

## MINUTES

### KEIZER CITY COUNCIL

Monday, June 15, 1992

Robert L. Simon Council Chambers  
Keizer City Hall

#### CALL TO ORDER

Mayor Orcutt called the regular meeting to order at 7:32 p.m. Roll call was taken as follows:

##### Present

Andrew J. Orcutt, Mayor  
Mike Hart, Councilor  
Dennis Koho, Councilor  
Jerry McGee, Councilor  
Al Miller, Councilor (arrived 7:35 p.m.)  
Bob Newton, Councilor

##### Absent

Joe Van Meter, Councilor

##### Staff

Donald H. Otterman, City Manager  
John Morgan, Community Development Director  
Skip Wendolowski, City Planner  
Shannon Johnson, City Attorney  
Linda Sanders, Recording Secretary

#### PUBLIC TESTIMONY

There was no public testimony to come before the Council.

#### COMMITTEE REPORTS

##### Volunteer of the Month

Jo Anne Beilke of the Volunteer Coordinating Committee introduced the Volunteer of the Month for June as Mr. Jay Prall. Mr. Prall was nominated by the Keizer Police Department where he has served as a Police Reserve Officer since October 1990. He completed the Reserve Academy in March of 1991. He has volunteered countless hours including working at the Oregon State Fair Booth and the Lancaster Mall Resource Show, enforcing handicap parking, working at the Iris Festival including the repair of the Department's float, surveying homes for security and patrolling several hundred hours. Mr. Prall is a life long resident of Keizer, attending Cummings, Whitaker and McNary Schools. The Police Department thanked Jay for his many hours of volunteer work.

Mayor Orcutt presented the June 1992 Volunteer of the Month plaque to Mr. Prall.

**PUBLIC HEARINGS**  
**Zone Change 92-1**  
**Beck/Pizza Hut**

Mayor Orcutt opened the Public hearing on the matter of Zone Change 92-1 continued from May 18, 1992.

Mr. Johnson gave a preliminary procedural announcement. The applicable criteria in the zone change must be listed. Testimony must address the applicable criteria if possible. Any issues that need to be raised must be raised at the close of the hearing or the close of the record, if the record is held open. The record can be held open for 7 days unless there is a continuance, if any person requests. If any person is entitled to a continuance, documents supporting the application must be submitted.

Mr. Wendolowski gave the staff report. He reviewed the application, the original staff report and comments from the hearings officer regarding the request to change the zone from Commercial Office to Commercial Retail on the land owned by Richard Beck and Phyllis Nelson. The purpose is to permit the development of a Pizza Hut.

Mr. Wendolowski clarified the property in question and elaborated on the zoning of the nearby properties. The zone change criteria are found in Section 4.16 of the Zoning ordinance. Mr. Wendolowski reviewed the staff report's analysis of the criteria and the proposals conformance.

The major issue facing development is street access. The Taco Bell on the south has primary access on River Road. The traffic engineer encouraged use of access to River Road for both properties. Staff noted a limited use overlay could be used to limit the effect of the development on the neighborhood. Staff also recommended the placement of specific requirements.

The hearings officer denied the request based on available property and the traffic destabilizing the land use of adjacent property. The staff agreed, in general, with the hearings officer's statements regarding available property. At the present time, it may be inappropriate to make zone changes until the River Road Design Plan has been approved. The staff recommended the Council uphold the hearings officer's decision and deny the zone change.

Speaking as proponents of the zone change were:

Jeff Tross, 1720 Liberty Street S.E, Salem, Oregon 97302. Mr. Tross spoke on behalf of Richard Beck. He addressed the aspects of zone use and property development. He felt the application did conform to the Comprehensive plan as a service business. The Plan explicitly identifies North River Road as the place for businesses requiring automobile traffic. He stated the Plan, by identifying that location, excluded other areas of Keizer.

He elaborated on the actual property setup. The Beck/Nelson property occupies the same position on Linda Avenue as the Taco Bell property does on Maine Avenue. One half of the block is zoned commercial retail while the remainder of the block is zoned commercial office. He stated that auto traffic is the big

criteria. The present situation is such that Mr. Beck can not use the driveway on the Taco Bell property, thus there will be more traffic on Linda Avenue. The property now is in adverse circumstances even if the variance is approved. He felt it is hard to see Taco Bell sharing a driveway with an office. Under the present zoning an ATM drive up banking facility could operate on the property which would be more traffic intensive than the proposed restaurant.

Mr. Tross stated the traffic concerns can be effectively addressed through site design, perhaps with an exit only driveway on Linda, curved so that only left turns can be made. A sign that Linda is a dead end, along with the left turn only sign could result in minimal traffic on Linda.

Mr. Tross stated the Pizza Hut restaurant could be accommodated by a driveway off River Road rather than Linda. These measures would only be possible if Taco Bell grants an easement. The Hearings officer denial prevented a shared driveway.

Mr. Tross also noted that only vacant land is required to be examined as possible sites. The only two other available pieces of land that are zoned commercial retail are many times larger than the company needed and they did not want to purchase additional land. Mr. Tross stated the conclusion of the hearings officer did not include the evidence that the other lots were too large for the business.

Mr. Richard E. Beck, 4485 River Road S., Salem, Oregon.

Mr. Beck is a partner in the lot on the corner of Linda Avenue and River Road. He stated that when it was decided to sell the property, he let the Pizza Hut owners make the application. They were assured at that time that there would be no problem since the lot met criteria and the prospective use met the traffic condition. The site plans were reviewed.

Mr. Beck showed slides to the Council of the property from all views. Some of the slides included showed the wall erected by the Taco Bell company, the types of land use near the property, the Taco Bell driveway and the present view from the property in question. He stated the owners are now in a poor position since there is no access from their property. The plan is only half finished. He urged to Council to move forward and approve the appeal.

