PLANNING COMMISSION MEETING

January 5, 2000

CALL TO ORDER: Chairman Maks called the meeting to order at 7:03 p.m. in the Beaverton City Hall Council Chambers at 4755 SW Griffith Drive.

ROLL CALL: Present were Chairman Dan Maks; Commissioners Vlad Voytilla, Charles Heckman, Eric Johansen, Sharon Dunham and Tom Wolch.

Staff was represented by Associate Planner Jeff Salvon, Associate Planner Tyler Ryerson, Senior Planner John Osterberg, Transportation Planner Margaret Middleton, City Assistant Attorney Ted Naemura, and Recorder Cheryl Gonzales.

The meeting was called to order by Chairman Maks, who presented the format for the hearing. He asked if there were any visitors wishing to address the Planning Commission on a non-agenda item? There were none.

NEW BUSINESS

A. **SV98-00001 - FIRST BAPTIST STREET VACATION**

(Request for continuance to January 19, 2000)

Request to vacate a public right-of-way between properties owned by the First Baptist Church of Beaverton at 5755 SW Erickson Avenue. The applicant requests to vacate the unnamed roadway, approximately 540 feet long and 25 feet wide, in order to allow for future use of the roadway by the church. The site is within the R-7 zone. The site is located on the west side of SW Erickson, north of SW Allen Boulevard and south of SW Berthold, and is approximately 4.03 acres in size. Map 1S1-16DC; Tax Lots 4700, 4800 & 4803.

Commissioner Voytilla MOVED and Commissioner Heckman SECONDED a motion to continue SV 98-00001, First Baptist Street Vacation, to a date certain of January 19, 2000.

The question was called and the motion CARRIED unanimously.

B. **CUP99-00011 - FIRST BAPTIST EXPANSION**

(Request for continuance to January 19, 2000)

Request for approval for expansion of the First Baptist Church located at 5755 SW Erickson Avenue. The church is located in the R-7 zone where churches and their accessory uses are permitted through a CUP approval. The expansion proposal includes approximately 15,000 square feet of additions to the existing facility; including offices, classrooms, a kitchen area, a multi-purpose room, and additional parking. The site is approximately 4.03 acres in size. Map 1S1-16DC, Tax lots 4700, 4800 & 4803.

Commissioner Voytilla MOVED and Commissioner Dunham SECONDED a motion to continue CUP 99-00011, First Baptist Expansion, to a date certain of January 19, 2000.

The question was called and the motion CARRIED unanimously.

Public Hearings

C. **CPA99-00026/RZ99-00016 - WILLIAMS /173RD AVENUE COMPREHENSIVE PLAN AMENDMENT AND REZONE**

This proposal is to add tax lot 1S106AB00100 to the City of Beaverton's Plan and Zoning Maps and reassign Washington County's R6 Plan designation to the City of Beaverton's Urban Standard Residential Comprehensive Plan designation and R5 Zoning District. The site is located at 20 SW 173RD Avenue. The site is approximately 1.57 acres in size.

D. **CPA99-00027/RZ99-00016 - GILBERT COMPREHENSIVE PLAN MAP AMENDMENT AND REZONE**

This proposal is to add tax lot 1S111DA06700 to the City of Beaverton's Plan and Zoning Maps and reassign Washington County's R5 Plan designation to the City of Beaverton's Urban Standard Residential Comprehensive Plan designation and R7 Zoning District. The site is located at 8805 SW Willow Lane. The site is approximately .19 acres in size.

E. **CPA99-00028/RZ99-00018 - EDGEWOOD DOWNS COMPREHENSIVE PLAN MAP AMENDMENT AND REZONE**

This proposal is to add a portion of 1S123CC02804 to the City of Beaverton's Plan and Zoning Maps and reassign Washington County's Institutional Plan designation to the City of Beaverton's Urban Standard Residential Comprehensive Plan designation and R7 Zoning District. The site is located on 7799 SW Scholls Ferry Road and is approximately .02 acres in size.

Staff Report on all three of the above items was presented by Jeff Salvon, Associate Planner. Staff was recommending approval for all three comprehensive plan amendments and rezones. He stated they followed the criteria outlined in the Urban Planning Area Agreement (UPAA) and the findings were obvious in the report.

Commissioner Heckman asked if the parcel in question was really a small triangular area 871 square feet, referencing exhibits C1 and C2. Mr. Salvon confirmed it was .02 acres, explaining the applicant was adding a building on an adjacent property that was in the City and had to annex this small area in order to adjust the property line so that they would meet the setback requirements.

Commissioner Heckman asked if the total of that operation, Edgewood Downs was all within the City. Mr. Salvon answered no, it was like an island; part of the building being on the north property and the main building on the southern property which was outside the City.

Commissioner Wolch asked about page 5 of the Staff Report, second paragraph, last sentence which read "annexation was requested by the property owner in order to supply the

property with the sewer services needed to support redevelopment of the property". Was that a requirement? Mr. Salvon said yes.
Commissioner Wolch went on to ask, same page, at the bottom, the Gilbert Comprehensive Plan Amendment, last sentence which stated "so that he could take advantage of the City's accessory dwelling unit provisions", was it the case that the County did not have that.

Mr. Salvon replied that the owner was trying to sell his property, but he had converted part of the garage into a bedroom or separate unit. His incentive was the fact that the City's accessory dwelling unit provisions favored the sale of the property more than did the County's.

Commissioner Wolch commented that he had thought that that was Metro policy that was why he questioned it.

Commissioner Wolch moved on to page 6, table 4, and asked for clarification regarding the County planning zone being institutional and the City's, urban residential. Mr. Salvon responded that Urban Planning Area Agreement (UPAA) between the County and the City usually have a corresponding zone, from the County to the City. However, because the City did not have an institutional zone, the matrix in that agreement specified that the appropriate zoning should be the most restrictive abutting zone, which would be R7.

Commissioner Heckman commented it had been a long time since they had zoned a property R7. He asked what the potential would be in requesting the R7 zone be made an R4.

Mr. Salvon responded that a developer was purchasing the property and had convinced the present property owner to petition for annexation. Once that has occurred, the developer purchases the property and extends the subdivision, Tracy Meadows, from the south adjoining that property. He was not sure if that would require a zone change. He thought Tracy Meadows was R7 as well.

Chairman Maks then asked if there were any further questions for staff. Seeing none, he announced time for public testimony.

ROBYN DRUCKER 59 SW Palatial Pl., Beaverton, Oregon 97006 who asked if the City was planning on somehow alleviating the traffic that would be displaced due to the property on 173rd. Chairman Maks responded this was not applicable to this application.

Commissioner Johansen asked if there was not an improvement plan for 173rd in the MSTIP, if not, possibly sometime in the future? Chairman Maks indicated there was something in the works.

Ms. Drucker said they were told that SW 173rd would eventually be completed between Walker and Baseline. They later found out the land had been condemned by the City of Beaverton because the owner did not want to sell it at the City's asking price.

Chairman Maks suggested they get a copy from the transportation system planner, second floor. That would provide the technical information she was seeking. He stated he was aware some funding had been included in the MSTIP relative to 170th and 173rd.

There was no one else who wished to address the Commission on the matter.

Commissioner Heckman commented that all the requests had met or will meet all the required criteria within the specified time frames.

Commissioner Heckman MOVED and Commissioner Wolch SECONDED a motion to approve CPA 99-00026, Williams/173rd Avenue Comprehensive Plan Amendment, based on the facts and findings presented in the Staff Report dated January 5, 2000.

The question was called and the motion CARRIED unanimously.

Commissioner Heckman MOVED and Commissioner Johansen SECONDED a motion to approve RZ99-00016, Williams/173rd Avenue Rezone, based on the facts and findings presented in the Staff Report dated January 5, 2000, and that the rezone criteria had been met.

