



**City of Sherwood
PLANNING COMMISSION
Sherwood City Hall
22560 SW Pine Street
Sherwood, OR 97140
January 8, 2008 – 7PM**

1. **Call to Order/Roll Call**
2. **Agenda Review**
3. **Consent Agenda – Draft Minutes from November 27, 2007**
4. **Staff Announcements**
5. **Council Announcements** (Council President Dave Grant, Planning Commission Liaison)
6. **Community Comments** (*The public may provide comments on any non-agenda item*)
7. **Old Business:**
 - a. **Continuation - Public Hearing – Former Driftwood Mobile Home Park Plan Amendment (PA 07-01)** – The applicant has requested to change the zone of the former driftwood mobile home park located at 21305 SW Pacific Highway (assessor map 2S130D, tax lot 1200) from Medium Density Residential Low to Retail Commercial.
 - b. **Continuation - Public Hearing – Oregon Street Industrial Park (SP 07-08)** – The applicant has requested site plan approval to construct three industrial buildings totaling 35,653 square feet with associated parking and a 105,000 square foot storage yard. This property is located in the Light Industrial (LI) zone and is generally located north of Oregon Street, southeast of the railroad tracks and west of Cedar Creek, at 15104 SW Oregon Street.
8. **New Business:**
 - a. **Old Town Lofts Modification (SP 07-13)** – The applicant is proposing to modify the approved site plan (SP 04-07) in Old Town in order to change the second floor from residential to office use.
9. **Comments from Commission**
10. **Next Meeting:** January 22, 2008 – Zobrist office site plan. Work session topics at close of business meeting: Commercial/Industrial design standards, Old Town fee/process discussion
11. **Adjournment**

City of Sherwood, Oregon
Planning Commission DRAFT Minutes
November 27, 2007

Commission Members Present:

Chair Patrick Allen
Jean Lafayette
Dan Balza
Lisa Walker
Matt Nolan
Todd Skelton

Staff:

Julia Hajduk, Planning Manager
Stephanie Guediri, Recording Secretary

Commission Members Absent:

Adrian Emery

Council Liaison – None Present

City Attorney – Chris Crean

1. **Call to Order/Roll Call** – Stephanie Guediri called roll. Todd Skelton was initially marked absent but subsequently arrived at 7:07 PM.
2. **Agenda Review** - Chair Allen announced that the Commission would be hearing the Oregon Street Industrial Park public hearing and discussion in preparation for the Council session on strengths, weaknesses, opportunities and threats. There were no changes to the agenda.
3. **Consent Agenda** – Minutes from the November 11th, 2007 session were approved by vote:
Yes – 6 No – 0 Abstain - 0
4. **Announcements** – Julia Hajduk introduced the new Assistant Planner, Zoe Monahan. Heather will conduct a work session on commercial/industrial design standards with the Commission about the first week of January. The next Brookman Road Steering Committee meeting is December 12th. Julia announced that Tom Nelson accepted the position of the Economic Development Manager and will start on December 3rd. Chair Allen asked if there were any questions. There were none.
5. **Community Comments** – Chair Allen asked if there were any community comments on topics not on the agenda. There were none.
6. **New Business – Public Hearing – SP 07-08; Oregon Street Industrial Park:**
Chair Allen read the rules for the public hearing process. He then asked Commissioners if there was any ex parte contact, conflicts of interest or bias to declare. Commissioner Skelton arrived just prior to Commissioner Allen asking for declarations.

Jean Lafayette asked if she needed to disclose her participation in the DEQ public meetings that were held but Chris Crean stated only to note that she was there. Matt Nolan stated he had ex parte contact with a co-worker who lives adjacent to the property in regards to making sure that

the co-worker was aware of the public hearing tonight. No members of the audience questioned a Commissioner's ability to participate.

Chair Allen opened the hearing at 7:08 PM.

Julia Hajduk, Planning Manager, explained that the parcels involved were part of a partition separating the property just north of the site. By doing that, a 50 foot wide private access easement was required as a condition. In reviewing the partition staff report, it appeared that the road was to be built at the time of the site plan approval. She added that she has another application submitted by the property owners to the north to build the access road which conflicts with the access shown in this application. Attorneys disagree on who has authority to submit an application. Our attorney advised that this is a civil issue. We need to make sure that it meets the code and does not preclude access to adjacent properties in accordance to code. Julia referred to exhibit A in the packet which is the applicant's submittal information. Exhibit B in the packed was submitted on November 16th. The applicant's additional submittal did not allow enough time for it to be reviewed thoroughly by outside agencies. Prior to the submittal of exhibit B, we were recommending denial due to certain conditions that weren't being met. Julia then referred to exhibit B and determined that it may be possible to condition but a thorough review was not yet done. She added that there are three main issues on this site:

1. Parking. The site is tight for parking and the parking provided is based on industrial use. The plans indicate this is an office park which requires a higher parking standard. Upon discussing this with the applicant, he indicated he understood that he would be limited to industrial uses which can be limiting to seeking tenants. Julia explained that at the industrial uses only, 1.6 parking spaces are required and with using the code provision that allows a reduction of 25% to accommodate cross-patronage, the applicant can reduce the required parking by 25% which in turn allowed us to condition compliance with several standards including providing the ADA parking spaces and addressing the street standards.
2. Access in the 50 foot easement. A private street still has to be constructed to a public street standard according to our code. Within the area they are showing, this can be accomplished with more parallel parking and a reduction in perpendicular parking. The Engineering Department is recommending that the street be public, but at this time, it is a private street. Also, Tualatin Valley Water District indicates that the water lines need to be in a public right-of-way, not an easement.
3. Storm Water. Clean Water Services requires that the Oregon Street improvements be included in the storm water treatment. The applicant is not proposing taking the additional storm water off-site to the adjacent property to the east, an orphan site managed by DEQ. Lee Harrington, Senior Project Engineer, referred to the CWS code (chapter 1.03.15), specifically condition number 7, which indicates that paving and roadway construction needs to have water quality treatment. This is not clearly shown by the applicant's design. Julia added that since it's crossing property lines, at the very least it needs to be in a public easement which is why Engineering is recommending that it be public right-of-way.

Jean Lafayette requested clarification on page 13 of the staff report. The 25% reduction refers to operating on different days or at different times of the day. Do industrial offices have the same requirement?

Julia responded that it could be more than a 25% reduction if the applicant can demonstrate that they operate at different days and different times and show greater cross-patronage.

Chair Allen asked Commissioners if there were any additional questions of staff at this time prior to receiving the applicant testimony. There were none.

Patrick Lucas, 20512 SW Roy Rogers Road, Suite 150, Sherwood, OR. 97140. He has worked on this project since 1999 and the remedial activities were nearly complete until an underground rail car was discovered full of contaminants. Originally there were two-3 lot partitions: tax lots 400 and 500. He did it as an easement so he could have a setback. He didn't record the tax lot 500 partition due to Provident Development wanting to place a mini-storage there. There is one lot in the back and two properties served by the access easement. However, the mini-storage site didn't come through so he applied for a grading permit to construct a private road. He explained that the concrete slab has arsenic in the concrete and that DEQ gave him approval to use that concrete as road base. The grading permit application was denied 7 months later. In March of 2006, the Community Development Director at that time stated that the city had new standards and the applicant would need a new site plan as it had expired. After speaking with Planning staff, he reduced the size of the buildings and made parking outside of the easement. This makes 45 feet of travel lanes reduced to 34 feet in parts. He opposes dedicating right-of-way as he would lose building number 3, costing him one million dollars. He wants to keep the private easement. He added that the original design contained a retaining wall to get sewer service to tax lot 500. Planning staff opposed this idea, therefore he agrees to get rid of the retaining wall. DEQ agreed for the applicant to hard-pipe the storm water across tax lot 600. He has an agreement letter from DEQ that he can show the Commission.

Dave Wechner, 12011 NE 99th Street, Suite 1530, Vancouver, WA. 98682. He prepared a memo for this meeting (given to each Commissioner just before the meeting started). He described this memo as clarifications to the staff report and read each point in summary to the Commission.

Briefly, he outlined AKS's responses to easements, maintenance agreements, design standards, and parking. He continued with specific references to plats, retaining walls, landscape buffers, access, striping of crosswalks, and screening the storage area from the railroad tracks.

Chair Allen asked if Condition C.1.b. regarding retaining walls poses an issue for the applicant and Dave Wechner replied no. Chair Allen also asked about the 3 parcel standard on private streets and how it pertains to tax lots 900, 1000, and 1100. Dave replied that 900 and 1000 are served by a different access than 1100.

Jean Lafayette asked for clarification regarding outdoor sales and displays. Patrick Lucas stated that they wouldn't have outdoor displays. Jean asked if that can be added as a condition and Patrick agreed. Jean also asked for clarification on the tree issue and why they needed to be removed. Patrick stated that they are in the middle of the future right-of-way and he isn't willing to save them and postpone the development. Jean asked if it's 1 foot of right-of-way that we

were trying to gain that would wipe out all of the trees and Lee Harrington responded that it's true that we want the additional 1 foot of right-of-way but the trees aren't located within that. The trees are closer to the street side and in an area that would be curb or street as opposed to an area that would ultimately be the green strip that would normally hold street trees.

Lance Ludwick, Professional Engineer for AKS, 21550 SW Mountain Home Road, Sherwood, OR. 97140. He addressed the street tree issues. He clarified that Mr. Lucas wanted to keep them and asked staff to review the criteria of the TSP for a sidewalk design that would wind around the existing trees. The staff-report did not comment on this. The trees are currently in the proposed sidewalk area.

Jean Lafayette asked if we would have to wipe out all of the trees to put in a sidewalk and Julia responded that's what was proposed and she didn't recall any conversation about trying to save the trees. Julia added that there are provisions in the code that allow modifications to street standards in order to save the trees.

Jean asked if the Oregon Self-Storage application had expired and Julia confirmed that it did.

Bill Blakesly, Owner, Billet Products, 20875 SW Chapman Road, Sherwood, OR. 97140. Mr. Blakesly was originally called up to testify during the applicant's time but Chair Allen requested that he testify as a proponent instead of using the applicant's remaining time.

Chair Allen opened the hearing to public testimony, beginning with proponents of the application. Bill Blakesly continued his testimony.

Bill stated he wanted to see the project approved due to the fact that Adams Street is now coming down his property line that he dedicated for the access 22 years ago. Adams Street will take a half-acre away from him. He added that Adams Street construction will change his property's entrance from the southwest side to the northwest side and this interferes with flow and storage for him. He wants to relocate his storage facilities to the 2 ½ acres on the subject's property.

Chair Allen stated that his plan relies on the rail line not being used frequently. Bill stated the rail line would be used frequently. Chair Allen stated Bill would be crossing the rail line regularly. Bill stated he would but just to park his fleet trucks and to place storage materials. Bill added that he was told by the designers of Adams Avenue that he would have access to turn left off of Adams and on to Oregon. He would also have access coming down Oregon to turn right on to Adams with a proposed entrance drive in to the yard about 100 feet off the corner. The main entrance would be up in the northwest corner would allow movement in either direction.

Chair Allen asked staff if the TSP called for the railroad crossing on Oregon to be closed and for Oregon to continue on the south side of the tracks. Julia wasn't certain about this. Chair Allen wanted to be informed at a later time about this.

Chris Crean, City Attorney, stated that staff was working with ODOT rail in getting a permit to rebuild the crossing to accommodate Adams as it goes through but as for Oregon Street, he isn't sure what the result will be.

Chair Allen asked if Adams would then cross the tracks and Chris responded that it will intersect with Oregon Street at some point and either Adams or Oregon will cross the tracks. Julia added that she will brief the Commission at a future meeting. Chair Allen stated that there was a lot of time spent on modeling traffic north and south of the tracks based on the redevelopment of the cannery site and Oregon Street not crossing the tracks. If the current TSP states there is no crossing of the railroad tracks, an amendment will be needed to the TSP. Julia will speak with Engineering about it and address it in a future work session.

- Patrick Lucas stated that Bill Blakesly had an agreement with the Catholic Church to use the property next to his for parking. The previous City Manager ended that agreement by stating the Church's property was zoned residential. This is why his trucks are parked on Patrick's property.

Bill Blakesly added that he has 50 trucks coming in and out daily and half of them use Oregon Street and Tonquin to I-5 South. It's known that Adams Street has put a hardship on him not to have access to Oregon Street.

Chair Allen then opened the hearing to opponents.

Clarence Langer, 15585 SW Tualatin Sherwood Road, Sherwood, OR 97140. Mr. Langer was confused by the notice he received and Chair Allen and Julia clarified that it was the correct notice and when the accompanying map showed "west of Cedar Creek", staff meant to show "west of Rock Creek". Clarence indicated that the project is a good idea for the site. He added that in 2003, he testified about the DEQ clean up and it's still a problem. He disbelieves Mr. Lucas has a letter from DEQ allowing him to use contaminated concrete and wants to see the letter for himself. With the Adams Street improvements, Bill Blakesly will lose space. He added that he wants to know when the vote will take place and he hasn't heard anyone mention traffic impacts on Oregon Street.

Chair Allen responded that the standards for traffic were addressed in the staff report and there was no disagreement about them that has not been raised at this point.