Phyllis Nelson, 524 Linda Avenue, Keizer, Oregon 97303.

Ms. Nelson is a co-owner of the property who had previously planned to reinvest her profits from the sale in a home in Keizer. She is not certain that she still wishes to do so after this experience. She stated that her fence had been torn down and her privacy had been invaded since only half of the plan had been completed.

Speaking against the application were:

Lillian Walston, 513 Linda Avenue NE, Keizer, Oregon 97303. Ms. Walston deferred to Mr. Bluhm.

Wilbur Bluhm, 743 Linda Avenue NE, Keizer, Oregon. Mr. Bluhm stated he

was in agreement with the hearings officer. He also stated that he understood the issue of availability is but one of the issues. He elaborated on the history and character of Linda Avenue, stating little had changed in the past 15 years. The residents range from young families to senior citizens. The street has no sidewalks, is a dead end and is a children's playground. Livability and character are very important to the people there.

Since Linda Avenue is one block south of Dearborn, traffic is a serious problem. He said that the signal at Dearborn often caused traffic to be backed up 3 or 4 blocks to the south and it is difficult to get onto River Road. He was concerned that people coming out of Pizza Hut would not follow the sign but would come down Linda looking for a cross street to miss the light.

Mr. Bluhm raised the question of what might happen if the zone is changed to Commercial Retail and a restaurant did fail there. He stated the proper land use action is to try to build buffers where you have highly conflicting uses of land. He was not pleased with the possibility of having an unsightly wall as a buffer. He was also concerned about the impact of the restaurant noise, lights and late hours. It is possible an emergency vehicle might have difficulty getting down Linda if traffic were blocked at the intersection. He was extremely concerned about that being a life or death matter. River Road is the only access the people of Linda have and it is an extremely serious issue.

Marilyn Wendel, 754 Linda Avenue, Keizer, Oregon 97303. Ms. Wendel was concerned about the extra traffic that might be generated on a street that is .2 of a block long. The street also has no other access. She mentioned the extra noise that will be generated by the restaurant since the people using it will be younger. She was concerned that the corner in question would be a real problem for a high impact restaurant. She also suggested two alternate sites.

Isabelle Cassidy, 7333 Linda Avenue NE, Keizer, Oregon 97303. Ms. Cassidy concurred with the previous speakers.

Dorothy Shearer, 583 Linda Avenue NE, Keizer, Oregon 97303. Ms. Shearer concurred with the previous speakers.

Jackie B. Miller, 744 Linda Avenue NE, Keizer, Oregon 97303, concurred with the previous speakers.

Ed Schunke, 644 Linda Avenue NE, Keizer, Oregon 97303. Mr. Schunke concurred with the previous speakers.

Al Lofstedt, 624 Linda Avenue NE, Keizer, Oregon 97303. Mr. Lofstedt stated he was a renter and concurred with the previous speakers.

Deby Nelson, 624 Linda Avenue NE, Keizer, Oregon 97303. Ms. Nelson agreed with the previous speakers.

Gary Ryder, 663 Linda Avenue NE, Keizer, Oregon 97303. Mr. Ryder suggested a curb be built into the exit onto Linda Avenue. He said it wouldn't take many cars to block both lanes which would cause problems for emergency vehicles

getting in. He pointed the Council to the key points of the hearings officer's decision especially the availability of alternative properties. He thought that Pizza Hut could consider occupied properties if they were so inclined.

Lillian Walston, 513 Linda Avenue NE, Keizer, Oregon 97303. Ms. Walston stated she lives behind the dental complex. She had reported in the first hearing that her apartment had been hit four times and not all the damage had been repaired. On the end of the apartment there is a private driveway with a "No Trespassing Sign", but people still whip through there. She also stated she was a heart patient and was concerned about emergency vehicles being able to get in if the traffic increased.

Evelyn Franz, 693 Linda Avenue, Keizer, Oregon 97303. Ms. Franz commented on the number of fast food places presently visible from the property. Ms. Franz said that she and Ms. Shelton had done some research on available properties and on April 6 she found 22 places from the Parkway to Manzanita. Nine of the properties are zoned commercial retail and three are zoned commercial office.

Roy Shelton, 723 Linda Avenue, Keizer, Oregon 97303. Mr. Shelton said that he had lived in that location over 30 years. He was concerned about the bus stop for the children to get on and off the school bus. The children would be required to go along River Road or through the Pizza Hut and Taco Bell properties. He also pointed out there is a U-shaped court across from the property that would not be protected by the wall on the east perimeter thus causing the senior citizens to be affected by the noise. Mr. Shelton pointed out the Senior Citizen court on the map at the request of Councilor McGee.

Carol Shelton, 723 Linda Avenue NE, Keizer, Oregon 97303. Ms. Shelton concurred with the previous speakers.

Bev Ryder, 663 Linda Avenue NE, Keizer, Oregon 97303. Ms. Ryder concurred with the previous speakers.

Jim Shelton, 723 Linda Avenue NE, Keizer, Oregon 97303. Mr. Shelton concurred with the previous speakers.

Dyan Hood-Taylor, 674 Linda Avenue NE, Keizer, Oregon 97303. Ms. Hood-Taylor concurred with the previous speakers.

Joni Gilles, 684 Linda Avenue NE, Keizer, Oregon 97303. Ms. Gilles concurred with the previous speakers.

Beth Shelton, 724 Linda Avenue NE, Keizer, Oregon 97303. Ms. Shelton concurred with the previous speakers.

George Sukos, 773 Linda Avenue NE, Keizer, Oregon 97303. Mr. Sukos concurred with the previous speakers.