The question was called and the motion CARRIED unanimously.

Commissioner Johansen MOVED and Commissioner Wolch SECONDED a motion to approve CPA 99-00027, Gilbert Comprehensive Plan Amendment, based on the facts and findings presented in the Staff Report dated January 5, 2000.

The question was called and the motion CARRIED unanimously.

Commissioner Johansen MOVED and Commissioner Dunham SECONDED a motion to approve RZ 99-00017, Gilbert Rezone, based on the facts and findings presented in the Staff Report dated January 5, 2000.

The question was called and the motion CARRIED unanimously.

Commissioner Dunham MOVED, Commissioner Wolch SECONDED a motion to approve CPA 99-00028, Edgewood Downs Comprehensive Plan Amendment, based on the facts and findings presented in the Staff Report dated January 5, 2000.

The question was called and the motion CARRIED unanimously.

Commissioner Dunham MOVED, Commissioner Heckman SECONDED, a motion to approve RZ 99-00018, Edgewood Downs Rezone, based on the facts and findings presented in the Staff Report dated January 5, 2000.

The question was called and the motion CARRIED unanimously.

H. **TA99-00003 (ORD.# TO BE DETERMINED) - TRAFFIC ANALYSIS REQUIREMENTS AND RELATED DEFINITIONS**

The proposal is a text amendment to the Development Code (Ordinance 2050) Section 60.60 “Transportation Facilities” and Chapter 90 “Definitions” to codify traffic impact analysis requirements and related definitions.

Staff Report was presented by Margaret Middleton, Associate Planner with the Transportation Division for the City who introduced Randy Wooley, City Transportation Engineer. Staff recommended approval of TA99-00003 - Traffic Impact Analysis Text Amendments to the Development Code. The Staff Report provided the latest draft amendments based on two work sessions with the Planning Commission. The amendment had also been had been reviewed by the Development Liaison Committee and interested ITE members. A letter from Beaverton Citizens For a Better Downtown was received January 4, 2000, and provided to the Planning Commission for their consideration at the January 5, 2000, public hearing.

Commissioner Heckman questioned Exhibit A, page 1, section 3, which stated "transportation improvements in rough proportion", and asked if there were a better word to use than "rough". Ms. Middleton stated that that language had come out of a supreme court decision.

Commissioner Heckman on page 3, under section D, Analysis Threshold, stated "a traffic impact analysis is required.." etc., and asked, as demonstrated by what? He continued, paragraph D-1, "proposed land use change or development will generate 400 vehicles per day or more in average weekday trips", and asked according to what; according to a traffic study performed by? These were open-ended. Ms. Middleton answered they were able to identify the traffic generation of a proposed development through ITE.

Commissioner Heckman questioned who was going to say it would generate 400 trips per day. Mr. Wooley answered that in practicality, it would be staff who would make that determination, the Traffic Engineer or designee.

Commissioner Dunham on page 4 under E. Study Area, area of influence, her concern was a readily accessible definition or the notation to see definition in Chapter 90. Although this had been discussed previously, it was still a concern because of applicable definitions relating to the text. On page 9, in the definition of "traffic impact analysis", they had indicated licensed professional engineer. Elsewhere in the text, it was indicated "traffic or civil engineer licensed by the State of Oregon"? How specific should that be, because on page 3 the reference was specifically spelled out under engineer certification. Ms. Middleton concurred in making those references specific and uniform.

Chairman Maks on page 4, under F section B, asked if they really meant "all existing driveways".

Ms. Middleton answered they wanted to include every possibility which was analyzed as any driveway, traffic coming in and going out. All movement and volume was to be accounted for and analyzed.

Chairman Maks gave the example of a school which would include several driveways but would not impact anything. Would this be something the Traffic Engineer could waive? Ms. Middleton stated it would have to be approved by the City Engineer.

Chairman Maks commented he did not want to burden the developer. Mr. Wooley stated his reading of the definition of area of influence would in fact restrict that.

Chairman Maks stated he disagreed with Commissioner Dunham regarding the placement of definitions in the text, however, they had talked about highlighting it. Ms. Middleton responded they would be referenced as defined in Chapter 90, which was agreeable. Ms. Middleton also advised this project has received Measure 56 notice.

Chairman Maks commented on page 8, section 3, how that 1000 linear feet compared to Portland, Tigard, Hillsboro and Washington County areas. Ms. Middleton answered that Portland had no requirement; Tigard had no requirements and Hillsboro used Washington County's and it was within the 10% area of impact and within a half mile of the project.

Chairman Maks on page 8, section 2, asked if item three was just a renumbering. Ms. Middleton confirmed that was correct.

Commissioner Johansen asked about the letter comment and the public review period.

Ms. Middleton responded she had had draft language available at the front counter prior to the June 9th work session which had been noticed 20 days prior. Since then there was an application draft available to the public.

Commissioner Johansen stated that this had been a seven months review period with two work sessions and a public hearing process. He took exception to a point in the letter about property owners not being included in the process. There was adequate opportunity for them to come forward and comment on the application.

Mr. Wooley commented they had met with Mr. Biggi today. He had advised him about the review by the Development Liaison Committee. Also, staff had received substantial comment from the traffic engineering consulting community which had actually led to changes.

Commissioner Heckman asked if Measure 56 notices were mailed December 17th, and asked how many responses had been received?

Ms. Middleton answered they had had about a dozen calls, most within the last week. No one had forwarded any written comments or requested further information.

Ms. Middleton had explained this TA and the road closure TA to callers. She had also invited them to come in and look at the draft proposals and submit comments. The City tries to get everyone involved. Chairman Maks asked if there was any public testimony? He noted there were no citizen cards and no one requested an opportunity to speak to the Commission. The City Attorney also had no final comments. Chairman Maks closed this

portion of the public hearing. Chairman Maks commented on a great job. He felt it met all the criteria and supported it completely.

Commissioner Heckman commented it was almost a done project except for a few minor concerns. Once those were addressed, he stated he would be very happy to approve.

Commissioner Johansen concurred and was ready to approve.
Commissioner Voytilla agreed with Commissioner Johansen and was in favor of it.

Commissioner Dunham likewise was in agreement and she also supported it.

Commissioner Wolch thanked the staff for crafting a great document. The City's previous policy had been too open-ended. Concerning the driveway issue, this was good from the standpoint that although not every driveway was significant but in considering major intersections and putting in medians. It would force the issue of managing the access. There was also flexibility along with requirements. He would like to see staff come back at some future point and provide a progress report. Beaverton was now the third or fourth largest city in the state and with that size came traffic problems, which needed to be managed. He would support a motion to approve.

Commissioner Johansen MOVED and Commissioner Heckman SECONDED a motion to approve TA99-00003, Legislative Development Code Text Amendment, based on the facts and findings presented in the Staff Report dated January 5, 2000, as amended through the comments at this meeting.

The question was called and the motion CARRIED unanimously.

I. **TA99-00007 ROAD CLOSURE PROCEDURES AND CRITERIA**

The proposal is a text amendment to the Beaverton Code Section 6.02 to codify procedures and criteria for road closures.

Staff Report was presented by Margaret Middleton. The Council had directed staff to implement the road closure policy that would contain City standards and processes for road closure decisions. This text amendment proposed these standards and processes to be added to the Beaverton Municipal Code. They supplemented the existing traffic issues process, which the Traffic Commission currently uses. Comments from the work sessions had been incorporated, and staff recommended approval.

Commissioner Dunham asked if access restrictions applied, and gave the example in Tigard, SW North Dakota, where access was limited and it had been done through a completely different process.

Mr. Wooley answered it would go through the Traffic Commission process, but would not evoke the additional requirements of the neighborhood.

Commissioner Dunham asked if this process went both ways; would the City ever be the applicant in a situation like that? Mr. Wooley answered that the City could be the applicant and would need to follow the process.