Bill Monahan, Lawyer representing Provident Development Group, 2 Centerpointe Drive, Lake Oswego, Oregon 97035. He directed the Commission towards a letter from his office that outlines the concerns related to the initial submittal (included in the Commission packet). His concerns involve unanswered questions. He believes that since this is the first evidentiary hearing, the Commission is obligated under ORS 197.763 Section 6a to continue this hearing to a date certain. He wants to see the memo from AKS Engineer, Dave Wechner, that was submitted earlier that evening. The project has changed and the revised site plan has not had adequate review. The application causes access problems. The parking layout is a significant problem. There are 12 spaces adjacent to proposed building number 1 that are perpendicular spaces that would back out on to the access drive and the sidewalk area. He stated that staff noted that 51 spaces are on the application and that's adequate except we don't know what the proposed use is going to be. He added that the number of spaces can be reduced by 25%. Under Section 16.94.010.04 Multiple Mixed Uses, it says that the 25% reduction can occur when there are several uses occupying a single parcel, which this isn't. He believes that 17 spaces will be lost off of the access drive. He continued that foregoing the retaining wall should lead to a new grading plan which will result in a different site plan. Either the building size needs to be

reduced or the maneuvering of the trucks needs to be changed. His recommendation is that the Planning Commission require a new, revised plan and continue this hearing to allow for additional testimony on the new information that has been submitted and also for the new information the Commission can require the applicant to submit. He clarified that 6a states that prior to the conclusion of the initial evidentiary hearing, any participant may request an opportunity to present additional evidence, arguments or testimony regarding the application.

Chair Allen asked staff if the Commission had an obligation to keep the written record open but not continue the hearing on request.

Chris Crean verified that the subsection goes on to say the Commission shall grant such requests by continuing the public hearing, or, leaving the record open for additional written evidence, arguments or testimony.

Chair Allen will take Bill Monahan's request under advisement.

Since there were no more opponents, Chair Allen returned to the Applicant for rebuttal.

Dave Wechner referred to the two traffic studies in the Commission's packets along with a parking study stating that the configuration of the parking was recommended to be angled next to Oregon Street and all of the spaces are outside of the access easement.

Lance Ludwick stated that they agreed with staff's conclusion regarding Section 16.94.010.04.

Jean Lafayette clarified that she had the most current site plan that showed the 45 feet and 34 feet for the driveway and that Patrick Lucas's statement was that at the 34 foot driveway, the parking spaces there do not go in to the existing access easement. Patrick Lucas stated the actual travel lane was 34 feet and the access easement was 50 feet.

Julia was concerned that Jean was referring to an 8 ½ x 11 sheet of paper and Julia stated that she did not receive any updated 8 ½ x 11 sheets that were current. She asked Jean to refer to the full-size plans.

Patrick Lucas added that the travel lanes on Oregon Street are narrower than the private access easement travel lanes.

Jean wanted Patrick Lucas's final answer on keeping the street trees or not. Jean suggested to Patrick that the Planning Commission could say to move the sidewalk behind the trees and Patrick Lucas agreed.

Chair Allen asked for final staff comments.

Julia finished her comments by stating that since the record was requested to be left open, staff would like to provide additional information and responses for the revised plans as they did not have time to conduct a thorough review. Julia went on to discuss that in regards to the 50 foot access easement, there was a road with sidewalk and landscaping which basically was a local street on a private drive as approved with the original Provident application. This was approved previously but not built and this isn't consistent with what the applicant is now showing. In

response to Clarence Langer's comments, she will also review the Notice as staff strives to write them as perfectly as possible. She added that getting DEQ approval is a condition. Traffic impacts have been addressed. Regarding the issue of parking reduction, there are 3 structures on 3 parcels of land therefore the standard does apply. If this standard did not apply, staff would not recommend approval because staff couldn't reasonably condition compliance with all of the standards. The access private road is an issue. The staff report contains a variety of standards relative to access and the Commission has a history of requiring shared access where possible. Staff is recommending that a joint-access easement be provided to the adjacent property as well as the property to the north.

Chair Allen questioned the public ownership of the street and how the widths and set-backs would be affected taking out the buildings on one side. He also asked if the Commission could establish different set-back standards for this circumstance or because of public ownership, are we tied in to the set-back standards and do we create our own problem?

Julia responded that we couldn't create a situation that would be considered non-conforming. There is no side yard set-back except for when it abuts a residential zone and then it has to be 40 feet from the public right-of-way.

Chair Allen confirmed that the applicant then is correct. Julia confirmed it would affect the set-backs, however, as they are shown, the set-backs are 20 feet away from where the road would be. Julia also confirmed that you could park in the set-back, but you wouldn't be allowed to back out in to a public road. Julia will speak to the applicant about how they can meet this standard.

Chair Allen asked about Tualatin Valley Water District's requirement that the facility be under a public street.

Lee Harrington stated that Section 16.118.050 of the code states that new private streets shall be prohibited unless it provides access to two or fewer lots. The applicant shows the private street accesses 4 lots. The code goes on to read that unless specifically authorized, a private street shall comply with the same standards of a public street.

Jean Lafayette wanted to know who would provide the specific authorization and Lee gave an example like Paul Norr, Hearings Officer, interprets the code to mean that it requires a letter of concurrence from the City Engineer. This means that the applicant has to submit for that and the City Engineer will have to concur with the submittal. Without the concurrence, Paul wouldn't make the decision.

Chair Allen states that presumably then, the Commission would have leeway to interpret the code as well which Chris Crean confirmed.

Chair Allen called for a short recess at 8:25 PM in order for the staff, the Commission and the applicant to discuss the next meeting time for this project before the end of the 120 day period.

The Commission reconvened at 8:35 PM.

After discussion on the possible hearing dates, the following motion was made;

Jean Lafayette moved that the Planning Commission continue SP 07-08, keeping the written record open for 10 days, with all submittals in by December 7th at 5:00 PM, rebuttal to new information due by December 14th at 5:00 PM and final applicant submittal due by December 21st at 5:00 PM and the next hearing date will be January 8th, 2008.

Matt Nolan seconded.

Vote was taken:

Yes - 6 No - 0 Abstain - 0

Motion carried.

7. Comments by Commission - Chair Allen moved to the SWOT analysis. There is a Council meeting date set for December 12th from 6:00 PM to 7:00 PM which is the same night as the Brookman Road Steering Committee. Chair Allen will present the SWOT analysis to the Council and Julia will have a staff member attend also.

The following was discussed for the SWOT analysis:

S (Strengths): Outreach to community / community engagement during large scale long-range Planning activities
Commitment to training of the Commission
Full strength Commission
Long-range Planning
Master Planning/Sewer and Water
Increased legal presence at hearings (decreases appeals)
Strong pool of applicants for open Planning and Planning Commission positions
A burst of commercial/industrial development

W (Weaknesses): Newness of staff
More training needed for Commissioners (web-casts available)
Willingness of Commission to accept incomplete/haphazard applicant submittals

O (Opportunities): Expand communication vehicles
Continue scheduling joint sessions with Boards and Commissions
Make connections with neighboring jurisdictions and groups
General education for the public in the Sherwood newspaper
Leadership opportunities for local High School students to observe Planning Commission meetings and/or learn about Planning
Pause in residential construction

T (Threats): A burst of commercial/industrial development without design standards in place
Code: Where is it required that a use determines commercial design standards versus the zoning?
Increased legal nuances that require more legal analysis

8. **Next Meeting** - December 11th, 2007: Continuation of the Former Driftwood Mobile Home Plan Amendment (PA 07-01).

9. **Adjournment** – Chair Allen adjourned the session at 9:24 PM.


End of Minutes.

Pfeifer Comprehensive Plan Amendment and Zone Change

TO: PLANNING COMMISSION

Pre-App. Meeting: November 2, 2005
App. Submitted: July 20, 2007
App. Complete: May 14, 2007
120-Day Deadline: February 6, 2008
Hearing Date: November 13, 2007
Cont'd to Dec. 11, 2007

FROM: PLANNING DEPARTMENT



Julia Hajduk, Planning Manager

At the November 13, 2007 Planning Commission meeting, the Commission held a public hearing, took public and written testimony and left the record open for the submittal of additional information by both the applicant and the general public.

The Commission should refer to the original packets distributed for the November 13th Commission meeting which included exhibits A-E. Distributed and/or entered into the record at the Commission meeting on November 13th were Exhibit F (E-mail from Marah Danielson at ODOT), Exhibit G (written testimony from Margaret Smith – read into record), Exhibit H (written testimony from Joe Broadhurst – read into record) and Exhibit I (submittal from Mr. Pfeifer including 11/6/98 letter from ODOT, 11/24/98 letter from ODOT, 12/1/98 letter from ODOT, 12/3/98 letter from ODOT and an undated e-mail from Geoffrey W Kaiser).

After hearing the testimony and brief discussion from the Commission, the applicant was asked to provide additional information to demonstrate the timeliness of the project and to support the need for the zone change in light of the potential that the Langer property could be developed as retail versus industrial as envisioned in the Economic Opportunities Analysis. The applicant has submitted a letter from Leslie Hauer discussing the Commission's concern in more detail and a memo from Eric Hovee, E.D. Hovee and Company LLC, discussing the economic need of the proposed change. This submittal is attached to this memo and included as **Exhibit J** to the land use record.

Staff was asked to provide additional information on the following:

Time horizon for the Capital Improvement Program (CIP) – Staff confirmed with the City Engineer that the CIP list matches the TSP project list and has a 20 year time horizon. The discussion regarding this had to do with capacity building/adding projects that potentially could be added to the TSP and/or CIP or proposed by the applicant in order to demonstrate compliance with the Transportation Planning Rule (TPR). Without proposing or providing for improvements necessary to accommodate “worst-case” transportation scenarios based on the proposed zoning, the zone change would not comply with the TPR unless the trips are limited to the existing “worst-case” of 480 trips per day.

Additional information on the Langer project – The Langer PUD modification and Development Agreement is scheduled to be considered by the City Council the evening of December 4, 2007. If

approved, the PUD would be modified to require the construction of Adams Avenue south from Tualatin Sherwood Road to Oregon Street and north from Tualatin-Sherwood Road to Pacific Highway as part of Phase 6 and 7 (the portion south of Tualatin Sherwood). The PUD modification would also include the construction of Century with Phase 6 and 7 as well. Part of the approval of the PUD modification would be the acknowledgement that the PUD continues to be in the public interest and that the PUD, in accordance with the existing code, is permitted to utilize the use list permitted at the time the PUD was originally approved. In the case of the Langer PUD, this includes the provision for retail commercial activities. The zone would continue to be light industrial and may be developed with any light industrial uses as well as retail commercial uses. At this time, no site plan has been submitted for review so it is not know the amount of land that might be developed with retail uses versus industrial type uses.

Background on the Capacity Allocation Program (CAP) – The CAP ordinance was developed and adopted before the current TSP. The purpose was to help preserve capacity along 99W at a Level of Service “E” or greater by limiting the number of trips and requiring mitigation where necessary to preserve the capacity. While the original analysis was based on a set of land use assumptions, the implementation is through the development code which does not require (or even allow) for a review and revision based on changes to the assumptions. The CAP requirements limit trips based on uses, not zones. For example, if a church locates in a commercial zone, they do not have to comply with the CAP even though the base analysis assumed that land would be CAP limited. However, in the case of the proposed zone change, the change itself must comply with the Transportation Planning Rule. At time of site development, an application would be required to comply with the CAP and provide additional traffic analysis (and potentially mitigation) regardless of whether they complied with the CAP and were under the 480 trips per day as presently proposed in the conditions.

No other written comments were received for this project. Based on review and consideration of the ODOT comments, the applicants’ comments at the hearing and in their supplemental materials, staff continues to recommend approval of the requested zone change with the following modification to the proposed condition in the 11/6/07 staff report:

1. A condition of this zone change is that the site is limited to 480 trips per day. If the applicant or future property owners wish to allow for more trips, a Plan Amendment with TPR analysis will be necessary to remove the trip limit.

2. Prior to this zone change becoming final, the applicant shall provide a written agreement, recorded with the property and binding on all future owners that all development on this parcel shall be subject to the City's site plan approval process and that indicates the site plan approval shall not be granted for uses that, taken cumulatively, exceed the trip generation ~~equivalent for the existing Medium Density Residential (MDRL) designation (approximately~~ of 480 trips per day) unless and until:

- 1) Transportation improvements to allow for the additional trips have been installed, funded, or included in the City's Capital Improvement Plan; or
- 2) The City's Plan is amended consistent with the Statewide Planning Goals to provide otherwise.

November 27, 2007

Julia Hajduk, Planning Manager
City of Sherwood
22560 SW Pine Street
Sherwood, Oregon 97140

RE Pfeifer Application for Comprehensive Plan and Zoning Map Amendment
File PA 07-01

Dear Ms. Hajduk,

We have considered testimony and discussion at the Planning Commission meeting of November 13, and offer the following comments as our final response and submission for the record:

1. A professional land economist, Eric Hovee, of E. D. Hovee & Company, LLC, of Vancouver, Washington, has been retained to review the economic issues raised, including the "need" issue. That review of the Pfeifer proposal included the Economic Opportunities Analysis and the Langer property. A more detailed report can be provided, but not in the time available to us; however the Hovee Report demonstrates a continuing need for commercial land under any view of other available commercial lands.
2. The Planning Commission was concerned about the timeliness of the request. We believe this is the best time for this property to be considered for redesignation. It is now vacant and some re-use is likely to occur that will commit the use of the site for the economic life of the new project. It was only left out of the general commercial zoning in the area because of its underlying residential use, which proved uneconomic. Unlike the residential market, the commercial property market in the Portland area is still vibrant. The need has been shown, the property is available, and thus the site should be part of the continuum of commercial uses along this portion of Highway 99W. With the recommended condition, the use and impacts of the property can be calibrated and resolved.
3. The condition of approval that would limit trips from the site is acceptable; however we would request that the reference to "MDRL" Zoning be eliminated.