Russell Smith, 672 Maine Avenue NE, Keizer, Oregon 97303. Mr. Smith stated that although he lived on Maine Avenue, he was speaking against allowing the

same thing to happen to Linda Avenue that happened to his street. The two streets are like bookends since they are similar in character. He felt there would be more benefit in maintaining the current office zoning and having a diverse economic situation rather than turning the area into a fast food strip.

Councilor Newton questioned how Mr. Smith differentiated that situation from James Avenue since it was similar. Mr. Smith stated that James may have some intersecting streets. Every house on Linda Avenue gets every car coming past it. He believed with older folks and rental property down the avenue, Pizza Hut did not fit.

Al Lofstedt, 624 Linda Avenue, Keizer, Oregon 97303. Mr. Lofstedt believed no matter where the turn is put, the drive will be too short to channel the cars back onto River Road without using Linda. He felt drivers are going to get smart and zigzag over to Dearborn through the private drive.

Speaking in rebuttal to the opponents of the variance were:

Jeff Tross, 1720 Liberty Street SE, Salem, Oregon 97302. Mr. Tross stated that although he heard sincere comments, he was certain there are solutions. The effect of traffic today on Linda is a problem which is not caused by Mr. Beck's property. He felt the City of Keizer had the talent to work out the traffic problems. If there were to be no driveway on Linda, then the development would not cause a problem. He also didn't think there would be a problem for emergency vehicles, but if there were, the vehicle could cut through the Pizza Hut Property and get out.

With the present zoning, one of the examples of use permitted today, would be a drive up banking center with constant traffic. A restaurant has peak times, lunch and dinner. The dinner hour is typically after the rush hour. Two driveways would likely not create any compounding of traffic. A limited use condition has been proposed and would be a natural.

Mayor Orcutt questioned whether he heard Mr. Tross state that the development could live with no driveway if access could be obtained to the Taco Bell Driveway. Mr. Tross answered yes. Mayor Orcutt also asked about the aesthetic issue. Mr. Tross stated they would be willing to install something other than a wall which would be a buffer, but since that doesn't provide a sound barrier, maybe a wall with hedge would be best.

Councilor Miller asked whether both businesses are owned by Pepsico or did they just own the franchise. Mr. Tross answered that he understood the two were subsidiaries. The Pizza Hut will be owned completely separately. Since Pizza Hut is one of the largest companies nationwide, not many are allowed to close and disappear. He also stated that the use of property with River Road frontage was supposed to be for auto traffic and Pizza Hut would fit. It would only have 41 parking spots and is a family restaurant. If there is a traffic problem, the city needs to address the problem which he did not believe was associated with his property.

Mr. Morgan gave the final staff comments. He stated that the two businesses

are separate franchise holders and their only connection is that they have one delivery truck. The drive way permit for Taco Bell was granted with several conditions. They were required to grant to the Beck property access so that whatever business was there could use the driveway.

He also stated the Taco Bell people agreed to relocate the driveway if the River Road design plan feels it should be moved. The traffic issues brought up will perhaps be changed by the implementation of the second year of the Design Plan. The thrust is to synchronize all the signals and time the progression for 30-32 miles per hour. This would create platooning and bunch the cars up. He also stated that while there are uses in the Commercial Retail zone that generate more traffic, a medical office would create more than a Pizza Hut.

Councilor Miller commented that it is hard to conceive an office complex wanting to share a driveway with Taco Bell. If the land was developed into an office, they would drive on Linda Avenue.

Councilor McGee questioned the comments regarding a previous agreement and understanding. Mr. Morgan stated that the City brought together all the parties in the beginning to see if there was a way to foster joint access. The result was the site plan which Pizza Hut and Taco Bell both initially accepted. Mr. Morgan said the staff told Pizza Hut they should apply for a zone change. When they did, there were real deficiencies in the zone change request. If they could have proven their case, the staff would have been with them. Councilor McGee commented that he liked to see commitments in writing, especially when things are complicated. Councilor Hart noted it wouldn't have to be presented to the Council in writing since they would set up the conditions if they made a decision.

Mayor Orcutt closed the Public Hearing on Zone Change 92-1.

#### **Variance 92-3 Ackerly Communications**

Mr. Johnson suggested the matter be held over for one meeting. As indicated previously, the City and the company are reaching settlement on the underlying citation. The variance request would be withdrawn if there were a settlement. Mayor Orcutt asked for anyone wishing to address the Council regarding the matter.

Mayor Orcutt continued the hearing to the July 6, 1992 meeting.

#### **Periodic Review**

Mayor Orcutt opened the Public Hearing.

Mr. Morgan gave the staff report. He said that at the prior Council meeting, there had been a request by the City of Salem to hold the hearing open. During that period, Salem concurred. Marion County came up with two requested changes in the document. They requested the regional density policy become a sub regional policy.

The second requested amendment had to do with keeping an inventory of large pieces of vacant industrial land in the area. They would like to assure a business coming to town would have a site as opposed to having to breach the Urban Growth Boundary. The policy would be that any parcel over 40 acres can be divided but one parcel of 40 acre size would have to remain. Only one property in Keizer would be included in this issue. The philosophy of the recommendation is sound. Mr. Morgan requested the Council charge the city attorney with preparing the document, if they wished to go along with the two amendments.

Councilor McGee asked why the requested acreage amount was 40 acres. Mr. Morgan stated that large hi-tech plants tend to be 40 acres in size although he felt the size was probably a negotiated point. Councilor Hart questioned what the sub-regional policy meant as far as making a change in what has been prior. Mr. Morgan answered there are three kinds of policies - local, regional and sub-regional. Willow Lake was an example of a sub-regional policy.

Mayor Orcutt closed the Public Hearing.

#### Sign Code

Mayor Orcutt opened the Public Hearing.