Commissioner Johansen asked if a street vacation would undergo the same process? Chairman Maks answered it would not. It was a separate process.

Commissioner Voytilla, under B. 4, the word "substantially", he asked how do they quantify that, using what criteria? Mr. Wooley replied they do not. That was intentional when the Traffic Commission and the Council drafted the language.
Commissioner Heckman questioned on page 5, under "proposal", the last sentence, "only roads that have substantial increase in traffic, etc., in addition to potential closure, cannot negatively affect surrounding roads", if substantial increase was determined then the road was closed, would not that potential increase in traffic then be all of a sudden diverted to surrounding roads?

Mr. Wooley responded there was a good chance of that and it would require an investigation before the closure would be approved. There was also a 120 day minimum test period for a road closure.

Commissioner Heckman commented they had recognized that and had defined the problem, but what would they do with it.

Mr. Wooley stated that it would be a big issue if they had a road closure before them.

Chairman Maks stated there were no citizen cards regarding the road closure policy and he closed the hearing.

Commissioner Heckman MOVED and Commissioner Johansen SECONDED a motion to adopt TA 99-00007, Text Amendments to Beaverton Code section 6.02 and further direct staff to prepare said memorial and propose ordinance embodying the Commission's recommendation and present it to Council for first and second readings.

The question was called and the motion CARRIED unanimously.

A break was called at 7:45 P.M.

The meeting reconvened at 7:50 P.M.

F. **CUP99-00025 - JACK IN THE BOX RESTAURANT**

Request for Conditional Use approval for a proposed restaurant on 15915 SW Regatta Lane. The applicant proposes an approximately 2,870 square foot, 68 seat, quick-service, dine-in, drive-through restaurant within an Office Commercial District. The site is within the Office Commercial (OC) zone, and is 1.15 acres in size. Map 1S1-15BA, Tax Lot 1401.

Chairman Maks asked if there were any members of the Commission who wished to declare an ex parte contact or a conflict of interest with the following request, or for any reason disqualify themselves from participation? There were none. There were no challenges or continuances. Chairman Maks presented the format for the hearing.

Chairman Maks asked if there was a film of the site? Mr. Ryerson stated there was, however there was no request to view it. It was stated that all Commissioners had visited the site. There were no challenges or continuances based on the Commissioners' site visits.

Staff Report was presented by Mr. Tyler Ryerson, Associate Planner. The applicant was requesting conditional use permit approval for a 2800 square foot quick serve dine-in, drive-through restaurant in an office commercial zone. The area was at 158th and Walker with the access being SW Regatta Way. There would not be an access to Walker or 158th. No major issues had been identified with the proposal. He noted this was in a commercial zone with the office commercial subdivision of Waterhouse Commons, an approved commercial subdivision in 1994. It was surrounded by the Fred Meyer shopping center to the north, across Walker Road, and various office development to the east and residential development to the south. They had received one letter from a representative with McDonalds. The letter addressed a couple of issues which were: the coinciding peak traffic flows of both McDonalds and the proposed Jack-in-the-Box which would strain the Walker Road access; and the proposed location at the end of a cul-de-sac. Staff recommended approval with conditions on page 12.

Chairman Maks, on page 6, staff stated the additional trips generated by this fast food drive-through restaurant were analyzed by the traffic study conducted for the original subdivision, a current traffic analysis not being required. There had been major concerns with regard to unsignaled access on to Walker Road, specifically with regard to left outs. His primary concern was the fact that there had not been an accident analysis since 1994.

Mr. Wooley stated this was an unusual situation. Approval had been given in the past based on the fact that the subdivision assumed certain development would occur and did occur. The improvements were presumably made that were needed in 1994. As a result, prior approvals satisfied their requirements.

Chairman Maks gave the example of another restaurant on the other side, a teriyaki to-go place, there are already two fast food restaurants. The bottom line was, traffic on Regatta at lunch time.

Mr. Wooley stated he was aware of the traffic concerns there, but the 1994 report had assumed two fast food restaurants and two additional restaurants.

Chairman Maks stated concerning the number and type of restaurants the scope of the traffic study was limited. Also, in four years things change, five years, ten years. He asked if they had anywhere, anything that defined a fast food restaurant.

Mr. Wooley said they could go back to the ITE manuals and use their definitions. There were different classifications in the 1994 report fast food restaurants were those with drive-through facilities.

Chairman Maks stated he could not see another drive-through facility on that street presently. His recommendation was, policy permitting, they should revisit it. In five years things change. A complete traffic analysis may not be necessary, but, at the very least, an

accident study with regard to high generation of vehicular trips. Approval would be dependent on this. He would be negligent in his duties if he were not looking out for the citizen's safety.

Commissioner Heckman noted this was old information, and asked if this was classified as a high turnover restaurant. Mr. Wooley answered it was.

Commissioner Heckman stated that the a.m. peak hour for this high turn over restaurant was 50 entering trips and 50 leaving trips. There were a.m. peak hour, p.m. peak hour, and an all day count in the study. What about a traffic count between the hours of 1130 and 1330?

Mr. Wooley said it would have been possible to get an existing traffic count then. He presumed there was similar data available for fast food restaurants but did not have it with him that evening.

Commissioner Heckman stated he shared the chair's concerns over the left turn out, particularly left turns going into that section off Walker. Unless the applicant had some new data to give them, he was really concerned about what he would see as future traffic problems there, 655 trips a day, in for three restaurants, seemed low. He wanted to expand on the letter from McDonalds and its similar concerns.

Mr. Ryerson stated it definitely sparked an interest with regard to the traffic issues they are addressing now. Perhaps, they should go ahead and look for a new, revised traffic analysis. That might be something to recommend.

Commissioner Heckman questioned if the letter had raised enough concern among staff members, then they should request a count on several days to verify the 655 trips per day.

Mr. Wooley said they had been giving some attention to the intersection at Fred Meyer driveway as a separate issue. He thought there was something like six accidents over the last three years, primarily involving vehicles turning left out of Fred Meyer. They had received a letter from some concerned citizens and decided to work with Washington County as Walker was a County road. They were also reviewing some waivers of remonstrance which had been required on the previous construction to see if they were still valid in case they needed to do improvements. His concern, however was more the left turns out of Fred Meyer than the left turns out of the subdivision. The north side of the Fred Meyer access was also an issue.

Chairman Maks asked what was Regatta posted with regard to parking? At noon there was only one lane due to parking on both sides of the street, as the parking lot is full. Mr. Ryerson's recollection was that there were no “no parking” signs on either side.

Commissioner Johansen on page 8 of the Staff Report, 18.1A appeared to require submission of a market analysis. He only had one page. Was that the market analysis? Mr. Ryerson replied that that was what the applicant submitted.

Commissioner Johansen said there was a lot of unsupported discussion. This was not the sort of market analysis they typically require. Was there any concern raised about the

relative amount of property being used for commercial purposes as opposed to office purposes. How many were conditional uses.

Mr. Ryerson assured him there was a concern from the start, considering the zoning of office commercial. With this particular subdivision, eating and drinking establishments were allowed through a conditional use permit. The applicant especially looked at this particular parcel and its lack of fast food or restaurants. Staff felt approval could be recommended through the conditional use permit approval.

Commissioner Johansen asked if the staff was concerned whether or not if at some point the supporting uses became predominant as, arguably they are becoming, they would have the critical mass to attract the kind of quality office development that they seek to have in this particular zone. Mr. Ryerson replied that that was a possibility.

Commissioner Wolch commented on page 5 of the Staff Report, bottom of the page, "All Family Zone" should be what.

Mr. Ryerson said that should be corrected, it should read "The Family Zone". Commissioner Wolch asked what type of business? Mr. Ryerson said previously the site was a black belt academy facility of some sort, presently those at the site said it was a learning facility, as that was what it was zoned for. It was not a day care.