We believe that the application and supporting information responds to the Planning Commission's concerns and is sufficient to justify a recommendation of approval to the City Council, with the condition of approval suggested by ODOT.

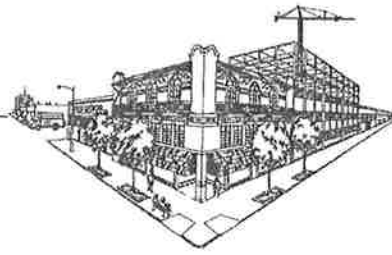
Thank you for your assistance.

Yours truly,

Leslie Ann Hauer AICP

E. D. Hovee & Company, LLC

Economic and Development Services



MEMORANDUM

To: Leslie Ann Hauer, AICP
From: Eric Hovee
Subject: Review of Economic Need – Pfeifer Trust Proposal for Commercial Designation
Date: November 27, 2007

On behalf of the Donald V. and Virginia E. Pfeifer Trust (as Applicant), E. D. Hovee & Company, LLC has conducted an initial review of the proposal for a Comprehensive Plan map amendment and zone change for 5.74 acres of property at 21305 SW Pacific Highway. Proposed is redesignation from Medium Density Residential (MDRL) to Retail Commercial (RC).

This initial economic assessment is based on a review of:

- The recently completed *City of Sherwood Economic Development Strategy Final Report* which includes an Economic Opportunities Analysis (EOA); and
- Information regarding both the Applicant's submittal and the proposal currently being considered by the Sherwood City Council for what is known as the Langer PUD.

ECONOMIC OPPORTUNITIES ANALYSIS

The EOA portion of the recently completed city-wide *Economic Development Strategy* indicates that 20-year demand for vacant commercial land may range from 15 acres (with low growth) to 106 acres (with high growth). Vacant land supply identified by the EOA is only 13 acres, meaning that *net land need* (or demand less supply) ranges from as little as 2 to 93 acres.

EOA Methodology & Implications. Differences between the alternative (low, medium, high growth) forecasts contained in the EOA relate to:

- *Capture of countywide employment* – with the low growth scenario based on Metro job forecasts and the high growth scenario reflecting what the EOA terms as a “strategic ratio of jobs to population” by 2025.
- *Rate of refill* – ranging from a Metro-wide average (of 50%) for pure retail commercial use with the low growth scenario to a high growth rate (of 30% reflecting a blend of lower refill rates including commercial service/office).

- *Employment density* – ranging from 350 square feet per commercial retail employee (with low commercial land growth) to 450 square feet (with high growth).
- *Site coverage or floor area ratio (FAR)* – ranging from 0.44 with low growth to 0.35 with high growth.

Our experience with commercial development both in the Portland metro area and elsewhere in the Pacific Northwest is that the high growth scenario represents the most reasonable expectation of commercial demand to serve the needs of Sherwood residents over the next 20 years.

High growth demand is more consistent with: a) high rates of observed population growth (averaging 4.8% annually from 2000-2005); b) a refill rate reflective of both retail and related service-commercial uses; c) employment densities more consistent with observed experience; and d) site coverage necessary for adequate on-site customer and employee parking.

Relationship to Strategic Economic Development Planning. The “high growth” EOA scenario appears most consistent with the city’s Economic Development Strategy – including the *objective* for the city to provide the employment land mix needed to “be self sustaining” and the *economic development policy* that the city “will seek to diversify and expand commercial and industrial development in order to provide nearby job opportunities and expand the tax base.”

This approach also best serves *commercial policies* of the Economic Development Strategy which read as follows:

- Policy 1. Commercial activities will be located so as to most conveniently service customers.
- Policy 2. Commercial uses will be developed so as to complement rather than detract from adjoining uses.
- Policy 3. Highway 99W is an appropriate location for commercial development at the highway’s intersections with city arterial and major collector roadways.
- Policy 4. The 1983 *Sherwood Old Town Revitalization Plan* and its guidelines and strategies are adopted as part of the Sherwood Comprehensive Plan.

Due to its visible Highway 99W location and adjoining commercial uses (including hotel and medical), the subject Pfeifer site appears well positioned to meet Commercial Policies 1-3. This need becomes more apparent as the relatively limited remaining vacant/redevelopable inventory becomes committed to commercial use.

With respect to Policy 4, the site’s location is consistent with the city’s Urban Renewal Plan’s economic development goal of promoting private investment in “both Old Town and Six Corners.” Our understanding is that the City of Sherwood Comprehensive Plan was previously amended to move the central business district to Pacific Highway “principally because the historic town center is too small and developed to accommodate expected growth” (per Ordinance 615, October 2, 2003).

Summary EOA Observation. In summary, our initial review would encourage use of a “high growth” scenario as most appropriate for commercial needs determination for the City of Sherwood. This approach best reflects both city policy objectives and commercial development experience in comparable jurisdictions. With this approach, the EOA analysis indicates a net need for an added 93 acres to meet projected 20-year commercial land needs. The applicant’s 5.74 acres represents a logical location to address a portion of the city’s identified commercial land need.

OTHER CONSIDERATIONS

Conclusions resulting from the EOA may be affected by other considerations including: a) potential inclusion of the Langer PUD within the commercial land use inventory; b) other imminent changes to the commercial land inventory; and c) current unmet commercial retail need in Sherwood.

Langer PUD. Our understanding is that the Sherwood City Council is currently considering modifications to the Langer PUD (Proposed Resolution 2007-081). If approved, these modifications would have the effect of adding Parcels 6, 7, and 8 (totaling 57.74 acres) to the commercial inventory. While zoned as light industrial (LI), extension of the initial 1995 PUD would allow for General Retail Trade activities that otherwise are no longer approved within the LI zone.

A wide range of non-retail uses also are allowed within the LI designation for these parcels, including light industrial, utility, and commercial office activity. While 57.74 acres represents the maximum of commercial retail activity that could developed, the likelihood is that the actual amount developed will be well less than indicated by this potential figure. Also noted is that another 9.51 acres of property is associated with Parcel 4 (but is not currently vacant due to existing mini-storage and residential uses on two tax lots).

Assuming that this PUD proposal is approved, the potential addition of up to 58 vacant acres with commercial potential (not included with the recent EOA analysis) could serve to reduce but not eliminate the net commercial land need for Sherwood. In effect, the net need would be reduced from 93 acres to perhaps 35 acres (but likely more depending on the extent to which the Langer PUD property is actually developed for commercial use).

This is a need that still is appropriately met, in part, by the subject Pfeifer property. The Pfeifer property also offers the advantage of more direct frontage and associated visibility to the Highway 99W corridor.

Removal of Land from Commercial Inventory. Our understanding is that some commercial vacant and redevelopment property identified by the EOA may become committed to development – including the GC site to the south of the applicant (to be occupied by a hotel) and a currently vacant/former truck garden (currently for sale to the north). When committed, either or both of these transactions will have the effect of further reducing a currently limited inventory of vacant or readily redevelopable commercial sites along the Highway 99W corridor.

Unmet Retail Demand. As a final observation, it is noted that a preliminary evaluation of retail sales data compiled by our firm indicates current unmet demand (or sales leakage) in Sherwood for retail sectors including auto dealers/service, furniture/home furnishings, electronics/appliance, apparel, and general merchandise. This represents an existing need to better serve the current Sherwood population which is not accounted for by the EOA (for which land needs are based solely on future growth rather than unmet need of the existing population).

This existing need adds further to the near-term commercial land requirement to better serve the current population. We are now evaluating the associated land needs and can provide this as supplemental information.

SUMMARY OBSERVATIONS

In summary, our initial economic review supports the Applicant's proposal for commercial redesignation due to factors including:

- Appropriate location of the subject property for commercial use – on Highway 99W and with potentially adjoining similar uses
- Consistency with adopted city policy including the recently completed *City of Sherwood Economic Development Strategy* and associated EOA.
- EOA determined need with additional commercial land particularly under realistic continued conditions of high growth.
- Level of need more than adequate to support designation of both the Pfeifer and Langer properties for commercial use.
- Need augmented by potential near-term removal of parcels from the existing commercial sites inventory coupled with opportunity to better serve retail demand generated by existing Sherwood residents.

E. D. Hovee & Company appreciates the opportunity to provide this initial economic review on behalf of the Pfeifer Trust. We would be happy to respond to questions or provide supplemental information related to any aspect of this economic review.

TO: PLANNING COMMISSION

Pre-App. Meeting: N/A
App. Submitted: June 6, 2007
App. Complete: September 28, 2007
120-Day Deadline: February 8, 2008
(extended 14 days from 1/25/08)
Hearing Date: November 27, 2007
Cont'd to January 8, 2008

FROM: PLANNING DEPARTMENT


Julia Hajduk, Planning Manager

At the November 27, 2007 Planning Commission public hearing, the Commission opened the public record and took public testimony on the subject application. After receiving the testimony, the Commission left the record open with the following deadlines: December 7th for anyone to submit information and new evidence into the record, December 14th for anyone to respond to the new evidence/testimony entered into the record, and December 21st for the applicant to submit final comments. This addendum report is organized to present the materials received within each record period along with a brief description of the issues raised in that submittal. The full documents are attached to this report as Exhibits H-O continuing on the Exhibits previously attached to the November 6, 2007 staff report. Where appropriate, staff also responds to the information submitted. (Exhibit G was submitted to the Commission at the November 27, 2007 hearing and is not included in this packet). Following the presentation of testimony received and a summary of issues raised is the staff response, where applicable. A final recommendation is provided at the end of this report.

Summary of testimony received

Submitted by December 7, 2007:

Exhibit H letter dated December 4, 2007 from William Monahan of Jordan Schrader.

Exhibit H provides additional information in the same vein of the testimony received at the hearing. Mr. Monahan indicates Provident Development is opposed to any parking in the easement as they do not believe it would honor the intent of the easement. The letter goes on to point out issues with determining the appropriate parking, the design of parking backing out onto the private access, the design of the parallel parking spaces on the eastern side of the access drive, the application of 16.94.010.04 which allows a 25% reduction in parking requirements when there are multiple tenants, building location to the easement, truck maneuvering potentially creating conflicts with traffic accessing the Provident site to the north, pedestrian access to the Provident site has not been shown and will be unsafe if located within the easement, removal of the retaining wall as requested by staff would required a modification of the grading plan and Provident would like to see the grading plan, or if the retaining wall is permitted conditions should be clear that the applicant is responsible for the removal and any expenses with a deposit or other assurance that this will be done when Provident is ready to develop.

Staff response: See applicant response (Exhibit N). In addition, Condition D. 4 requires the applicant to submit documentation on the proposed uses and the applicant has been made aware that prospective tenants (even if permitted in the zone), may not be permitted to locate in these buildings because they are not consistent with the uses proposed.

Regarding the dispute with staff's application of 16.94.010.4 (multiple/mixed uses) staff points out the specific code language (with emphasis underlined):

When several uses occupy a single structure or parcel of land, the total requirements for off-street parking and loading shall be the sum of the requirements of the several uses computed separately, with a reduction of up to 25% to account for cross patronage of adjacent businesses or services. If the applicant can demonstrate that the peak parking demands for the combined uses are less than 25% (i.e., the uses operate on different days or at different times of the day), the total requirements may be reduced accordingly.

This section does not require that the uses be completely on one parcel. Further the "shall" indicates that when multiple uses are proposed, the parking calculation must include the reduction to provide the minimum required. The only question is whether the proposal will in fact have multi-tenants (users) or one. If one tenant is proposed to occupy all buildings, this standard would not be applicable and the parking would not be met. It is appropriate to modify condition D.4 to make it clear that multi-tenant usage is required in order to meet this standard.

Exhibit I letter dated December 7, 2007 from Peter Livingston (includes attachment of 11/30 letter from same)

Exhibit I responds to the statement in the staff report that there is debate over which property owner has the right to submit a land use application for development within the easement. This appears to be more of an argument against the Provident application currently under review, than it does an argument in support of the subject application.

Exhibit J E-mail from Peter Livingston with request for May 8, 2006 letter from Michael Robinson to be included in the record

Exhibit K E-mail from Peter Livingston with request to submit October 15, 2007 letter from Michael Robinson to be included in the record

Exhibit J and K provide documentation that Mr. Lucas, the applicant has been trying to develop this property (specifically the access road) for a while.

Exhibit L Testimony from Dave Wechner including: L-1, Copy of November 30, 2007 letter from Dave Wechner regarding the Provident Development project under review to the north, L-2 December 7, 2007 memo to Patrick Allen providing additional testimony, and L-3, copy of October 15, 2007 letter from Michael Robinson disputing the 120-day determination.