Mr. Morgan gave the staff report on revisions for the Sign Code. The Code has been in effect for two years and fine tuning was needed. The Government Affairs Committee and the staff proposed recommendations. They were displayed in table form so that each point could be viewed including support or opposition.

Mr. Morgan reported one of the big discussions regarded regulation of window signs. He gave the history of the code in this area. The code today says those signs are counted in the total square footage. That is fairly impractical since signs such as VISA/MC would be included. The Government Affairs Committee proposes that window signs should not be included in the square footage at all. There is a practical problem with regulation.

Councilor Hart questioned why the matrix included a recommendation from the Planning Commission to delay until after the River Road Design Plan. Mr. Morgan said that the Planning Commission looked at all the recommendations twice. They felt the River Road Design Plan may make some significant recommendations when it is approved which would affect the proposals. Therefore, the Planning Commission chose to delay action on those proposals they viewed might be affected. Mr. Morgan stated the present Design Plan Draft does not make any substantive changes in those areas.

There are especially some questions regarding the integrated business center and Mr. Morgan stated it may be best to delay on that. One issue causing difficulty in the community is the maximum sign face height of 8 feet. Dairy Queen wanted to put up its standard sign which would not be acceptable under the present code. The staff recommends that the fundamental changes may be delayed but some of the finite changes could be considered.

Speaking in the hearing were:

Jim Keller, 1919 Mistwood Drive, Keizer, Oregon 97303. Mr. Keller requested the Council consider approving those proposals where the Government Affairs Committee, Planning Commission and the Staff are in agreement. He also asked the Council to reconsider and approve the areas where the Planning Commission wanted to delay until the River Road Design Plan is approved. Mr. Keller also asked that signs for business not in an integrated Business Center be considered tonight.

Councilor Miller asked for the reason in the difference of opinion of the Government Affairs Committee and the Staff. Mr. Keller stated Ms. Abbott, Chair of the Committee, could speak to that better than he.

Tom Landon, 761 Lockhaven Drive N.E., Keizer, Oregon 97303. Mr. Landon is the owner of the new Dairy Queen. He brought the attention of the Council to the possible sketches of ways to comply with the present Sign Code regarding the Dairy Queen sign. He would like to see this issue addressed favorably tonight. He noted they had reduced the sign to comply with the square footage requirement and would reduce the maximum height to fit the requirement but the third issue of an 8 foot sign face would be more difficult.

Jerry Watson, 1237 Manzanita Way, Keizer, Oregon 97303. Mr. Watson appeared as chair of the Planning Commission. He noted the Planning Commission spent quite a lot of time on the issues and a good deal of consensus resulted. Of the 16 listed, the Planning Commission disapproved 2 of them, recommended approval for 6 and recommended delay on 7.

Mr. Morgan recommended the Council hold the hearing open until the 6th and direct the staff to prepare the ordinance which would come back on the agenda of that meeting. Councilor McGee assumed the information was laid out for the Council to approve as quickly as possible the information given. He thought the Council could make the decision tonight if it would. Mr. Morgan stated the ordinance would be required for action. Mr. Johnson stated that if the Council wished to direct the staff, they could come back with an ordinance which might split up the proposals. Councilor Miller asked for input from June Abbott.

June Abbott, 445 River Road N., Keizer, Oregon 97303. Ms. Abbott spoke regarding 15.70 (1) Signs for a Business not in an Integrated Business Center. She stated various members worked on certain areas and are not always in agreement. They wanted to allow larger sign area space on certain areas along River Road that have large frontages in more than one direction. The small signage was lost on the large buildings. The committee felt the signage should be measured by lineal frontage through a formula to allow larger sign area. An example was Knecht's Auto Parts at the corner of Sunset and River Road.

Mr. Morgan noted there are two increases in size, one in businesses not in an Integrated Business Center, and the second for properties larger than two acres.

Mayor Orcutt continued the hearing to July 6, 1992.

The Council recessed for a short time.

The Council was called back to order at 10:00 p.m.

**DELIBERATION**  
**Zone Change 92-1**

Councilor Miller began discussion on this issue by stating that he believed that if Pizza Hut were not allowed to go in under certain conditions, the people who live on Linda Avenue are going to suffer more. He said that more traffic would be generated on Linda since an office building, with people coming and going all day probably would not want to share a driveway with Taco Bell. They would end up having a drive on Linda and more traffic would result. He suggested there could be two school bus stops instead of the present one.

Councilor Miller made a motion to direct the staff to prepare the proper ordinance to support Pizza Hut's appeal with the following conditions: no access onto Linda Avenue from the Pizza Hut parking lot, a sound barrier on the east side of the property, a sound and sight barrier to extend from the North east corner of the property to the west edge even with the private drive across the street, a dead end sign at River Road, one joint driveway with Taco Bell, the relocation of the present driveway and the removal of the billboard on the property. Councilor McGee seconded the motion.

Councilor Hart stated he did not agree with the hearings officer regarding the availability of parcels which might be too big since they do not fit the need. He also said the congestion of traffic on Linda is a difficult issue although he had driven down the street 4 times and was able to turn right each time without any difficulty. The question regarding emergency vehicles from the hearings officer did not seem pertinent since Councilor Hart felt the street was wide enough. He also stated something can be done to keep persons from turning down that street, i.e, sign, arrow on pavement, slight curb cut. Councilor Hart also commented on the concern voiced regarding the park on Linda becoming popular for pizza eaters. That doesn't seem to be a problem since it has 2 foot high grass. He raised the question whether Linda should be closed off to delivery trucks.

Councilor Miller said that the Pizza Hut representative stated they would be able to operate without access onto Linda. Councilor Hart commented he didn't think that would be their preference. Mr. Morgan noted that the delivery truck has been indicated to be a full-size semi and he did not think they would be able to get on the property and off using only the River Road access. He suggested a better solution might be to have a gated driveway on Linda that only the truck could exit. In that case the driver would carry a key. Deliveries should be only a couple times a week and it would be the same delivery truck as for Taco Bell.