Commissioner Wolch said that he had visited the site yesterday during the noon hour. He saw people parking on both sides, making the street essentially a one lane road. The additional vacant lots in the subdivision, once developed would mean even more traffic. He asked if driveways were proposed for a 24 hour operation? Mr. Ryerson said they were not.

Chairman Maks asked if there were any office commercial in this subdivision? Mr. Ryerson said there was one office building on the west side of the park near Outrigger.

Chairman Maks recalled when the initial subdivision was approved, he believed it went through a comprehensive plan or rezone. One of the points of discussion was that it was on a designated bus route transit corridor and that office commercial was one of the highest generators of transit, it seemed they were failing there also.

Commissioner Dunham questioned the drive-through plan. Was there a problem with the pedestrian friendly aspects of that coming from 158th and Walker, crossing through that drive-through, the way that it was configured at this time?

Mr. Ryerson stated that the pedestrian sidewalk coming from that intersection of Walker and 158th was designed at that corner of the drive-through. There was also another walkway proposed at the south end of the building coming from 158th, using the corner of the drive-through. This seemed to be the safest location and still allow the drive-through proposed at that particular location.

Commissioner Dunham asked if that was the 1 to 20 slope location? Mr. Ryerson was not sure. They were proposing a horse shoe or hairpin type of sidewalk.

Commissioner Dunham indicated the lay out of the parallel parking at the grill spots seemed problematic. Her other concern was mirrored in the letter from McDonalds about the softening of the corner at the entrance point.

Mr. Ryerson responded that the writer of the letter, after attending a neighborhood meeting proposed the softening of the landscaping. He believed the Board of Design Review would be reviewing that aspect of the landscaping as well.

Commissioner Heckman, returning to page 8 of the Staff Report, 3.5.8.1.A, the current market analysis submitted by the applicant, asked, in staff's opinion, did this letter qualify as a market analysis? Mr. Ryerson responded, that it was the first market analysis he had had the opportunity to look at. It had been supplied by the applicant. He indicated there should be more information.

Chairman Maks asked Mr. Ryerson about the word "isochron". Most market analysis indicate isochrons, or study areas, where the trips were generated.

Commissioner Dunham reviewed the trip generation summary. She wanted to know the difference between a fast food restaurant, a high turn over restaurant, a quality restaurants.

Mr. Wooley replied that fast food restaurants had the drive-through facility. The high turnover restaurant was one where you had your meal but did not stay for any length of time. A quality restaurant you are inclined to stay for a longer period of time.

Commissioner Dunham asked if the two fast food restaurants were the McDonalds which was there now and the proposed Jack-in-the-Box. The high turnover restaurant was the teriyaki place and the quality restaurant was the one flagged as a future Chinese restaurant across the way from McDonalds on the vacant lot.

Mr. Ryerson replied he did not know if staff had seen any applications relating to the chinese restaurant. Chairman Maks said that if they did not have an application they could not consider it.
Commissioner Dunham asked if the original Drax development called for two fast food restaurants. If so, and this was built, would that preclude anyone else from coming in under that designation?

Chairman Maks answered they could come in under a conditional use permit. It would be allowed. This was confirmed by Mr. Naemura.

APPLICANT:

MIKE HART Real Estate Manager for Jack-in-the-Box restaurants, 13849 SE Happy Valley Ct., Happy Valley, OR.

CHARLIE PATTON Construction Manager for Jack-in-the-Box, 4500 SW Kruse Way #270, Lake Oswego, OR 97035.

KELLY EDWARDS Architect, 1010 NW Flanders #204, Portland, OR 97209.

Mr. Hart began by stating that he recognized there was a significant amount of traffic at this intersection. In drawing up a market plan, their goal was to penetrate specific markets. They examined the restaurants in place and determined they were not able to handle the business coming at them. The market analysis provided, confirmed this. The Better Research Group is based in Portland and performed work throughout the country. Their work was not only in the quick service restaurant segment, but also in the supermarket segment. For every restaurant they open they commission a study to assess the market area, and to make sales projections. These are utilized as part of their planning steps and as a safety net. They did have a more detailed study containing proprietary information. If this was something required by the Council, they would be prepared to present it. With regard to the traffic and access point, the development was serviced by two access points on the south side. Definitions of fast food restaurants, quick serve restaurants, could be a matter of debate. He wanted to make the Commission aware that the piece of property on the Waterhouse Commons, which is proposed for development is the only piece that would allow development with a drive-through. McDonalds has been successful in gaining an exclusive drive-through facility on the rest of the development. The piece they were developing was not under the same ownership, it had previously been owned by a bank. He added they also believed strongly that they feed somewhat off the traffic in place. It was true that they would generate some trips during the peak hour, but they also looked for places where the traffic was there already. It was believed that they could, not only service the community through vehicular traffic, but also the pedestrian traffic coming from the recreation center and the Woodside Corporate Park across the street as well. He also pointed out that they recognized that there was an issue on Regatta and they would be totally in support of the City designating a no parking zone. On the site plan there were 35 proposed parking spaces rather than the 26 that are required. This was in cooperation with City Planning. It was his understanding also that IHOP was in the development process for the piece that would be between the McDonalds restaurant and their proposed development. That being the case, they had cooperated in terms of constructing an internal road access point between the facilities to allow for better circulation at that end of the cul-de-sac. He also mentioned relative to the corner, that they had proposed to landscape 30% of that parcel versus the requirement of 15%. They believed they had attempted to meet not only the letter of the code but the intent of the code.

Mr. Patton clarified the confusion about the site generated traffic as it related to the original traffic study that was done. The 655 trips, referred to by Commissioner Heckman represented only an a.m. peak hour of which the two fast food restaurants were a portion of that. Looking at other charts, the weekday trips for that development of the entire center was almost 10,000. When they do commission a traffic study, they have found that Jack-in-the-Box would fall quite a bit below the average for a typical fast food restaurant. The traffic study done in 1994, as it was represented to them by the staff, was sufficient in its findings. In their opinion, a traffic study would show that they would fall within the indicated boundaries.

Chairman Maks stated to Mr. Hart the he agreed that McDonalds was booked at noon time, however he also knew they did a complete market analysis. Commissioner Heckman was correct in that they usually have a much more substantial market analysis before them for a

variety of reasons. Not only do they establish need but they show where people were coming from; how wide a range they serve; were they bringing in people from outside the intended service area. These were all reasons to support and/or deny an application. Also what percentage came from what direction, which would effect cut-through traffic. Cut-through traffic in the Waterhouse area has been a major issue for an extended period of time.
Mr. Hart stated they did have a much more extensive report that had been provided by the Bennar Corp. But he was under the impression they needed to document the fact that the existing services in the area were not adequate for the conditional use to be granted. The Bennar Group was asked to do a quick synopsis of their in-depth study so as to document that the volume of business was not being satisfied by the existing restaurants.

Chairman Maks stated he understood that, but they needed to look at different businesses which were different types. Where were they drawing from? Depending on what part of the City and what the code said, you were not supposed to be drawing from outside a three mile area. That was the kind of information that also needed to be included in a market analysis. With regard to the no parking signs, it would have to be an item of discussion not just for this applicant but for the other developments and probably management people. The 30% landscaping was nice. He agreed with Mr. Patton that they probably did fall within the guidelines for traffic. He agreed with his definition of fast food restaurant. He said at the present time with the limited amount of information they have, he would have a problem approving this application.

Mr. Edwards stated they had met with the neighborhood association and worked with them with regard to types of landscaping and planting. Grading was also discussed. The BDR package contained the landscaping plan and screening proposed for the drive through.

Commissioner Voytilla commented that part of the criteria was that the project be harmonious with the surrounding community.

Chairman Maks asked about the distances to the closest fast food restaurants.