Exhibit L-1 is a copy of testimony received on the Provident site plan questioning the process and ownership.

Exhibit L-2 – Responds to testimony and question from the Commission raised at the 11/27 public hearing. Specifically,

- ◆ Mr. Wechner states that the applicant is agreeable to retaining the existing street trees along Oregon Street provided the sidewalk location can be modified without additional land use review, and proposes a new condition C.6.

- ◆ Mr. Wechner indicates the applicant is not opposed to removing the retaining wall from the plans as required in Condition C.1.b and recommends a modification to that condition.
- ◆ Mr. Wechner also recommends a modification to Conditions C.1.a and D.13 regarding providing access to the property to the east. Mr. Wechner requests condition C.1.a be deleted and D.13 be amended to only require cross-circulation between the tax lots that are subject to this specific application (900, 1000 and 1001).
- ◆ This testimony also responds to staff findings in Section 16.90.020.G (page 6 of 34 of the November 6, 2007 staff report). It is Mr. Wechner's assertion that this section is not applicable to this project because commercial uses are not proposed. Mr. Wechner further asks for confirmation that offices associated with light industrial uses are not considered a separate use category.
- ◆ It is requested that Condition D.7 be deleted because the "average" landscaping provided meets the standard.
- ◆ The applicant indicates that there is no code standard to support Condition D.11.
- ◆ Mr. Wechner also requests that Condition D.17 be deleted which requires the outdoor storage to be screened from the railroad tracks because he indicates that the tracks are several feet off the surrounding grade and the railroad right of way is 75 feet wide which adequately separates the site from adjacent properties.

Staff response: Staff supports the addition of Condition C.6 as proposed by Mr. Wechner. Mr. Wechner's discussion and proposed condition do not appear contrary to what is already in the staff report, therefore staff does not see a need to modify condition C.1.b. Staff concurs that previously it was indicated that right of way dedication would not be required for the easement. Based on the comments from TVF&R and full compliance with code standards the Engineering Department recommended (and continues to recommend) that the street be dedicated as public. After consult with the City Engineer staff is comfortable clarifying that the right of way dedication is not needed if deemed unnecessary to comply with other agency requirements (TVF&R, CWS) and supports a modification to that condition to read

Condition C.1.a - Revise the engineering drawing to reflect Tract A as public right-of-way with a public street meeting all current standards unless deemed unnecessary to comply with applicable agency requirements. Should right-of-way dedication prove unnecessary or unfeasible, the applicant shall record a cross access easement and public utility easement over Tract A for the benefit of tax lots 500, 600, and 602.

Staff does not agree with the requested modification of Condition D.13. While tax lot 600 to the east may have more than 150 feet of frontage along Oregon street there are many factors that may impact the potential location of an access into that site (floodplain and wetland specifically). Further, tax lot 602 does not have any frontage. Finally, 16.108.050.14.B.3 provides the spacing requirements for Collectors but also states that "where joint access is available, it shall be used." By providing a cross over easement on an existing access that is required to be built to local public street standards, the transportation system will flow more efficiently and allow for more orderly development of property.

Regarding the applicability of 16.90.020.G, staff concurs in this instance because the use has been clearly stated as industrial; however as discussed in the staff report (page 6 of 34) the elevations indicate that the standard will be met if a pedestrian connection is also provided. Condition D.4 requires the applicant to confirm the uses. By removing any requirement to comply with 16.90.020.G (which the staff report indicates is possible) the applicant is also removing any ability to locate commercial uses, including offices, in this location. The Code is clear that the standard applies to the USE, not the zone. Staff concurs and would recommend that the Commission concur that an office associated with an industrial use does not trigger the applicability of this

standard; however, an office intended for commercial uses and/or general public would trigger compliance.

Regarding Mr. Wechner's request that the landscape requirement be read at the "minimum average", there is nothing in the code that allows staff or the Commission the ability to read this standard in this way. The Commission would not consider averaging a setback or any other dimensional standard such as this. Staff does not support that applicant's request to delete condition D.7.

Staff's analysis on the applicability of D.11 is shown on page 15 of 34 of the November 6, 2007 staff report and based on that analysis, staff does not concur with the request to delete condition D.11.

Regarding condition D.17, the code section referenced by Mr. Wechner is relating to perimeter landscaping adjacent to parking, not the outdoor storage standard in 16.98.020. Section 16.98.020 requires that "in addition (to the six foot high fence), unless adjacent parcels to the side and rear of the storage area have existing solid evergreen screening or sight-obscuring fencing in place, new evergreen screening no less than three (3) feet in height shall be planted along side and rear property lines." There is not evidence in the record that there is an existing solid evergreen screening on the adjacent parcel. It may be possible that the existing vegetation and topographical difference between the subject site and the railroad right of way meets this standard; however a modification of the condition (D.17) would be needed to ensure that the applicant demonstrates this prior to final site plan approval. The condition could be modified to state "Submit a revised landscape plan that shows existing vegetation or new vegetation providing screening around the proposed storage yard that is no less than three feet in height along the side and rear of the storage yard boundary."

Exhibit L-3 is a copy of a letter from Michael Robinson asserting when the applicant believes the 120 day clock ends. As stated previously, staff and the City Attorney do not concur with the applicant's assertion as we did not know we had a complete application until the applicant confirmed what portions of the multi-phase project they wanted to have reviewed.

Submitted by December 14, 2007

Exhibit M Letter dated December 13, 2007 from Andrew Stamp responding to new evidence submitted in the record.

Exhibit M was submitted by Andrew Stamp, representing Pamela and Clarence Langer, to rebut the supplemental comments submitted by Dave Wechner (Exhibit L-2) specifically that it does not respond to any of the site deficiencies noted in the staff report or in the written and oral testimony. Mr. Stamp indicates that his clients are concerned that these design deficiencies constitute significant life/safety hazards. Mr. Stamp goes on to discuss in detail the issues they feel should have been addressed further by the applicant or his representatives after the hearing including feasibility of constructing the private drive to public street standards, no information to support that potential tenants will use cross patronage to support the 25% parking reduction, several conditions defer discretion to staff and the applicant has not submitted additional information to avoid staff discretionary review, rebuts Mr. Wechner's assertion that Condition D.11 should be stricken, pedestrian access not shown, internal vehicular circulation concerns, building setbacks if the private street is public, and does not agree with "averaging" the landscape requirements.

Staff response: Mr. Stamp raises several valid issues; however many of these issues could be considered as "new testimony" submitted after that record period closed and are therefore not addressed. However, he also raises issues with the conditions recommended and indicates that many of these leave discretionary decisions up to staff at time of final site plan review. Staff does

not agree. All of the conditions recommended were recommended because staff identified that it was possible to meet the standard with modifications to the site plan. In addition, the standards with conditions are generally non-discretionary in and of themselves. It is standard practice in all quasi-judicial land use decisions to impose conditions for revisions to the site plan prior to final approval without the need for additional public hearing or review, provided the conditions are feasible. If staff determines, in reviewing the final site plan that discretion is needed staff would follow the necessary procedures which could include notice and the opportunity for a hearing if necessary.

Exhibit N Letter dated December 14, 2007 from Peter Livingston responding to new evidence submitted in the record.

Exhibit N was submitted by Peter Livingston, representing Mr. Lucas, primarily to respond to the December 4, 2007 letter from William Monahan. This testimony responds point by point to the issues raised in Mr. Monahan's letter. Specifically Mr. Livingston continues to assert the applicant's position that the access easement is not a street and therefore not subject to many of the issues raised. Mr. Livingston also indicates that access to the adjacent property to the east is not (and will not) be provided therefore the concerns about the parking along that property line are not of issue. He also indicates that the applicant is agreeable to placing a sidewalk along the eastern portion of the easement but will not allow curb-cuts.

Staff response: Staff continues to maintain as discussed in detail in the staff report that the private drive/access is by definition a street and therefore subject to the requirements that no more than 4 vehicles back out onto it and that it be constructed to public street standards. Staff agrees that, with the conditions imposed, the parking will be consistent with the code and thus, will be safe. Staff does not agree with Mr. Livingston's statement about the 17 parking spaces on the eastern side of the site being permanent because access to the adjacent parcels will not and can not be provided. However, staff does not find that the potential removal of 2 of these 17 spaces will reduce the parking below the minimum required as discussed in detail in the staff report.

Submitted by December 21, 2007

Exhibit O – letter dated December 21, 2007 from Dave Wechner – *Note that this document was received via e-mail in pdf format at the City at 4:39 PM on 12/21. Staff did not open the document until Monday morning and found only one page in the pdf letter. Staff notified Mr. Wechner via e-mail and confirmed with the City Attorney that even though this may have been in error, the record period had closed. At the time of writing this report, staff has not seen the remainder of the letter to help the Commission determine whether it might be beneficial to re-open the record period to allow the full submittal of this letter. It should be noted that if the Commission were to re-open the record, if new evidence is submitted they would need to allow additional public input and response as well. Further, if the Commission were to consider doing that, an extension to the 120 day period would be necessary as well.*

Staff recommendation:

Based on the testimony received at the November 27, 2007 hearing and written testimony received after the close of the hearing, staff continues to recommend approval with the following conditions modified:

Condition C.1.a (revised) - Revise the engineering drawing to reflect Tract A as public right-of-way with a public street meeting all current standards unless deemed unnecessary to comply with applicable agency requirements. Should this right-of-way dedication prove unnecessary or unfeasible, the applicant shall record a cross access easement and public utility easement over Tract A for the benefit of tax lots 500, 600, and 602.

C.6 (new) Revise the public improvement plans along the northern portion of the right-of-way on Oregon Street to retain as many existing tree as possible. The Sidewalk may be allowed within the front yard setback, in a public easement.

D.4 (revised) Submit documentation on the proposed uses and tenants proposed in the 3 flex-space buildings. If the uses proposed results in additional parking, a site plan modification would be necessary to provide for the additional parking required. If a single tenant is proposed, a site plan modification providing additional parking or reduction in the size of the structures will be required.

D. 17 (revised) Submit a revised landscape plan that shows existing vegetation or new vegetation providing additional screening around the proposed storage yard that is no less than three feet in height and planted along the side and rear of the storage yard boundary.

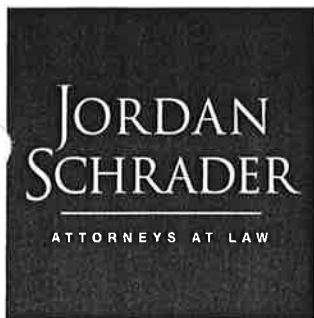
D.18 (revised) Submit a landscape plan that shows a total of 36 street trees ~~to be planted~~ along the frontage of SW Oregon Street that are a minimum of two inches in diameter and a minimum height of six feet. The trees may be a combination of existing and, if necessary, newly planted trees arranged so as to not conflict with the existing trees.

G.4 (new) No outside sales is permitted as part of this site plan application. (Added based on Planning Commission feedback at the 11/27/07 hearing.)

Staff recommends all other findings and conditions of approval included in the November 6, 2007 staff report be adopted by the Planning Commission as the basis for their decision.

Received via e-mail
12/4/07 JPH

Exhibit H



JORDAN SCHRADER RAMIS PC

December 4, 2007

Julia Hajduk, Planning Manager
Community Development Division
City of Sherwood
22560 SW Pine St
Sherwood OR 97140

Re: **Additional Public Comment on the Application of Patrick Lucas
Oregon Street Industrial Building-SP 07-08**
Our File No. 49988-36761

Dear Julia:

As you are aware, this firm represents Oregon Self Storage Sherwood, LLC of which Provident Development Group, LLC, is the managing member. Oregon Self Storage Sherwood, LLC owns the property adjacent to the Patrick Lucas proposed development. As you are also aware, our client has a pending land use application for its property, SP 07-07. As we have expressed before, our client's development plan is dependent upon Mr. Lucas honoring the intent of the easement that he voluntarily granted our client across his property.

WILLIAM A. MONAHAN

Admitted in:
Oregon

Direct Dial
(503) 598-5519

E-mail
bill.monahan@jordanschradler.com

At the close of the public hearing last Tuesday, the Planning Commission partially accepted our request under ORS 197.763(6)(a). We requested the opportunity to provide oral testimony at the next Planning Commission meeting to respond to new information presented by Mr. Lucas and his representatives. Since the November 27 meeting was the first evidentiary hearing on this matter, the Commission granted a continuance, but chose to restrict further input to written submittals. Please accept this letter as Provident's additional argument due by the close of business on December 4, 2007. I expect that we will submit further input next week to respond to any new information submitted in support of the application by Mr. Lucas.

Provident continues to be fundamentally opposed to the proposed development and has no alternative but to object to the present application. The latest plan, as modified by the letter submitted on November 27 by David Wechner of AKS Engineering, continues to illustrate that the easement will not be honored and the Provident potential development will be adversely impacted. Rather than carve out adequate space for an access easement as required by the agreement, the applicant has attempted to place



December 4, 2007

December 4, 2007

Page 2

approximately one-third of its parking there. This was never discussed and agreed to when the easement was purchased.