Councilor Koho questioned whether the request had met the criteria for a zone change if the criteria includes the question regarding other commercial retail zoned land they could use. He thought there probably were other sites, although there is some debate over the term vacant, and asked for clarification. Mr. Johnson clarified that vacant means the property is available for development, i.e. houses willing to be torn down. He thought it alluded to vacant as being available or on the market for sale.

Councilor McGee felt the major concern is to maintain livability of the neighborhood. Traffic is an issue. One given is that there will be development on that corner. He said available property elsewhere is irrelevant and the greatest protection would be to make access to Linda extremely limited. He said homeowners living there knew the property would be developed sometime and Pizza Hut would be removing a substantial blight at the entrance to their neighborhood. He also thought the traffic problems were not caused by the two businesses but they will increase it. The solution in the long range is signalization. He felt the motion on the table was the ultimate solution.

Councilor Koho said that if the impact on the neighborhood is the question, then the Council was on the right track. If rezoning is the issue and the requirements include finding other available property, then maybe the solution is different.

Mr. Johnson reiterated that most of the criteria had been met. The criteria that were in question were: supply of vacant land in the proposed (CR) zone is inadequate for development required for uses in the next five years or the location of the appropriately zoned land is not locationally or physically suited to the particular uses proposed for the subject property or lack site specific amenities for the proposed use. The other criteria dealing with the neighborhood being affected would be: the proposed zone, if it allows uses more intensive than other zones appropriate for the land use designation, will not allow uses that would destabilize the land use pattern for the area or significantly adversely affect adjacent properties.

Councilor Newton stated he did not see enough to persuade him from changing the hearings officer's findings. Although he thought aesthetically it might be an improvement, the result might destabilize land use. He also thought that traffic may make more difficult an already bad traffic situation. Councilor Miller said he would be willing to amend the conditions to include a gated entrance. He also reiterated that at the present time any one could go in and build an office building which would destabilize and detract from that neighborhood. He believed granting the appeal subject to the conditions would keep that from happening.

Councilor McGee questioned the staff regarding the provisional restriction wording. Mr. Morgan explained that a limited use overlay zone would grant a zone change for commercial retail for "X", i.e. Pizza Hut, a restaurant, etc.

Mr. Morgan asked for clarification regarding the buffer. It would need to respect vision clearance and the shrubbery couldn't go within 10 feet of the driveway and within 30 feet of the corner at River Road. Councilor Miller said the condition was to be even, across the street, with the west boundary of the private drive. Mr. Morgan stated that on the relocation of the driveway, the city had the capacity to require Taco Bell to cooperate. Taco Bell has had a real problem regarding the removal of the billboard. Making this condition a part of the motion could make it a long process between the owners of the billboard and Taco Bell.

Councilor Miller questioned what the specific of the overlay might be. Mr.

Morgan suggested either "Pizza Hut" or perhaps "a non fast food restaurant in keeping in what was represented in the site plan and the character discussed in this hearing. Mayor Orcutt noted that "fast food" might be misunderstood. Mr. Morgan further suggested "a restaurant with internal dining space and without an outside menu."

Councilor McGee asked if there had been thought given about having a right turn only lane coming out onto River Road. Mr. Morgan stated that the River Road Design Plan, at this moment, would have a median which would force a right turn. Councilor McGee noted this still wouldn't help the people at Linda. He also asked about how much difference the signal change would make. Mr. Morgan explained that the lights that are presently in would stay. The change would be the platooning which would bunch up the traffic and should help.

Councilor Miller asked for clarification on large delivery vehicles. Mr. Morgan suggested the same condition be used as on Taco Bell.

Councilor Miller made an amendment to delete the conditions regarding the removal of the billboard and relocating the driveway, adding conditions requiring a gated driveway for large service vehicles, a limited use overlay for operation of a restaurant as represented in and keeping with the site plan and the character as discussed in this hearing and Taco Bell and Pizza Hut share a driveway off of River Road. Councilor McGee seconded the motion.

Mr. Johnson questioned the intent of the motion regarding the barriers. He asked if the sound barrier on the east would be similar to the one behind Taco Bell and the visual barrier on the north extending to even with the private drive would be a sight obscuring hedge. Councilor Miller stated the condition included a sound and aesthetic buffer of 6 feet in height. He stated the testimony of the evening said a hedge wouldn't cut the sound and the wall would be unattractive. He said the intent of the condition was to have a sound barrier with hedging or something between that and the street to make it aesthetically pleasing.

Councilor Koho asked where the driveway would go. Councilor Hart noted it was in the site plan. Councilor Miller intended the driveway would be as on the plan.

Councilor McGee stated he would be supporting the amendment and the motion because it is the best way in the long run. He asked the Council to consider what can be done to reduce the impact. Councilor Hart asked if the gated driveway as shown on the site plan was included. Councilor Miller said that it wasn't included as one of the conditions.

The amendment passed with the following votes:

AYES: Hart, Koho, Orcutt, Miller, McGee, Newton (6)

NAYS: None

ABSTENTIONS: None

ABSENT: Van Meter (1)

Mayor Orcutt agreed with Councilor Newton. He did not think the application has met the criteria for a zone change and he will vote in opposition. He also thought the decision of the Council in the past should probably have included an overlay zone for the Taco Bell property. Councilor McGee said the decision of the past is not being considered and he believed support of the present motion would be the best way to treat the neighborhood now. Mayor Orcutt disagreed, stating an office complex would produce traffic in a different pattern, all throughout the day, and would not affect people as adversely since the trips are scattered. Councilor Miller noted the traffic from an office would be on to Linda Avenue rather than on River Road.