There were no further comments. Chairman Maks then opened the hearing to public testimony, he had one yellow card.

PUBLIC TESTIMONY:

GEORGE S. KYLER, Real Estate Representative, 3531 NW 163rd Court, Beaverton, OR 97006. He stated he worked for McDonald's Restaurant. He discussed the market analysis and expressed serious concern about the traffic study relating to insufficient date concerning peak flows, generation, and trip patterns. The larger the restaurant, the larger the impact. Their study failed to address a number of safety issues as well. His concern was not with high quality and high turnover restaurants, but did question the possibility of other restaurants going in and stated that this plan would affect future development. It was not an appropriate way to progress. With regard to pedestrian and street orientation and site issues, he agreed with Commissioners Dunham and Voytilla. The site was not pedestrian friendly. Pedestrian accessibility and safety were questionable. For

comparison, he gave examples of Portland restaurants and ways they accommodated pedestrian traffic and internal drive-through systems. He felt that peak hour capacity had not been addressed satisfactorily, as well as business volumes per hour. Their location on a cul-de-sac was not optimal for a drive-through's high traffic. The street was not commercial in nature. It was also outside the service area traffic. He also noted it was a three minute drive to the next McDonalds. He appreciated the Commission taking his letter seriously.

Chairman Maks commented about a rezone taking place had this been done in the typical fashion, or the installation of $3 million dollars worth of traffic improvements. More resources were needed to study in depth vehicular trips.

Commissioner Wolch asked Mr. Kyler why he thought people were parking on the street. He answered it could be for any number of reasons, it could be crew people, people parking to go in and eat, or those in the neighborhood. Mr. Kyler also mentioned that daycare centers had been looking at this location and Hollywood Video for some future development.

Chairman Maks asked the applicant if they had comments in rebuttal.

Mr. Hart, with regard to the drive-through and pedestrian safety issue, stated there would always be people who would park and walk. But the layout and design of the pedestrian areas and parking was appropriate and would provide safe and efficient circulation on the site. They were also in the process of revising walkway plans.

Mr. Edwards stated on the site plan there was a guild wire wrapping around the corner of the building side having the maximum amount of glass, which would act to prevent pedestrians from getting too close to the street. Commissioner Voytilla asked Mr. Edwards to point this out on the exhibit.

Chairman Maks stated the BDR would go through this thoroughly.

Commissioner Dunham questioned the adequacy of the grill spaces. Mr. Edwards answered it was wider than the depth of a standard parking space.

Chairman Maks addressed staff and also told the applicant of the possibility of their being denied approval, but they could choose to have a continuance put before the commission.

RECESS was called at 9:02 p.m.

The meeting RECONVENED at 9:07 p.m.

Chairman Maks asked if they wanted to approve Jack-in-the-Box as a conditional use permit; could they state the CUP was only for Jack-in-the-Box?

Mr. Naemura answered that it would be necessary to go back and re-examine the evidence. There would have to be something unique to the establishment itself. Mr. Osterberg concurred with this statement.

Chairman Maks asked if it could be tied to the ADT? Mr. Osterberg stated they would need to indicate it was limited to Jack-in-the-Box. That portion of the hearing was then closed.

Chairman Maks then polled the Commissioners as to how they felt about the application.

Chairman Maks agreed with Comms. Johansen and Heckman, there was a need. However, the market feasibility study was not adequate. He quoted objectives 3.5 and 7.2. Traffic issues were not adequately addressed nor were internal flow issues about the cul-de-sac. 3.5 and 7.3 did not meet the criteria and would limit other future development. The proposed use must be reasonably compatible. As it stood, with the documents he had, there being already two fast food restaurants in place, he could not approve the application.

Commissioner Heckman echoed these comments and re-emphasize the traffic study concerns and highlighted Mr. Kyler's testimony and letter. He stated the market study was insufficient, the traffic information was outdated, applicant had adequate time to submit these . He could not support a motion to approve.

Commissioner Wolch likewise agreed with these comments, although his biggest concern was criteria three, compatibility. The traffic study was six years old. There was no accident listing, parking was inadequate. He had looked at signal options to help alleviate some of the situation, unsuccessfully. Regarding criteria two, applicant had made some effort to not be strip commercial, there were pedestrian connections. Still compatibility and the impacts of the use would need to be addressed more completely. He could not support approval at this time.

Commissioner Voytilla replicated all these comments and mentioned the lack of properly prepared information, the market and traffic study in particular. Regarding the question of the two fast food restaurants, he would need some proof by a traffic analysis that it would not create a problem. He appreciated the Chairman's creativity in trying to find a way to approve. It would take an updated traffic study to support this facility. He could not approve this request and wished the applicant would consider a continuance.

Commissioner Dunham concurred with all the Commissioners' comments. The traffic study and market analysis were seriously lacking. She could not support approval.

Commissioner Johansen stated the market analysis was not adequate, the traffic study was insufficient and outdated. His main concern was the mixed uses in this commercial zone. He would need to look at what the uses were and see what could be excessive. He felt they may have gone too far with the commercial use. He could not support approval.

Chairman Maks commented that Commissioner Johansen's third point was a good one and he too would have to look at the other commercial uses they had approved.

Commissioner Johansen said these uses relate specifically to the issue appropriate development of the property.

Mr. Edwards stated he would like to request a continuance at this time for this procedure, in order to produce the requested reports and data. There would be a waiver of the 120 days form.

Chairman Maks asked how long it would take them to do what needed to be done? They would need to continue to a date certain.

Chairman Maks stated the applicant had requested a continuance, waiving the 120 day rule. There followed a short discussion concerning the number of weeks needed for preparation. It was decided February 16th would be acceptable to everyone.

Commissioner Heckman MOVED and Commissioner Wolch SECONDED a motion to continue CUP 99-00025, JACK-IN-THE-BOX on Regatta, to a date certain of February 16, 2000.

The question was called and the motion CARRIED 5 to 1 with Commissioner Johansen opposed.

G. **VAR99-00024 - MCCORMICK & SCHMICK ADDITION RENOVATION**

Request for a Variance approval for a 10-foot side yard setback along the SW 99th Avenue property line.. The site is within the Commercial Service (CS) zone, and is approximately 0.9 acres in size. Map 1S1-14BA, Tax Lot 5200.

Chairman Maks asked if there were any members of the Commission who wished to declare an ex parte contact or a conflict of interest with the following request or for any reason disqualify themselves from participation. He then asked if anyone wished to challenge the right of any member of the Commission to participate in this hearing or ask that the hearing be continued to a later date? Seeing none, Chairman Maks began the public hearing with the Staff Report. Chairman Maks presented the format for the hearing.

Chairman Maks asked if there was a film of the site and Mr. Osterberg said no. Chairman Maks asked if the Commissioners had visited the site?

Commissioner Heckman said that he had visited the site that morning, and stated that he had found one of the signs laying in the bushes so he stood it up and that sign had no dirt on the post where it was supposed to have entered the ground.

Commissioner Johansen said that he had visited the site last Sunday and had been in the restaurant many times.

Commissioner Voytilla said that he had visited the site last Saturday and he too had been there many times.

Commissioner Dunham stated she had visited the site that day and had been there many times.

Commissioner Wolch said he had visited the site the day before around the noon hour, driven by, but did not speak to anyone.

Chairman Maks said he had visited the site, he drops by on a regular basis and was also on site when it was built in 1972. He asked if they had anything to present from their site visit and asked if there were any challenges or continuances based on their site visits? None were seen.