As stated earlier in Tim Ramis' November 2, 2007 letter, our specific objection relates to the original intent of the access easement. The City has acknowledged that our client has a fifty foot wide access and utility easement along the easternmost portion of the Lucas parcel to provide access to the Provident property to the north. Because Mr. Lucas has not followed through on his commitment to construct an access road within the easement, Provident has been forced to assume responsibility for constructing the private road. Mr. Lucas' development plan creates numerous conflicts with the intent of the easement and ultimately the use of the private road.

Following is a restatement of the issues that we have raised:

1. The narrative and plans are not clear as to what the proposed uses of the three buildings will be. This lack of information makes the calculation of parking requirements difficult. The parking calculation seems to be for the minimum number of spaces that the eventual uses of the three proposed buildings could generate. If the city approves 33,413 square feet of industrial buildings, it is likely that the 51 spaces shown on the plan are inadequate. A review of the plan shows seventeen spaces are within the access drive, thus there are really only 34 spaces that are not within the access drive. Of the 34 spaces, the staff report says that the six spaces along Building 2 will need to be adjusted to meet code section 16.92.030.2B. This section of the Code requires a 10 foot landscaped strip along SW Oregon Street. The anticipated result is the loss of one space. In addition, the staff report says that the 12 spaces along Building 1 must be reconfigured as the 12 spaces cannot all back out onto our access. The redesign to parallel spaces and a maximum of four perpendicular spaces, plus design for ADA spaces, could result in the loss of four or five more spaces. So, there are not really 34 spaces on site, perhaps there are 28 or 29.
2. The proposed industrial buildings will have either perpendicular or angle parking that will require that drivers back directly into the easement onto the private access. Besides being a design flaw, this is a safety concern. If this

December 4, 2007

December 4, 2007

Page 3

concept is approved, the private access cannot be built to public road standards as it conflicts with the required right of way, sidewalks, and actual street width required by the City. The latest staff report requires that the perpendicular spaces must be reduced, but unless the size of the building is reduced, the safety concern, to some degree, will remain.

3. The Lucas plan shows seventeen parking stalls located along the eastern portion of the easement. These stalls are not consistent with the design standards for a public street, and they would create a safety concern, so, Provident opposes the seventeen spaces on the access drive. The 4.81 acre site should be able to accommodate the parking needed for 33,413 square feet buildings without locating spaces on the access drive. Surely there is sufficient land available for parking on the site. If the seventeen spaces are allowed within the access drive, the spaces must be considered to be “temporary” as they will need to be removed later when the adjacent parcel to the east is developed. The eventual loss of these spaces will result in further adverse impact on neighboring properties. That is tenants and client of the Lucas development will need to find parking on other sites, possibly creating conflicts.
4. Provident objects to staff’s interpretation that the spaces planned by Mr. Lucas may be further reduced by using Code Section 16.94.010.04 Multiple/Mixed Uses. If applicable, this Code provision would allow the applicant to reduce the number of required spaces by 25%. The Sherwood Code does not allow use of this exception in this case. The Code only allows a reduction when “several uses occupy a single...parcel of land.” But, here the applicant has three parcels, so the Code cannot be applied. At the November 27 hearing, the staff interpreted the exception to apply in this case because two buildings are planned on one of the parcels. It is our position that the City cannot interpret the Code this way. If, however, the City can in fact split the application and have the benefits of Section 16.94.010.04 apply where there are two buildings on a parcel, the exception should not apply for the remainder of the property. The more consistent

December 4, 2007
December 4, 2007
Page 4

application of the Code though, consistent with the intent of the Code, is that the full parking standard must be met.

5. The buildings are too close to the easement area and they are situated in a manner that the circulation pattern for automobiles as well as trucks creates conflicts. The building locations, and likely their intended size, are not suitable for the site given the easement that Mr. Lucas granted to Provident. It is apparent that while Mr. Lucas granted the Provident easement, he intends to ignore the fact that the loss of developable land should reduce the maximum development potential of his property. Simply stated, Mr. Lucas negotiated the easement and is bound to honor it with any development concept that he may have for his property. He has not done this.
6. Use of the easement by Mr. Lucas to access his planned development is in conflict with Provident's proposed plans. Given the present plan, it appears that the truck access to service the industrial buildings will not function in a manner that will be consistent with the easement. There is no detail at this time concerning the likely uses and tenants of the proposed industrial buildings so there is no way to confirm that detrimental impacts will not occur.
7. Pedestrian access to the Provident property along the sidewalk that will be built within the easement will be unsafe if the Lucas parking plan is allowed. The sidewalk must be preserved. There is no alternative pedestrian access that appears to be feasible to access the Provident site across the Lucas property.
8. The plan submitted for the November 27 hearing depicts a retaining wall along the Provident tract that ranges from 1.5 to 6 feet in height. It is 4 feet at the point the drive adjoins the Provident property. The staff stated on pages 23 and 24 of the report that Engineering has recommended elimination of the retaining wall on the north and east side of Tract A. Provident agrees. According to the applicant's comments at the November 27 hearing, he has agreed to eliminate the retaining walls. This likely means there will be a significant grade difference created that could further impact the

December 4, 2007

December 4, 2007

Page 5

development potential of the Provident property. Provident suggests that the applicant provide a new grading plans which likely will result in a redesign of the entire site. This is reason for the City to require that the applicant submit a new plan to address all of the concerns raised by staff through the report as well as the concerns of opponents. The City should not allow this retaining wall.

9. If the City does allow a retaining wall, the conditions should be clear that Mr. Lucas will be responsible for the removal of the retaining wall and any other expense related to the impact upon our plans to complete the private road. Provident suggests that the Engineering staff determine a suitable deposit that Mr. Lucas must provide to the City at the time of site development to be set aside for City use when Provident's development proceeds. That way there will be no unnecessary delay caused by any future dispute.

For these reasons, Provident must continue to object to the plans submitted by Mr. Lucas and ask that the Planning Commission deny the pending application. Provident continues to be willing to work with the applicant so that the original intent of the easement is honored while accommodating the ultimate use of his property.

Thank you for taking our concerns into consideration. We look forward to reviewing the new materials that are submitted by the applicant. Once the applicant has reviewed the comments and the staff prepares an addendum to the staff report, we fully expect that there will be new information that is before the Planning Commission at its meeting of January 8, 2008. While the Commission Chair stated that the Commission will not accept any testimony at the hearing, even if there are new findings and conditions with the staff addendum, we urge you to allow testimony in order that the City Code is complied with and rights of all parties are preserved.

Sincerely,

JORDAN SCHRADER RAMIS PC



William A. Monahan

cc: Provident Development Group, L.C.



SCHWABE, WILLIAMSON & WYATT
ATTORNEYS AT LAW

Pacwest Center, 1211 SW 5th Ave., Suite 1900, Portland, OR 97204 | Phone 503.222.9981 | Fax 503.796.2900 | www.schwabe.com

PETER LIVINGSTON
Admitted in Oregon and Washington
Direct Line: 503-796-2892
Home Phone: (503) 233-9313
E-Mail: plivingston@schwabe.com

December 7, 2007

VIA E-MAIL HAJDUKJ@CI.SHERWOOD.OR.US

Patrick Allen, Chair
Sherwood Planning Commission
c/o Julia Hajduk
City of Sherwood
22560 SW Pine Street
Sherwood, OR 97140

Re: Oregon Street Industrial Building Application
SP 07-07
Our File No.: 117935/157587

Dear Planning Commissioners:

We represent J. Patrick Lucas, the applicant in this proceeding. We are writing to call your attention to an important issue that concerns this application and the application of Provident Development Group, LC on property next door to the subject property.

The staff report contains the following statement on page 2 (and similar statements elsewhere):

“There is debate among the two property owners regarding the legality of each to submit for review and construct within the easement, however that is a civil matter. Staff’s evaluation of each site plan will be reviewed on their own merit to ensure compliance with the code and to ensure that development of one does not preclude the development of another adjacent property.”

As shown by the attached letter to Julia Hajduk, dated November 30, 2007, which was filed in connection with the Provident Development Group, LC application, the city cannot avoid addressing the question of Provident’s authority to apply for a road on Tax Lot 900 by calling it a “civil matter.” Provident’s claim to the right to build a road is based on an easement that does not grant that right.

Portland, OR 503.222.9981 | Salem, OR 503.540.4262 | Bend, OR 541.749.4044
Seattle, WA 206.622.1711 | Vancouver, WA 360.694.7551 | Washington, DC 202.488.4302

Patrick Allen, Chair
December 7, 2007
Page 2

By processing an application, filed by a *non-owner*, for site plan approval for a road to which the property *owner* objects, the city is making a determination that the non-owner possesses a property right. The city has no authority to process a land use application filed by a non-owner of property.

This is a *fundamental* principle of land use law. If land use applications could be filed, without authorization, concerning property the applicant did not own, the land use system would collapse. Property owners could find their property being rezoned by strangers over their objections. It is highly improper for the city to proceed with a land use application over the expressed objections of the property owner, thereby forcing the property owner into civil litigation.

Very truly yours,



Peter Livingston

PLI:tag

cc: J. Patrick Lucas
Dave Wechner



PETER LIVINGSTON
Admitted in Oregon and Washington
Direct Line: 503-796-2892
Home Phone: (503) 233-9313
E-Mail: plivingston@schwabe.com

November 30, 2007

VIA E-MAIL JHAJDUK@CI.SHERWOOD.OR.US

Julia Hajduk
Planning Manager
Planning Department
City of Sherwood
22560 SW Pine Street
Sherwood, OR 97140

Re: Site Plan Approval
Application of Provident Development Group, LC
Case File No. SP 07-07
Our File No.: 117935

Dear Ms. Hajduk:

We represent J. Patrick Lucas. Mr. Lucas or an entity controlled by Mr. Lucas is the owner of Tax Lot 900. The 475 foot long private cul-de-sac road proposed by the captioned site plan application would cross Tax Lot 900. Mr. Lucas has not consented to the filing of the subject application and, in fact, opposes it.

ORS 227.175(1) authorizes only an owner of land (or, presumably, the owner's authorized representative) to apply for a permit or zone change. The city's own application form requires the signature of the applicant and the property owner to indicate: "*I am the owner/authorized agent of the owner empowered to submit this application* and affirm that the information submitted with this application is correct to the best of my knowledge."

There is a July 1, 2000 Declaration of Private Access and Utility Easement over the property, attached, which creates "a permanent private access and utility easement over, under and across that portion of the 'Parcel 1' as described in Exhibit 'A' attached for the benefit of 'Parcel 2.'" This non-exclusive access easement does not authorize the construction of a road or the filing of an application for site plan review for the construction of a road.

Julia Hajduk
November 30, 2007
Page 2

Mr. Lucas has not authorized anyone to submit an application for site plan approval that would allow the construction of a road on Tax Lot 900. Therefore, the city must deny the application.

Very truly yours,



Peter Livingston

PLI:tag

cc: J. Patrick Lucas

RECORDED BY OREGON TITLE AS AN ACCOMMODATION ONLY. NO LIABILITY IS ACCEPTED FOR THE CONDITION OF TITLE OR FOR THE VALIDITY, SUFFICIENCY, OR EFFECT OF THIS DOCUMENT.

OREGON TITLE INS. CO. 02-A092 136

6/26/02

30
1/3

AFTER RECORDING RETURN TO:
Pacific III, LLC
PO Box 1605
Tualatin, OR 97062

Washington County, Oregon 2002-111387
09/24/2002 03:42:43 PM
D-E Cnt=2 Wtr=0 T HAKIN
\$50.00 \$8.00 \$6.00 \$11.00 - Total=\$82.00



0016840920020113870000069

I, Jerry Hanson, Director of Assessment and Taxation and Ex-Officio County Clerk for Washington County, do hereby certify that the within instrument of writing was received and recorded in the book of records of said county.

Jerry Hanson



Jerry R. Hanson, Director of Assessment and Taxation, Ex-Officio County Clerk

DECLARATION OF PRIVATE
ACCESS AND UTILITY
EASEMENT

Recitals

- A. **Declarant:** means Pacific III, LLC, an Oregon limited liability company.
- B. **Properties:** means:
 1. That parcel of land described in deed to Pacific III, LLC, recorded April 18, 2002 in Instrument #2002-046151, Deed Records of Washington County, Oregon, herein "Parcel 1".
 2. That parcel of land described in deed to Pacific III, LLC, recorded June 4, 2001 in Instrument #2001052622, Deed Records of Washington County, Oregon, herein "Parcel 2".
- C. **Easement:** means a permanent non-exclusive access easement and private utility easement over, under and across that portion of the "Parcel 1" as described in Exhibit "A" attached for the benefit of "Parcel 2".
- D. **Purpose.** The purpose of this Easement is to create a permanent private access and utility easement over, under and across that portion of the "Parcel 1" as described in Exhibit "A" attached for the benefit of "Parcel 2".