The main motion as amended failed with a tie vote:

AYES: Hart, Miller, McGee (3)  
NAYS: Orcutt, Koho, Newton (3)  
ABSTENTIONS: None  
ABSENT: Van Meter (1)

Councilor Koho moved to direct staff to prepare and order to uphold the hearing officer's order. The motion was seconded by Councilor Newton.

Councilor McGee asked if the Council couldn't come up with a compromise. Councilor Koho suggested that if it failed on this motion that the Council bring it back at the next meeting. Councilor Hart stated he felt the hearings officer did a poor job.

The motion failed with a tie vote:

AYES: Hart, Miller, McGee (3)  
NAYS: Orcutt, Koho, Newton (3)  
ABSTENTIONS: None  
ABSENT: Van Meter (1)

Councilor McGee asked if there was any way to at least partially solve the traffic problem, which seems to be the sincere worry of the neighborhood. Councilor Newton stated the traffic engineer has studied this and the problem on River Road needs to be addressed. He wished the problem had been solved but although this is a good idea, the timing is bad. All the problems may be changed with the sequencing of traffic lights. He asked when the issue might be brought back if the traffic was solved.

Mr. Morgan noted that the staff was sorry that both the Taco Bell and Pizza Hut situations have come up now. It is the hope to have the traffic component of the River Road Design plan completed in a month or so, but he wasn't sure it would be specific enough to deal with this issue.

Councilor Koho stated he needed to go through tonight's process to come to his present position and that he was not inflexible but would like to talk to the business owners. Councilor Hart stated this is a land use matter and Councilors can not talk to people because they would have to disqualify themselves from the vote. Councilor Koho said he understood he merely had

to disclose the nature of the contacts.

Mr. Johnson clarified the issue because the hearing is closed. The idea behind disclosing the discussion in ex-party contacts would allow for both sides to have equal time for their side. He stated with the hearing closed, he would suggest the Councilors not have ex-party contacts. If the Council can't come to a decision in this meeting, they can talk to staff. Mayor Orcutt also added that Councilors can talk among themselves.

Mayor Orcutt stated that since the Council is at a stalemate now, deliberation will continue at the next meeting in July. In order for Councilor Van Meter to vote on the issue, he must listen to the tapes and sign that he has listened to the tapes.

#### Sign Code

Councilor Newton moved that the staff be directed to return to the Council with a proposal to adopt those recommendations which the staff has recommended approval and to put the others off until additional information is received and they can be resolved. Councilor McGee seconded the motion.

Councilor McGee asked if this would address the problem for Dairy Queen. Mr. Johnson stated the ordinance couldn't be passed tonight but the Council can direct staff to come back with an ordinance. That would address the issue.

Councilor Hart pointed out that based on the motion, all of the Government Affairs Committee recommendation approvals would also be included except for the one regarding projecting signs. He asked if that one should be included. Councilor Newton said the staff's recommendation for that issue solves a lack of definition that isn't there now. Councilor McGee asked if there must be some limit for projecting signs. Mr. Morgan stated they are limited to 18 inches in another place in the Code. The Government Affairs Committee bogged down on discussion of this complex issue and planned on coming back.

Councilor Koho was in favor of the motion but noted it doesn't solve all the problems. Mayor Orcutt stated he would have a problem with roof signs and non-conforming signs when those issues are brought before the Council.

The motion passed unanimously with the following votes:

AYES: Hart, Koho, Newton, Orcutt, McGee, Miller (6)

NAYS: None

ABSTENTIONS: None

ABSENT: Van Meter (1)

#### DISCUSSION TERRACE GREEN RESERVE STRIP

Mr. Morgan gave the staff report. He stated the staff had sent a letter to the Terrace Green Association as directed by the Council. The Association did not return the deed and have asked their attorney to be present for tonight's

meeting. He also asked for direction from the Council as to how the staff is to become involved.

Speaking on the issue was:

Norman Webb, of Webb and Martinis, 1114 12th St. SE, Salem, Oregon 97303-2897, representing the Terrace Green Association. Mr. Webb stated he felt the essential question of the issue was whether a private party could enlist the aid of the City of Keizer in an action that will have an adverse effect on a neighborhood.

He gave some history of Lot 41 of Terrace Green No. 2. He stated in 1968 that the developer was to deed a 1 foot reserve strip to Marion County. This was not done. The lot was deeded to Bohemia, Inc. In 1976, Bohemia conveyed the property to Terrace Green Association. His clients are the owners of three reserve lots with nothing in the deed regarding the reserve strips being deeded to the county. He showed some pictures of the property in question. The lane, which borders Terrace Green, has at one end a cyclone fence and shrubbery. Cedar trees border and serve as a shade and wind barrier. This lane was considered an amenity to Terrace Green buyers.

Mr. Webb noted that he had contact with Marion County in 1989. He asked three times for information regarding the request for the property to be deeded to the county. He received nothing.

Mr. Webb stated that the commitment to Marion County was made by the first owners in 1968. Terrace Green Association was not a part of that commitment. He also stated that since nothing was placed on record the commitment is considered void under ORS 93.640. Improvements have been made. Taxes have been paid by the Association and they have cared for the trees as well. Petitions have been signed by 86 property owners that they bought their own property knowing about lot 41.

Since Terrace Green is a PUD, two-thirds of the property owners must agree to transfer the property. He stated the matter is not one of public concern, but of private concern. The land owner who is bringing the question to the Council bought his property knowing the strip was owned. Mr. Webb said that if the City chooses to support that individual the expense to the Terrace Green owners becomes a significant financial one.