Staff Report was presented by John Osterberg with City Development Services Division. McCormick's Restaurant was requesting a side yard setback on the east side of the building along 99th Avenue. The restaurant is at the corner of Beaverton Hillsdale and 99th Avenue. He explained a variance request was a somewhat limited review of the McCormick's restaurant, there were other pending applications, design review primarily, which was not before the Commission presently but would have been reviewed by the facilities review committee as part of a Type 2 design review application. No final action had yet taken effect on the other applications that were pending. Staff had reviewed the variance before the Commission and had made findings that the applicant's proposal met the variance criteria. Staff found there were special or unique circumstances on this site regarding the history of approval; the original approval of the Rusty Mills restaurant, and also an issue regarding the applicant relying on incorrect dedication information provided by the County. The dedication issue was not the primary issue for the finding of special circumstances, but rather the previous City of Beaverton land use approvals by both the Planning Commission and the Board of Design Review in 1971 and 1972 respectively. Both of those hearing bodies had approved the 10 foot setback to 99th Avenue, even though it created a nonconforming setback. By definition this was a special circumstance and not one the applicant had created solely due to inconvenience. The other element was the actual issue physically. This addition proposed by the McCormick's restaurant was really very small. The proposal was to add 178 square feet within the 20 foot setback. The restaurant already has 225 square feet, a very small amount, but has a greater amount of the building in that 20 foot setback already. The applicant did not propose to go any closer to 99th Avenue than where they were right now. So there is no further reduction of the existing side yard setback that was approved previously by the City. With that in mind, staff found that all the variance criteria had been met and recommended approval of the request.

Chairman Maks referred to a letter in the packet from ODOT requesting a pork chop. ODOT requested that a condition be placed and he read that condition. As he did not have Facility Review in his packet, he did not know if it was part of Facility Review. Mr. Osterberg said there were no Facilities Review conditions for this variance.

Chairman Maks asked what they were to do with the ODOT letter? Mr. Osterberg replied he could only recommend the Commission simply consider it and act accordingly. He pointed out that ODOT did not state McCormick's needed a separate access permit from ODOT. Under traditional circumstances, the letter from ODOT was not typical. It was rare for ODOT, or the County to advise the City of a proposed condition for approval as part of City action. He also noticed in the letter of December 13, 1999, that they were not describing any permit. This was a little unusual. He stated the Facilities Review Committee did adopt conditions for the design review application, but a condition for a

pork chop or other sort of traffic control device had not been included, and the City did not require it.

Chairman Maks asked Mr. Osterberg for clarification. Were they supposed to disregard the letter from ODOT? Mr. Osterberg stated he would not want to say that. Rather, the Commission should consider it. However, the City was not requiring the pork chop or any other diverter on the street. He noted the development code does not provide for the Facilities Review Committee to adopt any conditions, or even be involved in variance applications.

Chairman Maks stated facility review was involved in the design review process. Mr. Osterberg agreed.

Commissioner Voytilla stated concerning the letter from ODOT, they had jurisdiction over the highway obviously. If the pork chop they wanted was to be installed, it would have to be done at that part of the driveway access that would be in their right-of-way, was that not true? Mr. Osterberg said that was so. Most traffic control diverters were in the public right-of-way.

Commissioner Voytilla questioned how the Commission could control something that would go in an Oregon Department of Highway Transportation right-of-way? Chairman Maks stated on rereading the letter, it was saying that the Commission condition them (the applicant) to go back to ODOT and update their existing ODOT access permit. They did want to take an action with regard to the access permit.

Commissioner Heckman questioned that that was the applicant's responsibility. The Commission could advise them to make the contact only. Chairman Maks stated they have directed them in this manner in their conditions frequently.

Mr. Osterberg stated that this has occurred occasionally, he remembered the Walker Road Auto Center, an issue coming up there where the Commission felt they could not make a finding until there was some action on the County's part to review access permit.

Chairman Maks stated that his problem with the letter and also understanding that this does not go to facility review because ODOT is part of facility review, but if this did go to through facility review under the ODOT statement, they would say you don't approve unless this is done.

Mr. Osterberg said that staff was not recommending the Commission adopt this ODOT condition. Chairman Maks questioned if staff was not in support of conditioning them to update their existing ODOT access permit? Mr. Osterberg said they were not supportive of making that a condition of approval. That was up to ODOT to require it themselves.

Commissioner Heckman stated they did not have the latitude on a variance to make a condition such as that.

Mr. Osterberg stated that he thought they might have considered such measures if they were talking about a large expansion, something substantial where there would be substantial

change in the trip generation or some other factor but since this was quite a small building addition, partly because of variance, there was not a rough proportionality to make this condition with the City. ODOT was free to do it on their own.

Commissioner Voytilla asked if there were any other mechanism that ODOT has in which to have the applicant do what they are requesting. It was apparent through the letter that they were concerned about prior accidents that had occurred. So they have some other mechanism besides, as he understood it from the applicant's written testimony, the majority of this request is for ADA accessible bathrooms. Continuing on the letter, there was concern also relative to three accesses on SW 99th in ODOT's letter. He wanted to know if staff had any feeling on that comment? Mr. Osterberg said that 99th Avenue is a County road.

Commissioner Wolch noted that the County road, and the County in their letter deferred the access management to the City and that did not seem like a typical thing for the County to do and did they do it all the time. The ODOT letter does talk about closing access and that seemed like a management issue that seems to have been deferred to the City.

Chairman Maks stated that in the County letter page 3 under B under note says that this property was not currently eligible for an access permit.

Mr. Osterberg stated that he was reading at the top of page 2 the information from the County that said before the County would permit access to 99th Avenue, the applicant will be required to provide certification.

Chairman Maks commented that if the County does not let them have access on 99th and ODOT closes them off on their driveway they will be hurting big time.

Mr. Osterberg said that those accesses already exist.

Commissioner Voytilla referred to the site plan, noting that if the restriction for access and the adjustments to the parking were implemented, the functional use of the parking lot would not be viable.

Commissioner Heckman stated that he had one further question. Did Mr. Osterberg have any discussion with the applicant on what was the absolute minimum variance they could have requested, was 10 feet, or were they going for seven or six, or five?

Mr. Osterberg stated the staff had made findings that the amount of variance requested was minimal and did not go into the setback to any great degree, not even one foot greater than what was already there.

Commissioner Johansen asked that if 99th was expanded 10 feet to the west, how far?

Mr. Osterberg said it was 10 feet, the right-of-way had already been dedicated. So if the street were expanded, it would take it closer. It would be no closer than 10 feet.

Commissioner Wolch, on page 3 of the County transportation review under B, stated that that may be something they would like the applicant to address. Mr. Osterberg said the spacing had been reviewed by the City in the Facilities Review Committee and the City was not requiring any accesses to be closed or moved.

Commissioner Wolch stated he found himself pretty much in harmony with the Staff Report, with the exception of the second criteria, which was "strict interpretation will deprive the applicant of rights commonly enjoyed". They had, on the site, a going concerned business, so he had difficulty with what was being denied as far as rights commonly enjoyed. He had difficulty with criteria two due to allowed use.

Mr. Osterberg stated the finding under #2 described that if the 20 foot setback limitation was strictly applied, that would ignore the intent of the previous allowances to allow the building setback at 10 feet. The applicant's proposing this east addition was to provide a second accessible route to the restaurant, ADA accessible which would be a right commonly enjoyed by other restaurants. It was not an unusual request and was something that was commonly done with other buildings or other commercial developments in the area.

Commissioner Wolch questioned if they made a mistake once, and they made it again, it becomes a right to make that mistake. Mr. Osterberg asked if this was regarding the original approval; and Commissioner Wolch said it was.

Chairman Maks, on page 9, under 2 under facts and findings, the last sentence stated that as far as he knew, previous land use actions do not set precedence, and just because they did it once, there was no precedence.

Mr. Osterberg said nowhere was he attempting to say there was a legal precedence, that somehow this must be approved because of that. The criteria actually referred to the rights commonly enjoyed by other properties in the same district.

