prior to the Council receipt of the Planning Commission's recommendation.

Coun. Brzezinski noted the flaw was that if the neighbors liked what was being proposed they wouldn't testify. She added it was a Catch 22 because if someone liked it, then they wouldn't testify, then one wouldn't get noticed when they changed what one originally liked. She said she did not see how they could do anything except proceed with this one, but it was a flaw in the system.

Mayor Drake explained it was important to follow through and watch every action. He mentioned that the process for notice procedure could be discussed and brought back to the Council. He noted Pat Russell, who had been part of Five Oaks Triple Creek NAC, was a professional planner and recently moved to Clackamas County. He said it was a loss not having him on the team to help with the review process. He concluded in this case it did not appear that the NAC took an interest or testified, but the process was followed, be it right or wrong.

Oien said Bergsma mentioned that he notified the Beaverton School District on this remand and legally he was not required to do so. He questioned why the school district was notified as a courtesy and the NAC's were not. He agreed that there was a way around this situation, which required citizen input on the issues. He said if something came before the City Council and was passed, the NAC did not necessarily get the agenda for that meeting. He said they wouldn't know unless they viewed the web site or received a copy. He felt if people were noticed the second time there would be less confusion.

Mayor Drake asked for Oien for clarification

Oien answered the point was that the seven property owners were out of the loop on March 5, 2001. He explained they assumed the property would be Campus Industrial, then it was remanded. He added they were not notified of the remand or required to be notified. He concluded in the future it would be nice to be notified when property designation changed.

Mayor Drake asked Oien to indicate the area that he felt needed to be notified.

Oien said it would be the original notice one.

Mayor Drake stated that would be citywide, and very expensive.

Oien said his point was that the Beaverton School District was notified concerning this process and nobody else was, which was a double standard.

Bergsma said the School District had an option to acquire the property and were notified. He added they requested the remand.

Mayor Drake noted that the linkage to that was very natural and so there was no double standard because it was the School District that was interested in the property and not Yamamoto.

Oien added a second notification would encourage comment and participation by the citizens in the community. He said he apologized to Coun. Brzezinski for the NAC had dropped the ball on this issue.

Coun. Soth asked if the NAC had an observer at the Planning Commission meeting to see if there was anything affecting their area.

Oien replied they felt this issue was a done deal and he took full responsibility for not having someone at that meeting. He explained the NAC had missed the link on what was proposed was changed. He added he felt a good solution would be to send a second notification that would not need to be citywide. He said the public notice for light industrial was 500 feet within the property line.

Coun. Soth asked if the School District received notification because they requested notification of the remand.

Bergsma answered that was correct. He explained Beaverton School District was notified of the date and time of the Planning Commission hearing because they requested the remand. He added the notification procedure could be reviewed when the City worked on the amendments to the Comprehensive Plan.

Coun. Stanton said she would change Mr. Bergsma's comment to "will look" at changing the notification process. She said she found it difficult to look citizens in the eye and tell them the City was legal.

Mayor Drake said it meant everything to be legal and the City did follow the law. He said if through this process they found they needed more citizen notice, that was something the Council could change, but the City did follow the law.

Coun. Brzezinski said they could not make any changes after the fact because then they would be open to litigation. She added they could feel

good about this being brought to their attention and as a lasting contribution they could figure out a way that the crack in the process would no longer exist.

Coun. Soth said he felt that procedures could be inserted to ensure that the people who were interested received all of the information. He said the notice of potential land use action was circulated to all the NAC's with meeting notices that could be specific to these kinds of issues.

Mayor Drake thanked the NAC members for their input and thanked Pat Russell for his participation. He said he knew this was a tough situation.

Oien said they recognized the area as a great employment area and their concern was traffic. He said they were willing to do whatever they needed to do to provide information to the Council in a timely manner, but they were not professionals. He asked for the Council to consider the remand.