Also speaking was Steve Johnston, Terrace Green owner. He had lived in Terrace Green for 14 years. He stated Nottingham was one of the most beautiful streets in Keizer. He said the issue is the request of an individual to take away private property for personal use. The individual has access through Wheatland Road if he chooses to use it. Although it is not a fair fight, the Terrace Green Association is willing to continue to fight. He was concerned that the property was desired merely for an individual's profit and this could set a precedent for the City to take the property of any one.

Mayor Orcutt asked whether Terrace Green was a PUD or a subdivision. Mr. Morgan stated it is recorded as a subdivision and was approved through the

PUD process which the county approved. The trees are probably in the right of way and the streets are public. Mr. Johnson clarified that there is a deeded reserve strip which was deeded to the Association rather than to the county. The Association owns a 1 foot strip of land around Nottingham. Councilor Newton noted that in effect that is private property owned by Terrace Green Association. Councilor McGee noted that seemed different from what the Council had previously understood. Mr. Morgan stated that the usual condition is that the strip is to be deeded to the City so they can maintain the property. It is very customary but here is a point where the developer did not do what they were supposed to do and dedicated it to the Association.

Councilor Koho said he was having trouble figuring out what good it would do to take possession since the City would not want to take down the trees and would not have money to take care of them. Councilor Miller agreed. Councilor Newton said that he had assumed that the County had the deed to that reserve strip. Councilor McGee said he didn't believe that the Council understood that it was private property. He had thought that the City had lost what was theirs and then the tree decision would be the City's. In fact it is not the Council's decision to make. Mr. Morgan stated that the transaction was legal, but it should not have been done. Part of the issue is to enforce a condition of 24 years ago.

Councilor Hart stated that as a member of Terrace Green Association and a landowner, he could not vote. He did note that a reserve strip usually is on the width of a street only and the reserve strip does not have a Lot number thus this is a different situation. Mr. Morgan pointed out that the City does have reserve strips that run along the length of the street. An example is Spring Time Court where the City released the reserve strip when the property went through a partitioning. The reason to have reserve strips is so that the City can control driveways and access.

Speaking was Jerry Horner, 7050 Wheatland Road, Keizer, Oregon, 97303. Mr. Horner stated that although the trees are appealing on the road, from his side of the property, they are unkempt, shade the property and are quite messy. He also said that Terrace Green Association fully knew what they were doing when they took the strip from the developer. They have an agreement and the agreement needs to be fulfilled. He said the Council is giving up the City's access to control the streets and letting Terrace Green be the City of Keizer. In his research, Mr. Horner stated he found it to be a tax exempt lot and wondered how much they had paid in taxes.

Mayor Orcutt asked Mr. Horner how he thought the property would change if the City had the ownership. There probably would not be any change in the issue of the trees. Mr. Horner stated that he thought the City Council would go along with an adjacent property owner to help him do with his property what he wanted if he was within statutes. He planned to develop the property. Mayor Orcutt stated he didn't think getting the reserve strip would change the tree situation. Councilor Miller stated that he would imagine there might be only one vote on the Council that would allow the trees to be cut down for any development. All that would be accomplished would be that the City would be responsible for the trees.

Al Byrd, 929 Nandina Court, Keizer, Oregon 97303. Mr. Byrd stated he was the President of the Terrace Green Council. He had 86 signatures of residents on the petition submitted to the Council. He felt he could have more. Mr. Byrd said the petitioner could pay for the dandelions that comes from his lot onto the Terrace Green property.

The Mayor, sensing a Council consensus, declared the Council did not wish the City to pursue this matter any further.

The Council took a 3 minute break.

## DELIBERATION

### Periodic Review

Councilor Newton stated that he could live with the County's request regarding the 6.5 density but he was irritated by the other policy request since only one piece of property in the community falls under the proposal. Councilor Miller noted the differences between Keizer and Salem especially in Salem's desire to have larger plants in their city. He felt Keizer was not interested in this type of development. The concept was the result of negotiations between the County and the City of Salem. Mr. Morgan stated it was new to the City of Keizer. Councilor Hart supported not having new items brought up and he will not support the policy.

Councilor Koho made a motion that the Council direct the City Attorney to prepare the appropriate ordinances adopting the Periodic Review of the Keizer Comprehensive Plan, amending the document to include the first condition but not the second. Councilor Newton seconded the motion.

Councilor Miller said he liked the idea of the motion but wondered if it was taking away any negotiation possibilities. Mr. Johnson said that he could draft an ordinance but the ordinance should not be adopted until we have concurrence. The way the system is set up is that concurrence will happen when all jurisdictions concur. It is supposed to work that amendments are brought up and the jurisdictions concur before adoption. Mr. Johnson suggested a message could be sent by adopting a resolution or sending a letter rather than the passing of an ordinance. Mayor Orcutt said the Council could prepare an ordinance and show the county they are mad. The City had lengthy negotiations in earnest and then the question of density came up. It was negotiated. He said now, after four years of negotiating, the County is throwing more curves and he was mad.

Councilor Koho asked why it needed to be a sub-regional policy to have 6.5 density. Mayor Orcutt said he thought it was agreed at Marion County that all the jurisdictions would build to this density or there would be no expansion of the Urban Growth boundary. They are trying to double dip with this additional change. Councilor McGee asked why in philosophy the County should have a veto over Keizer in the second policy either. Councilor Koho stated he would change his motion to include the 6.5 density rate as a civic policy. Mr. Morgan stated it didn't need to be done.

Councilor McGee stated the County did not want to deal with public reaction regarding not extending the urban growth boundary if a large plant wanted to come in. He said he is not sure Keizer wants a huge conglomerate to come to our city. Councilor Newton said he did not want to lock the City in if it is premature, that the Council could send the same message without approving the plan. Mayor Orcutt noted the Council is not approving the plan, just asking legal council to prepare the ordinance.