Commissioner Wolch agreed it was a small addition, how small a percentage it was of the total property line. Another way to consider the requirement of a 20 foot setback, when in fact they are getting 10, would make that a 50% variance. Mr. Osterberg conceded that was true, but the building was already there. The applicant was coming before the Commission at this time to request approval for the first time for a 50% variance.

Chairman Maks agreed with staff on criteria four and five, borderline on criteria one. He gave the example of an owner who had to cut his garage off because they were supposed to be following this criteria no matter how much it made sense. The bottom line was they had the criteria for a reason. The applicant needed to prove that if strict interpretation of this ordinance would deprive him of rights currently enjoyed by other properties. Thus far they have only pointed out side yard setbacks in areas down the road that did not have through streets, and that this one does. He had a problem with number three because he questioned the need for an east access. Was it only ADA? Were they saying they were unable to put the ADA in the back, on the side, or in the front where the ADA parking spots are? If in fact this was actually for ADA, the building being there, the road was built, it would be 10 feet from the road. Chairman Maks asked staff if they had discussed with the applicant the

reasons for the expansion of the east access. Mr. Osterberg said he had not. He had taken this project over some time later from another planner who left the City.

APPLICANT:

PHILIP THOMPSON, Architect, 25925 NW St. Helens Rd, Scapoose, OR 97056, was representing Larry Hart who was the primary architect on this project and McCormick and Schmick who were the owners of the restaurant. He stated it was not actually germane as to why they were there, nobody knew about this property line until just before they got to the first design review hearing. They worked very hard to do the addition so it would not encroach on what they then thought was a 20 foot setback. Their addition was carefully designed to stay within the setback. The first criteria was unique in that the City actually created this circumstance. It would not occur with most properties. The City approved the site plan as it was. They could have disapproved it but said they were going to require a 10 foot dedication and therefore go back and redo the site plan but they did not. They approved it with a note stating they were creating a nonconforming property. They felt that that was important and it satisfied the special condition peculiar to this property. Regarding the strict interpretation issue, other properties in the neighborhood having setbacks that are less than 20 feet, he felt it was reasonable for them to define the neighborhood as a C2 district as opposed to residential houses that were down the street and so on. He submitted a map that was not included in the packet which showed Beaverton Hillsdale Highway, and the McCormick's property which had the 10 foot setback. Across the street at Helens of Course the setback was 12 feet and visually it was closer than that because there was a substantial ramp that got in the way. The very next street up from the property had a 7 foot setback. This was a driveway, nonetheless, the setbacks were 6 feet and 6 feet. So, he was arguing that everyone in the neighborhood had a right to a setback of less than 20 feet; and, indeed, only one property had a setback that was greater than the 10 feet that they were requesting. He went on to say that it was a small addition with two purposes. One purpose was to improve accessibility and address the ADA issue. Although it was not mentioned in the Staff Report, they were doing a substantial renovation in the bathrooms in the interior to upgrade them. One of the reasons McCormick's came to him was they needed to upgrade the property. They had large numbers of people going there and they needed to do a better job. Another part of the problem was crowding. People were waiting to get into the dining room. There was not enough space at the bar for people to wait so this small proposed addition added slightly to the bar. Three feet was needed to get around the end of the bar to get back in. McCormick's was proposing this as much to provide for the customer as anything else. They were also doing a substantial amount of work to the parking lot to correct the existing situation which had some parking spaces which did not meet the City's requirements for a parking lot. They were able to completely renovate the parking lot, maintain the same number of cars and get better circulation. Frankly, if it were ODOT's request to close this, it would be a serious problem for them. They were also doing a substantial amount of additional landscaping. Lighting had been upgraded to remove roof spotlights, which was not an issue for the variance but was an issue for the neighbors. They believed their design was harmonious with the neighborhood which he felt was a critical issue concerning the fourth finding. At this time, he showed pictures, and addressed the ODOT condition. He said it came out of the blue and they would do whatever they could to oppose it. They did not need to close it, that was the County's business. If they had to put a pork chop in, they would put a pork chop in. But it seemed strange, as there was nothing

like that on Beaverton Hillsdale Highway anywhere. With regard to the County's letter, it was characterized by the fact that it was sent to the City when they went through their first design, and the City had proposed approving the parking lot and the accesses. They had been told they should design to City standards, so their drawings reflected the City standards. The County was aggressive, in a letter to Beaverton stating that this was their road and they had to apply for a permit. This was no longer a simple project even though that was what it had started out to be. Finally, they would not talk to them until the City approved the accesses. In other words, the City had the right to approve the location of the access and they could not apply until that was done. So they were in the process of doing that. He stated the minimum setback which would allow them to expand around the bar, if they only went 7 feet, would not allow them to get the bar expansion in.
Commissioner Heckman questioned Mr. Thomas, asking if he was only really requesting a variance for the setback for a total of 21 feet. A variance not for the entire property, only for 21 linear feet. Mr. Thomas replied his application indicated 27 feet. Commissioner Heckman questioned if it would go from the existing fireplace on back and not come any closer to 99th than that? Mr. Thomas confirmed that statement.

Commissioner Wolch wanted to determine whether or not that was the only way they could modify the building to accomplish what they were trying to do?

Mr. Thomas replied it was the only way it could be done so as not to further violate the space. They needed to add one handicapped space. They had one in back which gave accessibility through the bar. They had done several schemes to expand the bar to the south, but they impacted the parking and eventually needed to go further into the setback, so they abandoned those schemes.

Commissioner Wolch asked if the setting back of the bar was the pathway to the bathroom. Mr. Thomas said no, there were two purposes. One was to address the ADA concerns and the other was the expansion of the space at the bar for people to wait.

Chairman Maks commented that since 1972 they had not had enough waiting room. The bar was small and filled up and people backed up to the doors. The bathrooms were located in the center which created a flow problem. The bottom line was there was no place to wait to eat and that was what they wanted to use the bar for; basically, to increase the waiting room area.

Commissioner Voytilla asked regarding the portion of the building where they were requesting the variance setback which was along 99th, specifically what type of roof structure, would it have for an overhang? Mr. Thompson said no, they were just going to continue what was there.

Chairman Maks mentioned Mr. Thompson said that they had looked at areas where they could go to the south but it impacted parking. Chairman Maks said technically, by code, they have more parking than was required.

Mr. Thompson replied that given the current size of the building, there were more parking spaces than was required. The proposed expansion would be the maximum taking into consideration the amount of cars they can park.

Chairman Maks noted that the approval of the original site plan was probably not the main argument, but related toward the others sharing the rights commonly enjoyed by other properties. The bottom line was that there was residential behind the property, and apartments just down the street. Supposedly with any new development, they were to facilitate pedestrian movement. Chairman Maks stated he agreed with everything Mr. Thompson had said. Since 1972 their bathrooms were small, the parking lot had not worked and he understood the applicant's issue with needing the space. His problem was not getting by number three. The applicant was doing this because he was losing business and that did not fall within their criteria. These special conditions did not result from actions of the applicant. He could honestly say live with the existing business. It did not need to be done specifically for the ADA. Why then were they requesting the variance, the bottom line was that they wanted to increase business or just to hold business?

Mr. Thompson responded they could see it that way, another way but to look at it was that they were expanding in order to better serve the customers who deal with the crowded conditions.

Chairman Maks agreed with him but nowhere in the criteria was need and these circumstances and conditions were resultant in the actions of the applicant.

Mr. Thompson suggested they go back to the setback, right across the street on 99th, Challenger Court, a 12 foot setback. Chairman Maks replied there was no argument there, but when this was approved in 1972, the traffic then did not compare to now. That was why they had other setback requirements now and do not have other land use actions acting as precedence.

Mr. Thompson stated he found staff's argument in number three intriguing and it looked to him like that argument would fly. Mr. Osterberg stated that McCormick's Fish House, if this were approved, and the new site plan were circulation plan are approved as proposed, they would have one surplus parking space, so it was not a greater number than that. Chairman Maks confirmed this, stating that by expanding they needed additional parking as they were losing some spaces.