#### PUBLIC HEARINGS:

01388 Adopt Resolution and Authorize Implementation of Site Development Permit Fee Increases, and Repeal Portions of Resolution No. 3177 of the City's Site Development Fee Schedule (Resolution No. 3646)

01389 Adopt Resolution and Authorize Implementation of Mechanical Permit Fee Increases, and Reduction in Plumbing and Electrical Permit Fees (Resolution No. 3647)

Mayor Drake asked if there were any questions.

There were none.

Mayor Drake opened the Public Hearing.

Mayor Drake asked for any comments.

There were none.

Mayor Drake closed the Public Hearing.

Mayor Drake complimented Mr. Roast and his staff on the thorough job they did with researching the information.

Coun. Soth **MOVED, SECONDED** by Coun. Ruby, to approve AB 01388 and AB 01389.

Coun. Soth thanked Mr. Roast for working with the other Tri-County building officials for participating in developing common determinations for the building inspector fees, and for solving disputes with contractor and developers.



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

Coun. Stanton asked for clarification on the language contained in AB 01390 (in record) She asked about the text (2015.05 2B 3) that stated if within the total 10% of all allowable retail, that would mean a 60,000 square foot building area but if 8% of the 10% of the land area in a development control area has already been utilized then if 60,000 would fit into the remaining 2% it could be a site that could be developed.

Pilliod said he felt that was correct.

Naemura said that was how the portion of the ordinance was applied to date. He said it was most recently applied in the Home Depot application at 5<sup>th</sup> and Western.

#### ORDINANCES:

Coun. Soth MOVED, SCONDED, by Coun. Doyle, that the rules be suspended, and that the ordinance embodied in ABs 01390, 01391, 01392, 01393 be read first time by title only at this meeting, and for the second time by title only at the next regular meeting of the Council. Couns. Brzezinski, Doyle, Ruby, Soth, and Stanton voting AYE, the motion CARRIED unanimously. (5:0)

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

#### First Reading:

- 01390 An Ordinance Amending Ordinance 2050, The Development Code, to Regulate the Size of Retail Uses in the Campus Industrial Zoning District, TA 2000-0004 (Ordinance No. 4186)
- 01391 An Ordinance Adopting a New Comprehensive Plan and Repealing Ordinance 1800 (Ordinance No. 4187)
- 01392 A Companion Ordinance to the New Comprehensive Plan, Amending Ordinance 2050, the Development Code and Zoning Map, to Conclude Implementation of the Merlo Station Area Plan, TA 2001-0006, RZ 2001-0013 (Ordinance No. 4188)
- 01393 A Companion Ordinance to the New Comprehensive Plan, Amending Ordinance 2050 the Development Code to Delete Section 20.20.90.D.3, TA 2000-0008 (Ordinance No. 4189)

#### Second Reading and Passage:

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

An Ordinance Relating to Parking Violations Amending Beaverton Code Section 6.02.310(F) (Ordinance No. 4185)

Coun. Soth MOVED, SECONDED by Coun. Stanton that ordinance embodied in 01382 now pass. Couns. Brzezinski, Stanton, Doyle, Soth and Ruby voting AYE, the motion CARRIED unanimously. (5:0)

Mayor Drake asked for a motion to reconsider the consent agenda. He said they had intended to pull the two bid awards and bring them back in early January.

Coun. Stanton MOVED, SECONDED by Coun. Soth, that the Council reconsider at a future date AB 01386 and AB 01387.

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

Coun. Soth MOVED, Seconded by Coun. Stanton to reconsider approval of the consent agenda.

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

EXECUTIVE SESSION:

Coun. Soth MOVED, SECONDED by Coun. Doyle, that the Council move into executive session In accordance, (1) (e) to deliberate with persons designated by the governing body to negotiate real property transactions. Couns. Brzezinski, Doyle, Soth, Ruby, and Stanton voting AYE, the motion CARRIED unanimously. (5:0)

ADJOURNMENT:

There being no further business to come before the Council at this time, the meeting was adjourned at 7:50

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Sue Nelson, City Recorder

APPROVAL:

Approved this 1<sup>st</sup> day of April, 2001

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Rob Drake, Mayor