DECLARATION

1. **Declaration of Easement.** Declarant, as owner of the properties, declares that the Properties shall be held and conveyed subject to and together with the Easement, in accordance with the terms and provisions of this Easement, and Declarant grants and conveys the Easement as an appurtenance to and encumbrance on the Properties, the benefits and burdens of which Easement, as set out in this Easement shall run with the properties.
2. **Duration of Easement.** The Easement is and shall be a permanent private access and utility easement over, under and across that portion of "Parcel 1" as described in Exhibit "A" attached for the benefit of "Parcel 2".
3. **Maintenance.** The Declarant shall be 100% responsible for the maintenance of the easement area.
4. **Additional Provisions.** Any person who enjoys the benefits of the Easement shall hold and save the owner or owners of the servient parcel or parcels burdened by this Easement harmless from any and all claims of third parties arising from said benefited person's use of the rights created by this Easement. Any person who enjoys the benefit of the Easement and who is responsible for damage to a servient parcel arising from negligence or abnormal use of the Easement shall repair such damage and restore the affected property at the responsible person's sole expensed.
5. **Future Ownership.** This Easement shall run with, benefit and burden the Property and shall benefit and bind the owners of the Property and their respective successors in interest.
6. **Attorney's Fees.** In the event of action, arbitration, litigation or appeal to enforce any provision of this Agreement, the prevailing party shall be entitled to reasonable attorney fees and court cost.

Dated this 1 day of July 2002.

Pacific III, LLC, an Oregon limited liability company

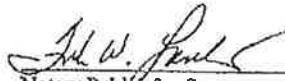
By: 
John P. Lucas, Managing Partner



2802-111387

STATE OF OREGON,
County of Clatsop)ss.

The foregoing instrument was acknowledged before me this 1st day of July,
2002, by John P. Lucas, Managing Partner, Pacific III, LLC, an Oregon limited liability company,
on behalf of the limited liability company.



Notary Public for Oregon
My Commission Expires:





2002-111387

OLSON
ENGINEERING INC.

LAND SURVEYORS
ENGINEERS

(360) 695-1385
1111 Broadway
Vancouver, WA
98660

EXHIBIT "A"

LEGAL DESCRIPTION FOR LUCAS DEVELOPMENT
Proposed Access and Utility Easement

June 21, 2002

A parcel of land situated in the Southeast quarter of Section 29, Township 2 South, Range 1 West of the Willamette Meridian, in the City of Sherwood, Washington County, Oregon, being more particularly described as follows:

COMMENCING at the Southwest corner of the Southeast quarter of said Section 29;

THENCE North 89° 59' 00" East along the South line of said Southeast quarter of Section 29 a distance of 1667.82 feet to the TRUE POINT OF BEGINNING;

THENCE North 00° 01' 00" West a distance of 70.00 feet;

THENCE North 04° 37' 22" East a distance of 103.77 feet;

THENCE North 00° 01' 00" West a distance of 163.16 feet to a point on a 15.00 foot radius curve to the left;

THENCE around said 15.00 foot radius curve to the left (the long chord of which bears North 32° 51' 32" West a distance of 16.27 feet) a distance of 17.20 feet to a point on a 70.00 foot radius curve to the right;

THENCE around said 70.00 foot radius curve to the right (the long chord of which bears North 12° 08' 28" East a distance of 136.86 feet) a distance of 190.20 feet;

THENCE North 89° 59' 00" East a distance of 30.00 feet to a point on the West line of that parcel conveyed to Frontier Leather company by document recorded in Book 467, Page 108 (dated July 2, 1962), Washington County Deed Records;

THENCE South 00° 01' 00" East along said West line a distance of 312.64 feet;

THENCE South 04° 37' 22" West a distance of 103.77 feet;

THENCE South 00° 01' 00" East a distance of 67.97 feet to the South line of said Section 29;

(CJM/evr)
2:560006900\6789161980003.102.doc

175



OLSON
ENGINEERING INC.

LAND SURVEYORS
ENGINEERS

EXHIBIT "A" CONTINUED

(360) 695-1385
1111 Broadway
Vancouver, WA
98660

THENCE South 89° 59' 00" West along said South line a distance of 50.00 feet to the TRUE POINT OF BEGINNING.

EXCEPT any portion thereof lying within N.E. Oregon Street.

REGISTERED
PROFESSIONAL
LAND SURVEYOR

Bruce D. Towle

OREGON
FEBRUARY 3, 1963
BRUCE D. TOWLE
2030

RENEWAL DATE: 6/30/04

6124102

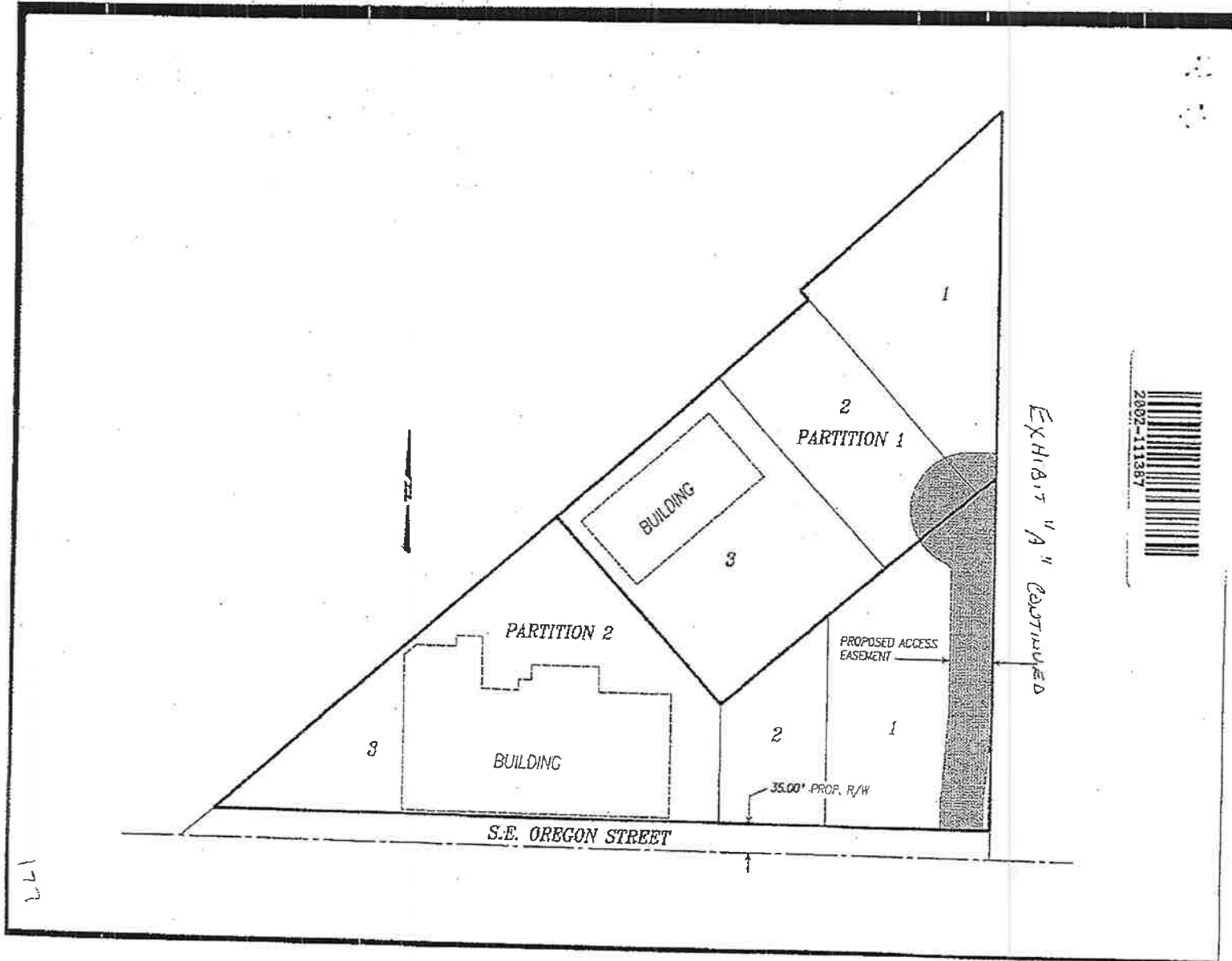


EXHIBIT "A" CONTINUED



Julia Hajduk

From: Livingston, Peter [plivingston@SCHWABE.com]
Sent: Friday, December 07, 2007 4:51 PM
To: Julia Hajduk
Cc: jpatricklucas@yahoo.com; davew@aks-eng.com
Subject: Oregon Street Industrial Property



Robinson letter re plivingston@SCHW
street.pdf ... ABE.com.vcf (7...

Dear Ms. Hajduk:

Please include the attached letter in the record for SP 07-07, Oregon Industrial Property. This letter shows the amount of time applicant Patrick Lucas has spent seeking land use approval for this application.

<<Robinson letter re street.pdf>>
PETER LIVINGSTON | Attorney
SCHWABE, WILLIAMSON & WYATT
1211 SW 5th Ave., Ste. 1900 Portland, OR 97204
Direct: 503-796-2892 | Fax: 503-796-2900 | Cell: 503-314-1050 | Email:
plivingston@schwabe.com
Assistant: Melissa Albrecht | Direct: 503-796-3770 | malbrecht@schwabe.com www.schwabe.com
<<plivingston@SCHWABE.com.vcf>>

To comply with IRS regulations, we are required to inform you that this message, if it contains advice relating to federal taxes, cannot be used for the purpose of avoiding penalties that may be imposed under federal tax law. Any tax advice that is expressed in this message is limited to the tax issues addressed in this message. If advice is required that satisfies applicable IRS regulations, for a tax opinion appropriate for avoidance of federal tax law penalties, please contact a Schwabe attorney to arrange a suitable engagement for that purpose.

NOTICE: This communication (including any attachments) may contain privileged or confidential information intended for a specific individual and purpose, and is protected by law. If you are not the intended recipient, you should delete this communication and/or shred the materials and any attachments and are hereby notified that any disclosure, copying or distribution of this communication, or the taking of any action based on it, is strictly prohibited. Thank you.



Michael C. Robinson
PHONE: 503.727.2264
EMAIL: mrobinson@perkinscoie.com

1120 N.W. Couch Street, Tenth Floor
Portland, OR 97209-4128
PHONE: 503.727.2000
FAX: 503.727.2222
www.perkinscoie.com

May 8, 2006

VIA EMAIL

Mr. Kevin Cronin
Planning Manager
City of Sherwood
20 NW Washington
Sherwood, OR 97140

Re: My Client: Pacific III LLC

Dear Mr. Cronin:

This office represents Pacific III, LLC. Patrick Lucas, Pacific III LLC's representative, has asked me to write you concerning his property described as Map 2S 1 2ND Tax Lot 400. I am writing because Mr. Lucas has informed me that the City refuses to allow him to construct a private road that has been approved in a series of limited land use decisions creating parcels on the property. His private road construction application has been pending for over seven (7) months.

The property is zoned Light Industrial ("LI"). The City approved a minor land partition in 2002 (Case No. MLP 0202). That approval authorized the creation of three parcels and a 50-foot access easement providing access to parcels 1-3. The City subsequently approved a minor land partition for tax lot 400. The approval included a provision that the 50-foot access easement was appropriate. Finding D.1 concluded that access by a private street within the easement was appropriate. The City subsequently approved a final plat. Mr. Lucas then recorded the final plat, thereby creating the access easement.

I understand that Mr. Lucas has requested City approval of construction permits to build a private street, but the City has refused to approve construction permits. I note that the final plat review (Case No. MLP 0202), Finding B concludes that "the easement shown on the plat is consistent with what was preliminarily approved."

[61027-0001/PA061230.088]

ANCHORAGE • BEIJING • BELLEVUE • BOISE • CHICAGO • DENVER • HONG KONG • LOS ANGELES
MENLO PARK • OLYMPIA • PHOENIX • PORTLAND • SAN FRANCISCO • SEATTLE • WASHINGTON, D.C.

Perkins Coie LLP and Affiliates

Mr. Kevin Cronin
Planning Manager
City of Sherwood
May 8, 2006
Page 2

The City has approved the easement in both the tentative partition and the final plat. The easement is recorded. Mr. Lucas has a right under Oregon law to proceed with construction of the street. Unless Mr. Lucas has failed to comply with applicable construction standards, the City must issue a permit for construction or show cause why the permit should not be issued.

On Mr. Lucas' behalf, I would like to meet with you to discuss the status of this matter. If a meeting is not possible, then I request that the City either issue the appropriate construction permits within ten (10) business days or provide me a letter explaining why the construction permits cannot be issued.

Mr. Lucas and I would both prefer working with the City as opposed to litigating the matter. However, if we cannot meet with the City, or we do not believe that the City's justification for not acting on the construction permits is appropriate, then Mr. Lucas has the option of seeking a writ of mandamus in the Washington County Circuit Court to compel the City to approve the construction permits.

I look forward to hearing back from you. If you would like to meet, we would be happy to do so.

Very truly yours,

Michael C. Robinson
Michael C. Robinson *lt*

MCR:crl

cc: Mr. Patrick Lucas (via email)

Julia Hajduk

From: Livingston, Peter [plivingston@SCHWABE.com]
Sent: Friday, December 07, 2007 4:57 PM
To: Julia Hajduk
Cc: jpatricklucas@yahoo.com; davew@aks-eng.com
Subject: Oregon Street Industrial Property, SP 07-07

Dear Ms. Hajduk:

Please include the attached letter in the record of the application for the Oregon Street Industrial property. This corroborates how much time Mr. Lucas has spent working through the city's process in this matter.