Commissioner Voytilla, looking at sheet 2 of the site plan, the existing building had a 3 foot projection on the 99th side that created the 10 foot pre-existing setback. He asked if that bump out was just the fireplace. If the proposed addition was going to the edge of the fireplace, why was the addition not proposed to be more parallel or linear to 99th and avoid the setback variance request.

Mr. Thompson responded it had to do with the bar.

Commissioner Voytilla asked if they had looked at measures of re-configuring this to avoid the variance.

Mr. Thompson stated they could not avoid the variance. They could avoid 3 feet of the variance, but would still have 7.

Commissioner Voytilla asked if the addition measuring 11 x 21 feet, could that be turned 90 degrees.

Mr. Thompson responded there would still be a variance because it would be seven feet into the setback. He pointed this out on the exhibit.

Commissioner Voytilla asked Mr. Thompson, as an architect, had he looked at those types of things.
Mr. Thompson responded this was the best minimal solution to the problem. If they turned it the other way, essentially they would be destroying the bar.

Commissioner Voytilla asked if there was some place else to re-configure since they were remodeling anyway? Mr. Thompson said it was very nicely set up now, it was just too small.

Commissioner Voytilla said it was beyond an issue of not being able to afford it, they just did not have the facility to do it. Mr. Thompson confirmed this was correct.

Commissioner Heckman regarding criterion #2 under the variance of strict interpretation, he stated that this was where his main problem was and he wanted Mr. Thompson to convince him that the strict interpretation rule was going to deprive them. He also wanted to know how far from the setback line was the fireplace. Mr. Thompson responded 10 feet. Commissioner Heckman stated they wanted to take 27 feet north of the fireplace, that was what they were asking for, the entire thing.

Mr. Thompson stated he felt there was a special condition peculiar to the land, and that was the City's design review approval of a nonconforming use in 1972. It was still running with the land. That was also true of B. In their application form this was discussed at some length, the minimum setbacks.

Commissioner Heckman asked whether or not he knew if the building directly east of the applicant's structure, on the other side of 99th, had to dedicate 10 feet, and at this time they were 12 feet back, but did they also dedicate 10 feet, was it measured from that dedication line? Mr. Thompson stated it was measured from the 30 foot width of the street.

Chairman Maks thanked him and asked if the City Attorney had any final comments. With that, he closed that portion of the public hearing, and randomly polled the Commissioners.

Commissioner Johansen said he had problems on criteria two and three.

Commissioner Wolch stated the variance criteria was extremely difficult to meet and he was very sympathetic to the applicant in this case. He felt it did not really address the criteria and did not think they needed a variance to address the ADA concerns. Of the five criteria, he had difficulty with two and the strict interpretation would deprive the owner of a reasonable use. Special conditions do not result from the actions of the applicant, three, he felt that was not met. So, for these reasons, and in fairness to other applicants who had been before the Commission, he would have to support a motion to deny the variance. He commented that maybe the City Council could fix this problem.

Commissioner Voytilla stated with regard to criterion three, the applicant had not requested the ADA requirements which would make for even greater conditions with regard to access and restrooms. If this proposal was coming to them specifically for that and the hardships that they have to comply with, given the site, he was concerned they would also be looking at this addition to be part of something to add to the business. But he was not certain if there wasn't some other method by which an addition could be done. It had not been demonstrated that there was not some other means to bump out that bar. In criteria two and three, like his fellow Commissioners, he had problems with meeting these requirements. He was not convinced that the need was being driven specifically for some undue hardship but more of an expansion for the business itself and that was not what these were set up for. This being the case, he was not comfortable supporting an approval.

Commissioner Dunham stated she had more of a problem with criterion three than she did with two. She almost had four criteria out of five met, but that was not sufficient. She agreed it made sense to fill out the bump out that they already had which was created by the problem created in 1972. She questioned whether there was a further reduction of the setback to seven feet, because the final agenda did state a seven foot side yard setback, but that already had been answered. Because she did not see that it met the criteria number three, she reluctantly did not support this.

Chairman Maks stated with regard to the variance in front of them, it did not meet criteria two or three. Just because they approved a 10 foot setback years ago did not mean it should be done now. He did not necessarily think that it was the intent for them never to have an entire grid system either but they don't and he was not saying that they were going to continue doing that. With regard to the past actions and abutting properties, the argument did not hold water in today's goals and plans of what they were trying to achieve. Not meeting criteria three, both parts was the biggest issue. The ADA, although an issue, could be addressed in a lot of other ways. Having been in that restaurant many times since 1972 he could not see where a wheel chair would be able to get through that bar no matter what they did on that one side. He could not support the application because of two and three. However, the upbeat part was that this could be appealed. City Council could over turn the Commission's decision because they might not review the criteria like the Commission does. He then asked if it should be denied.

Commissioner Heckman responded that criteria one, two, three, had not been met. Numbers four and five could probably fit. He would not support the variance.

Commissioner Johansen stated that he was waiting to hear some encouraging possibilities. He believed that two and three were not met; they had made a case for one, four and five. He had to vote for denial.

Chairman Maks stated that for clarification of his comments with regard to the appeal, because much of the case had been made on the previous intent, Council would be the agency to determine intent, so they could possibly seek direction through them.

Mr. Osterberg requested that the Commission might consider, in their motion for denial, a denial without prejudice. By doing so, that would provide the applicant the opportunity to

reapply for another variance within the year. Otherwise, the alternative would be that they could not reapply for the variance for one year. He wanted to preserve that opportunity for the applicant.

Chairman Maks also reminded the Commissioners that if they were in agreement with Mr. Osterberg's statement, the motion would need to be made without prejudice.

Commissioner Heckman MOVED and Commissioner Johansen SECONDED a motion for denial of VAR 99-00024, McCormick's Request for Variance, as the request did not meet criteria one, two, and three of the criteria out of the five required as conditions for variance.

Commissioner Voytilla asked if Commissioner Heckman was taking the suggestion of staff? Commissioner Heckman said no, because he could not see where a variance could come back. However, if he wanted to make an amendment it could be considered. Commissioner Voytilla stated that that is their decision, it would give them a tool.

Commissioner Wolch asked if the motion maker would consider adding criteria 5 as part of the reason for the denial? If not, he wanted to hear the rationale. Commissioner Heckman said that if it were granted, it was the minimum possible, but they were not granting the variance so it could not be a yes or no.

Commissioner Johansen agreed with Commissioner Heckman for omitting the no prejudice. He did not think, under the criteria, that adjusting a request for a lesser variance would go anywhere.

Chairman Maks directed his comments to Commissioner Voytilla, and stated he understood what he was trying to do. It was a viable business and he did not want them to be hurt. Chairman Maks asked Commissioner Voytilla's opinion about other opportunities down the road where a minor variance might be sought, and something could be achieved.

Commissioner Voytilla stated he did not know. However, if the opportunity presented itself, even if the possibility of moving one foot, it would trigger the need for a variance. He did not see where they were giving them anything, it was a tool.

Chairman Maks asked staff if it was correct that without prejudice, in the motion does not waive fees, it would just allow them to re-apply? Mr. Osterberg confirmed that was correct.

Commissioner Voytilla MOVED and Commissioner Dunham SECONDED a motion to amend the main motion that they add "without prejudice" so that the applicant could have the opportunity to bring this forward within the year and not be delayed.

Commissioner Johansen stated there may be something out there that more creative people could come up with and so he supported the amendment.

Commissioner Heckman called for the question, the amendment to the main motion CARRIED with Commissioner Heckman voting no.

The question was called for the amended motion, the motion CARRIED unanimously.

Chairman Maks stated the Commission had a new member coming on board next week and an alternate.

The meeting ADJOURNED at 11:00 p.m.