Councilor Newton stated that since the density issue is not an obstacle for Keizer, the City could not be seen as an ogre. Councilor Hart stated he didn't have a problem with that issue since it had been studied and the City was in a positive position. He had a problem with the 40 acre issue. Mayor Orcutt stated his problem was with the County changing the game plan. He thought it had all been worked out prior. Councilor Koho thought the County Commissioners would abhor the tactics of their staff and he will tell them. Councilor Newton said the City could say they would agree to the County's policy regarding density but stop inventing new stuff. It would be affirming what was agreed to a year ago regarding density and what was agreed to 4 years ago but then nothing else new.

Councilor Hart questioned the sub-regional policy idea. He asked if it has to be in the City's Comp Plan. Mr. Morgan says there is a rather general regional policy regarding building in a compact manner, etc. There is a city policy that we build in a 6.5 density rate. If the City were to change it, there would be a hearing. The County is asking for a veto if the density in the policy is being changed.

Mr. Johnson stated the County is attempting to force the City to keep the 6.5 density by saying it can't be changed without the County's approval.

Councilor Koho moved to amend the motion to remove 6.5 density (the first condition) as a sub regional policy. The motion would then read - the Council directs the City Attorney to prepare the appropriate ordinances adopting the Periodic Review of the Keizer Comprehensive Plan. Mayor Orcutt seconded the motion.

Mayor Orcutt questioned whether if this is a sub-regional policy and the County requested the City to raise the number to 7 the next time the Comprehensive Plan comes up and they refused, the City could be held in non-concurrence. Mr. Morgan said there is a situation where the County must concur in areas outside of the boundaries. When the Periodic Review comes up in 5 years, everything is out on the table.

The amendment passed unanimously with the following votes:

AYES: Hart, Koho, Newton, Orcutt, McGee, Miller (6)

NAYS: None

ABSTENTIONS: None

ABSENT: Van Meter (1)

The motion passed unanimously with the following votes:

AYES: Hart, Koho, Newton, Orcutt, McGee, Miller (6)

NAYS: None

ABSTENTIONS: None

ABSENT: Van Meter (1)

## CONSENT CALENDAR

- May 26, 1992 special session minutes
- June 1, 1992 regular session minutes
- RESOLUTION - Insurance Agent of Record
- La Brisa Liquor License Renewal

Councilor McGee requested the May 26, 1992 special session minutes be pulled from the Calendar. He asked if Mr. Otterman had reviewed the minutes and gave one example of an error he found in them. He asked that the staff look at the minutes before they get to the Council. Since that meeting was a significant one, he was angry that there were too many mistakes in the minutes. Councilor Miller also mentioned some mistakes he had found. Mayor Orcutt asked that the May 26, 1992 minutes be returned to the City Manager to be brought back to the next meeting.

A motion was made by Councilor Koho that the Consent Calendar be approved. The motion was seconded by Councilor Hart.

Councilor Miller also mentioned a correction on page 9 of the June 1, 1992 minutes. He asked that the sentence be changed from "all of the members of the City Council have had disagreements" to "all of the members of the City Council have had their disagreements with the KeizerTimes."

The motion passed unanimously with the following votes:

AYES: Hart, Koho, Newton, Orcutt, McGee, Miller (6)

NAYS: None

ABSTENTIONS: None

ABSENT: Van Meter (1)

## APPOINTMENT OF PRO TEM CITY RECORDER

Councilor Newton moved that the Resolution R92- Appointing Pro Tem City Recorder be approved. The motion was seconded by Councilor Hart.

The motion passed unanimously with the following votes:

AYES: Hart, Koho, Newton, Orcutt, McGee, Miller (6)  
NAYS: None  
ABSTENTIONS: None  
ABSENT: Van Meter (1)

#### **PARTICIPATION IN MID-WILLAMETTE VALLEY COG**

Mr. Otterman stated his recommendation was that the Council approve the ordinance for the City to be a part of the Council of Governments. He asked that the clause "subject to funding being available" be added.

A motion was made by Councilor Koho that a bill for an Ordinance relating to participation by the City of Keizer in an Intergovernmental agreement rechartering the Mid-Willamette Valley Council of Governments be prepared subject to the passage of the June 30, 1992 levy. The motion was seconded by Councilor Hart.

The motion passed unanimously with the following votes:

AYES: Hart, Koho, Newton, Orcutt, McGee, Miller (6)  
NAYS: None  
ABSTENTIONS: None  
ABSENT: Van Meter (1)

#### **OTHER BUSINESS**

Councilor Koho stated he wasn't sure that whether he agreed with Councilor McGee or not concerning the comments regarding the minutes but he suggested it be discussed in an upcoming session. Councilor McGee stated he felt the City Manager must look at the Minutes and it was gross incompetence to let them appear with substantive mistakes. Mayor Orcutt stated the minutes are submitted by the City Recorder or the Recording Secretary and it is not the responsibility of the City Manager. Councilor Koho stated again he is willing to listen to other's arguments but tonight he felt the City Recorder is responsible for the minutes.

#### **WRITTEN COMMUNICATIONS**

There were no written communications to come before the council.

#### **AGENDA INPUT**

Councilor Hart asked for "No Parking Signs" on Clearview to be discussed in the next meeting. Mayor Orcutt said that Pizza Hut, the Sign Code and possibly Ackerly Communications would be included on the agenda. Councilor Miller would like to be updated regarding the traffic light at Sandy at least every other meeting. Councilor Newton asked for progress reports every meeting for that traffic light and for the one at McLeod Drive. Councilor Miller felt the property owners may be stalling at the Sandy intersection. Councilor Newton wanted to get going in the process.

ADJOURNMENT

The meeting was adjourned at 11:55 p.m.

Linda S. Sanders  
Linda S. Sanders,  
Recording Secretary

APPROVED:

[Signature]  
MAYOR

[Signature]

[Signature]

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