PETER LIVINGSTON | Attorney
SCHWABE, WILLIAMSON & WYATT
1211 SW 5th Ave., Ste. 1900 Portland, OR 97204
Direct: 503-796-2892 | Fax: 503-796-2900 | Cell: 503-314-1050 | Email: plivingston@schwabe.com
Assistant: Melissa Albrecht | Direct: 503-796-3770 | malbrecht@schwabe.com
www.schwabe.com

To comply with IRS regulations, we are required to inform you that this message, if relating to federal taxes, cannot be used for the purpose of avoiding penalties that under federal tax law. Any tax advice that is expressed in this message is limited addressed in this message. If advice is required that satisfies applicable IRS regul opinion appropriate for avoidance of federal tax law penalties, please contact a Sch arrange a suitable engagement for that purpose.

NOTICE: This communication (including any attachments) may contain privileged or co information intended for a specific individual and purpose, and is protected by law. intended recipient, you should delete this communication and/or shred the materials attachments and are hereby notified that any disclosure, copying or distribution of or the taking of any action based on it, is strictly prohibited. Thank you.



1120 N.W. Couch Street, Tenth Floor

Portland, OR 97209-4128

PHONE: 503.727.2000

FAX: 503.727.2222

www.perkinscoie.com

Michael C. Robinson

PHONE: (503) 727-2264

FAX: (503) 346-2264

EMAIL: MRobinson@perkinscoie.com

October 15, 2007

VIA E-MAIL

Ms. Julia Hajduk
Planning Manager
City of Sherwood
22560 SW Pine Street
Sherwood, OR 97140

Re: City of Sherwood File No. SP 07-07

Dear Julia:

Thank you for your October 11, 2007 letter. I am writing to explain why my client respectfully disagrees with the conclusions in your letter regarding the appropriate 120-day clock date. Notwithstanding our disagreement, I want to reiterate that my client wishes to resolve this matter in a way that results in a positive staff recommendation and a Planning Commission approval of the application. Accordingly, while my client is compelled to respond to your letter, he intends to emphasize the substantive merits of the application while reserving his rights to assert his 120-day clock rights, if necessary.

ORS 227.178(2)(a) provides as follows: "If an application for a permit, limited land use decision or zone change is incomplete, the governing body or its designee shall notify the applicant in writing of exactly what information is missing within thirty (30) days of receipt of the application and allow the applicant to submit the missing information. The application shall be deemed complete for the purpose of said section (1) [the 120-day clock] of this section upon receipt by the governing body or its designee of:

(a) all of the missing information;..."

61027-0001/LEGAL13642947.1

ANCHORAGE • BEIJING • BELLEVUE • BOISE • CHICAGO • DENVER • LOS ANGELES
MENLO PARK • OLYMPIA • PHOENIX • PORTLAND • SAN FRANCISCO • SEATTLE • WASHINGTON, D.C.

Perkins Coie LLP and Affiliates

Ms. Julia Hajduk
October 15, 2007
Page 2

My July 24, 2007 letter stated in relevant part in the first paragraph: "I am writing to respond to your June 22, 2007 incompleteness letter. As you know, Oregon law provides that the application must be made complete within 180 days of the submittal date in order to vest the application against then-effective approval standards. *The applicant will make the application complete as explained below. The remainder of this letter addresses the incompleteness issues identified in your letter.*" (emphasis added). Thus, the letter stated that it was providing the requested completeness materials. The applicant chose to fully respond to the incompleteness letter.

Nothing in ORS 227.178(2) requires the applicant to state that none or no other missing information will be provided where the applicant, as my letter did, states: "The applicant will make the application complete as explained below." The City had all of the necessary information that it needed to make the application complete and the July 24, 2007 letter fully responded to the City's incompleteness letter dated June 22, 2007.

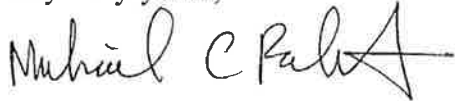
Your letter notes several reasons why you believe the completeness date is September 28, 2007. First, you noted the last paragraph of my letter in which I requested that you notify me when you deem the application complete. This paragraph is consistent with the first paragraph of the letter which informed the City that it was receiving all of the information necessary to make the application complete. As noted above, ORS 227.178(2) provides that the application is deemed complete upon receipt by the governing body of all of the missing information. The July 24, 2007 letter addressed all of the incompleteness items that you identified. The last paragraph simply requested a completeness letter.

Second, you asserted that an additional fee was required. Response item 2 in my letter responded to the fee request. The letter stated in relevant part: "You have requested that a site plan review fee that includes the square footages and parking areas in both scenarios be required. We will comply with that request." Response item 3 responded to that request. Moreover, whether the fee was adequate or not did not prevent the City from determining the application was complete for purposes of beginning the 120-day clock.

Ms. Julia Hajduk
October 15, 2007
Page 3

Thank you again for your courtesy and assistance. Patrick and I both enjoy working with you and David and we hope that the Planning Commission hearing can be scheduled for November 13, 2007 so we can avoid any question of the 120-day clock.

Very truly yours,

A handwritten signature in black ink that reads "Michael C. Robinson". The signature is written in a cursive style with a large, stylized initial "M".

Michael C. Robinson

MCR/cfr

cc: Mr. David Doughman (via email)
Mr. Patrick Lucas (via email)
Ms. Christy Stockton (via email)
Mr. David Wechner (via email)

ENGINEERING PLANNING
FORESTRY

12011 NE 99th Street, Suite 1530
Vancouver, WA 98682
Phone: (360) 882-0419
Fax: (360) 882-0426



LANDSCAPE
SURVEYING

Offices Located In:
SHERWOOD, OREGON
REDMOND, OREGON
VANCOUVER, WASHINGTON
www.aks-eng.com

November 30, 2007

Julia Hajduk, Planning Manager
City of Sherwood
22560 SW Pine Street
Sherwood, Oregon 97140

Re: SP 07-07 Provident Development Group Road

Dear Julia:

Our office received a copy of the public notice distributed for the Provident Development Group Road, your case file SP 07-07. I noted in the description:

The applicant has requested site plan approval to construct a 475 foot long private cul-de-sac road across tax lot 900 to serve tax lot 500 within a 50 foot wide private access easement. No other development is proposed associated with this application at this time. It is anticipated that future development applications for tax lot 500 would be forthcoming.

Processing the application appears to have two fundamental flaws:

1. It is unclear from this notice how much development is actually occurring within the access easement, but at a length of 475 feet, and easement width of 50 feet, there could be as much as 23,750sf of development occurring on the site. The threshold for a "Fast Track" Site Plan application is 15,000sf or less. Therefore, the Type III Site Plan Review process should be applied to this development.
2. The owner of tax lot #900 did not sign the land use application, and has not consented to road construction by Provident on his property. Therefore, the application is not technically complete per SZCDC 16.70.030, as the owner of property subject to the land use action has not signed the land use application.

In the November 27, 2007 public hearing for the Oregon Street Industrial building property on tax lot #900, this project was cited, but no details were available. In the interest of public involvement, Goal 1 of the Oregon Land Use Goals, this development certainly demands broader participation than the limited scope available in the "Fast Track" procedure.

Of particular concern, is the fact that development is not only proposed by the applicant for their property, but *on an adjacent property they do not own*. The road proposed is not within a separate tract or right-of-way, but within an access easement. The owner of tax lot #900 did not sign the land use application, and would potentially be subject to the penalty of SZCDC 16.70.050, and prevented from submitting a land use application for the same type of development on his property should this application be denied. For years, Sherwood has consistently returned applications to prospective applicants as incomplete under 16.70.030 if the land owner signature is absent from the application.

To summarize, in the interest of public participation and compliance with the Sherwood Code, the signature of a property owner on an application for development is a basic requirement that cannot be ignored, and the procedural ordinance dictates a Type III application procedure must be used for this level of development when a technically complete application is submitted.

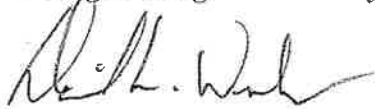
I urge you to return application SP 07-07 to the applicant, with directions to obtain proper land owner signatures, and upon acceptance of a complete application, process this request as a Type III land use permit.

You will receive a letter from Peter Livingston dated November 30, 2007 citing statute and case law that substantiates the argument above in regards to the issue of landowner signature on the application form.

This letter is forwarded to the Planning Commission Chair Patrick Allen, to clarify the issue in regards to SP 07-08 Oregon Street Industrial Building, as this proposed application is germane to the decision on that development and should be included in the record, open until December 8, 2007.

Sincerely,

AKS Engineering and Forestry, LLC



David L. Wechner, M.S. AICP
Principal

C: John Patrick Lucas, Pacific III, LLC
Patrick Allen, Chair, Sherwood Planning Commission
Peter Livingston, Attorney Schwabe, Williamson & Wyatt

ENGINEERING PLANNING
FORESTRY

12011 NE 99th Street, Suite 1530
Vancouver, WA 98682
Phone: (360) 882-0419
Fax: (360) 882-0426



LANDSCAPE
SURVEYING

Offices Located In:
SHERWOOD, OREGON
REDMOND, OREGON
VANCOUVER, WASHINGTON
www.aks-eng.com

MEMORANDUM

To: Patrick Allen, Chair Sherwood Planning Commission
From : David L. Wechner, M.S. AICP Principal
Date: December 7, 2007
AKS Job: 1741

Re: Comments during the open record period Nov. 27 to December 7, 2007, Oregon Street Industrial Building, SP 07-07

Pursuant to ORS 197.763(6)(a) and (c), the applicant submits the following additional testimony.

1. The applicant suggests the following additional condition:

Discussion:

Condition C.6 Street Trees: The applicant did discuss the issue with Planning Director Julia Hajduk in July, 2007, and submitted a letter from Michael Robinson, applicant's attorney, on July 24, 2007 stating that the application could be amended to retain the existing trees. However, given that developing a curb-tight sidewalk in the project would require a modification to the street standards, and Engineering has been reluctant to approve modifications to the Street Standards in the past, the applicant chose not to pursue the modification. The applicant is willing to retain these trees, with a curb-tight sidewalk for that portion of Oregon Street, and proposes the following condition of approval:

Proposed Condition:

C.6. Revise the public improvement plans along the northern portion of right-of-way on Oregon Street to retain as many existing street trees as possible. The sidewalk may be allowed within the front yard setback, in a public easement.

If the condition above is approved as revised, Condition D.18 should be deleted.

2. The applicant requests that Condition C.1.b. be amended.

Discussion:

Condition C.1.b Retaining wall along private access drive: Commission Chair Allen asked if the retaining wall indicated on the plans can be removed. The applicant has no objection, and proposes an amended condition to respond to the Commission's request.

Proposed Condition:

C.1.b Revise the engineering drawings dated November 15, 2007 to remove the retaining wall shown east and adjacent to the private access driveway.

3. The applicant requests that Conditions C.1.a. and D13 be amended.

Conditions C.1.a and D.13 Access for additional parcels The partition plat recorded as #2002-030 contains a private access and utility easement for the benefit of tax lot #500, as detailed in Doc. 2002-111387, recorded with the partition. Cross-circulation access easements should be established for lots 900, 1000 and 1100 only. The applicant objects to providing additional access for adjacent parcels #600, 601 and 602 that collectively contain over 800 feet of frontage on Oregon Street, and can meet spacing standards in completing the intersection at SE Orland Street, or SE G&T Drive. (See the attached recorded easement document).

Section 16.108.050.14.B.3 of the City code requires that:

3. Collectors:

All commercial, industrial and institutional uses with one-hundred-fifty (150) feet or more of frontage will be permitted direct access to a Collector.

Consequently, the adjacent tax lots #600, 601 and 602 may access Oregon Street directly; the applicant should not be required to bear additional traffic from adjacent parcels that contain frontage on a collector well in excess of 150 feet.

The applicant requests the Planning Commission delete Condition C.1.a and replace Condition D.13. with the following:

Proposed Condition:

D.13 Submit legal evidence in the form of deeds, easements, leases or contracts that clearly establish joint ingress/egress for the 3 proposed buildings, storage yard on the subject site, tax lots #900, 1000 and 1100.

In addition to the response to Commissioner's concerns detailed above, the applicant offers the following in response to the staff report's findings and recommended Conditions of Approval:

Finding on Section 16.90.020.G is inapplicable to the project, unless the applicant proposes a commercial use in the Light Industrial zone (*i.e.* 16.32.030.F Restaurants without drive-thru). Section 16.32.010 submits the applicant's design to the approval of the Planning Commission. Building elevations and proposed materials were submitted with the application, and exterior review is allowed per Section 16.90 of the Code. Further review by staff is not warranted for an industrial use under the commercial design standards, and not contemplated in Section 16.90.020. (See Findings: 16.90.020.G, page 6 of the November 6, 2007 staff report). The applicant requests that the Planning Commission confirm this finding.

The applicant requests that the Planning Commission confirm that offices associated with industrial uses are not extracted as a separate use category for purposes of determining the parking standard, as virtually any industrial use has an office associated with it, but that does not mean associated offices meets the definition of “general office”. The applicant concurs that if he chooses to lease a building or tenant space as purely office, it would be limited to the 1/370sf standard for that structure.

Condition D.7: The applicant requests that the proposed landscape buffer along parking areas be approved, by allowing the standard to be used as a ‘minimum average’. It does narrow to 2.5-foot wide at one point near the east entrance, but the bulk of this landscape island is well over 10 feet in width. The applicant requests the Planning Commission delete condition D.7.

Condition D.11: There is no Code standard that dictates no more than 4 perpendicular parking spaces may back out into a private, internal access drive through a parking lot. The staff may be basing this Condition D.11 on Section 16.94.020.1.B Off-Street parking standards:

B. Layout

Parking space configuration, stall and access aisle size shall be of sufficient width for all vehicle turning and maneuvering. Groups of more than four (4) parking spaces shall be served by a driveway so that no backing movements or other maneuvering within a street, other than an alley, will be required.

Applying the code to require this condition may be consistent with the staff’s contention that the access drive is a street, but the Partition plat that created the lots did *not* require a street, but simply the requirement for a private access to be established within an easement. The access is furnished through an internal driveway, and no backing movements or other maneuvering is proposed within a street. The applicant requests the Planning Commission delete condition D.11.

The applicant asserts that the outside storage area does not need additional screening from the railroad tracks. Section 16.92.030.2.C allows that additional screening would not be required: “where equivalent screening is provided by intervening buildings or structures.” The tracks are several feet off the surrounding grade and the railroad right-of-way is up to 75 feet wide, separating the site from a wetland, on other industrially-zoned property. Fencing should be deemed adequate. The applicant requests the Planning Commission delete condition D.17.

If you have any questions, I am available at the AKS Vancouver office during normal business hours: (360) 882-0419.



Michael C. Robinson
PHONE: (503) 727-2264
FAX: (503) 346-2264
EMAIL: MRobinson@perkinscoie.com

1120 N.W. Couch Street, Tenth Floor
Portland, OR 97209-4128
PHONE: 503.727.2000
FAX: 503.727.2222
www.perkinscoie.com

October 15, 2007

VIA E-MAIL

Ms. Julia Hajduk
Planning Manager
City of Sherwood
22560 SW Pine Street
Sherwood, OR 97140

Re: City of Sherwood File No. SP 07-07

Dear Julia:

Thank you for your October 11, 2007 letter. I am writing to explain why my client respectfully disagrees with the conclusions in your letter regarding the appropriate 120-day clock date. Notwithstanding our disagreement, I want to reiterate that my client wishes to resolve this matter in a way that results in a positive staff recommendation and a Planning Commission approval of the application. Accordingly, while my client is compelled to respond to your letter, he intends to emphasize the substantive merits of the application while reserving his rights to assert his 120-day clock rights, if necessary.

ORS 227.178(2)(a) provides as follows: "If an application for a permit, limited land use decision or zone change is incomplete, the governing body or its designee shall notify the applicant in writing of exactly what information is missing within thirty (30) days of receipt of the application and allow the applicant to submit the missing information. The application shall be deemed complete for the purpose of said section (1) [the 120-day clock] of this section upon receipt by the governing body or its designee of:

(a) all of the missing information;..."

61027-0001/LEGAL13642947.1

ANCHORAGE • BEIJING • BELLEVUE • BOISE • CHICAGO • DENVER • LOS ANGELES
MENLO PARK • OLYMPIA • PHOENIX • PORTLAND • SAN FRANCISCO • SEATTLE • WASHINGTON, D.C.

Perkins Coie LLP and Affiliates

Ms. Julia Hajduk
October 15, 2007
Page 2

My July 24, 2007 letter stated in relevant part in the first paragraph: "I am writing to respond to your June 22, 2007 incompleteness letter. As you know, Oregon law provides that the application must be made complete within 180 days of the submittal date in order to vest the application against then-effective approval standards. *The applicant will make the application complete as explained below. The remainder of this letter addresses the incompleteness issues identified in your letter.*" (emphasis added). Thus, the letter stated that it was providing the requested completeness materials. The applicant chose to fully respond to the incompleteness letter.

Nothing in ORS 227.178(2) requires the applicant to state that none or no other missing information will be provided where the applicant, as my letter did, states: "The applicant will make the application complete as explained below." The City had all of the necessary information that it needed to make the application complete and the July 24, 2007 letter fully responded to the City's incompleteness letter dated June 22, 2007.

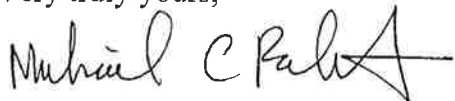
Your letter notes several reasons why you believe the completeness date is September 28, 2007. First, you noted the last paragraph of my letter in which I requested that you notify me when you deem the application complete. This paragraph is consistent with the first paragraph of the letter which informed the City that it was receiving all of the information necessary to make the application complete. As noted above, ORS 227.178(2) provides that the application is deemed complete upon receipt by the governing body of all of the missing information. The July 24, 2007 letter addressed all of the incompleteness items that you identified. The last paragraph simply requested a completeness letter.

Second, you asserted that an additional fee was required. Response item 2 in my letter responded to the fee request. The letter stated in relevant part: "You have requested that a site plan review fee that includes the square footages and parking areas in both scenarios be required. We will comply with that request." Response item 3 responded to that request. Moreover, whether the fee was adequate or not did not prevent the City from determining the application was complete for purposes of beginning the 120-day clock.

Ms. Julia Hajduk
October 15, 2007
Page 3

Thank you again for your courtesy and assistance. Patrick and I both enjoy working with you and David and we hope that the Planning Commission hearing can be scheduled for November 13, 2007 so we can avoid any question of the 120-day clock.

Very truly yours,

A handwritten signature in black ink, appearing to read "Michael C. Robinson". The signature is fluid and cursive, with a large, stylized initial "M" and "R".

Michael C. Robinson

MCR/cfr

cc: Mr. David Doughman (via email)
Mr. Patrick Lucas (via email)
Ms. Christy Stockton (via email)
Mr. David Wechner (via email)

ANDREW H. STAMP, P.C.
ATTORNEY AT LAW
Kruse-Mercantile Professional Offices, Suite 15
4248 Galewood St.
Lake Oswego, OR 97035

Admitted in Oregon.

Tele: 503.675.4318
Fax: 503.675.4319
andrewstamp@comcast.net

13 December, 2007

VIA ELECTRONIC & U.S. MAIL

Ms. Julia Hajduk
Planning Manager
Community Development Division
City of Sherwood
22560 SW Pine Street
Sherwood, Oregon 97140

Re: *Rebuttal Comments*
 Oregon Street Industrial Buildings
 City of Sherwood File No. SP 07-07

Dear Julia:

My office represents Pamela and Clarence Langer and the Langer Family LLC. As you know, the Langers are long time residents of the city of Sherwood with significant commercial development interests in the city. Over the years the Langers and their partners have strived to create efficiently designed development projects that are aesthetically pleasing and responsive to community values as they are expressed in the city's comprehensive plan and development code. As result, the Langers feel they have a vested interest and a public responsibility to ensure that site plan proposals for new construction in the city meet the same standards for high quality and efficient design that they have set for themselves and which they believe the citizens of the city of Sherwood have the right to expect.

Mr. Langer provided oral testimony at the November 27, 2007 Planning Commission meeting that considered Mr. Lucas's application. The draft planning commission hearing minutes reflect that the commission left the record open for the receipt of additional written testimony for ten (10) days until December 07, 2007. The planning commission further left the record open through December 14 for receipt written rebuttal testimony. This letter is provided in rebuttal to the supplemental comments submitted by David Wechner on December 07, 2007 on behalf of Mr. Lucas.

As Mr. Langer stated in his testimony, the Langers do not object to the light industrial uses Mr. Lucas has proposed. In fact, the Langers believe the project is a good idea for the site. The Langers are concerned, however, that Mr. wechner's December 07 letter does not respond to any of the site design deficiencies noted in the staff report or in the written and oral testimony provided by other interested parties. The Langers are concerned that in some instances, the design deficiencies that have been noted in the record may constitute significant life/safety hazards. A detailed description of the issues the Langers believe Mr. Lucas' representatives should have addressed to the planning commission following the November 27 hearing are set forth below:

1. Private Drive, Tract "A".

Mr. Lucas proposes to construct a private street along the site's eastern property line. The proposed private street would be constructed entirely within an existing private access easement that benefits tax lot 500 to the north. The private street will the abut tax lots 500, 900, 600 and 602.

SZCDC 16.118.050 states: "Unless otherwise specifically authorized, a private street shall comply with the same standards as a public street identified in the Community Development Code and the Transportation System Plan." Applicant's site plans reflect that the proposed private street does not meet the city's minimum public street design standards. Among other deficiencies, the proposed private street does not meet minimum width requirements; it does not provide required pedestrian facilities; it proposes parking that does not meet minimum standards for public streets; and the retaining walls included in the street's design could place unreasonable development restrictions and fire/life safety limitations on adjoining parcels.

The findings contained in the November 06, 2007 staff report correctly state that the proposed private street does not meet the minimum street improvement standards contained in SZCDC 16.108.030.04. Despite this conclusion, the staff report proposes to approve Applicant's site plan with conditions of approval that require Applicant to submit revised site plans that show: (1) the proposed private street designed to meet all public standards; (2) cross access and public utility for the benefits of tax lots 500, 600 and 602; and (3) vehicular connections to tax lots 500, 5600 and 602 via the private street by removing the proposed retaining walls. Condition of Approval No. 1. The conditions of approval proposed by staff are inappropriate for several reasons, the least of which is the fact that the staff report acknowledges that the conditions themselves may "prove unfeasible."¹ Additionally, there is nothing in the record that supports a decision by the city engineer to authorize any deviation form the requirement that all private streets be constructed to public street standards. The conditions of approval proposed by staff to address the proposed private street's deficiencies will create a second, separate discretionary land use decision that will potentially impact parking requirements, landscaping requirements, pedestrian movements and internal vehicle circulation. Such a decision would be properly subject to the same public notice, comment and appeal provisions that the current application is subject to. *Citizens for Responsible Growth v. City of*

¹ See *Griffith v. City of Corvallis*, 16 Or LUBA 64 (1987), holding that a feasibility finding that is equivocal or wavering is not sufficient.

Seaside, 23 OR LUBA 100, 104 (1992); *Holland v. Lane County*, 16 OR LUBA 583, 594(1988). Prior to granting any approval of the proposed development, staff should require Applicant to submit revised site plans that show the private street proposed for Tract A designed to full public street standards that includes curbs and sidewalks and meets on-street parking standards. The street should also demonstrate adequate and safe vehicle, pedestrian and emergency access to all adjoining properties.

2. Parking.

The minimum required parking spaces for industrial uses is 1.6 parking stalls per 1,000 square feet of gross leasable area. SZCDC 16.94.020.02. Applicant's current site plan proposes to construct three light industrial use structures with a total gross leasable area of 33,413 square feet. The minimum required parking for the three structures is 54 spaces. Applicant's site plan shows 50 spaces. As correctly noted in the staff report dated November 06, 2007, Applicant's site plan does not include striping plans for required ADA parking spaces and loading areas. The staff report correctly estimates that inclusion of required ADA parking spaces will reduce the net number of available parking spaces by approximately 4 spaces to 46 parking spaces, which is 8 spaces short of the minimum required 54 parking spaces.

SZCDC 16.94.010.04, Multiple/Mixed Uses, allows for a reduction of required off-street parking up to 25% where an applicant demonstrates cross patronage of adjacent business or services. Applicant's submittal packet does not contain a request for a reduction of required parking spaces based on cross patronage. The submittal also does not contain any factual information or discussion that could be reasonably interpreted to demonstrate the possibility that cross patronage will occur between the 3 proposed buildings. Nonetheless, the November 06, 2007 staff report reduces the amount of required parking by 25% from 54 spaces to 41 spaces. There is no factual basis in either Applicant's submittal materials or the staff report that supports the parking reduction granted to this development proposal. Applicant should be required to provide factual evidence that reasonably demonstrates cross patronage of adjacent businesses or services will occur on the site in a manner that justifies a reduction of the minimum required 54 parking spaces. In the absence of such evidence, Applicant should be required to submit revised site plans that show a minimum of 54 parking spaces. This revision may necessarily require Applicant to submit revised landscaping plans that demonstrate compliance with minimum parking lot landscaping standards.

SZCDC 16.94.020B, Parking Layout, states: "Groups of more than four (4) parking spaces shall be served by a driveway so that no backing movements or other maneuvering within a street, other than an alley, will be required. The November 06, 2007 staff report correctly observes that the 50-foot access easement is, by definition, a "street," and that Applicant's site plans show groups of more than 4 parking spaces that will require backing movements and maneuvering within the street in violation of SZCDC 16.94.020B. Compliance with this requirement will result in an additional reduction in available parking spaces. The staff report's solution to the site plan's failure to comply with this parking standard is to approve the site plan with a condition of approval requiring Applicant to "submit revised site plans that clearly show no more than 4 perpendicular parking spaces backing out into the private easement." Condition of Approval D. 11. The condition of approval proposed by staff is inappropriate because it will

create a second, separate discretionary land use decision that would be properly subject to the same public notice, comment and appeal provision that the current application is subject to.

Mr. Wechner argues that Condition D. 11 should be stricken because the partition plat that created the lots that Mr. Lucas proposes to develop did not “require” a street to be constructed. Mr. Wechner’s reasoning ignores the plain language of SZCDC 16.10.020, which defines a street as: “A public *or private road, easement* or right-of-way that is created to provide access to one or more lots, parcels, areas or tracts of land.” (Emphasis added) Applicant’s plans show more than 4 parking spaces that require backing out onto a “street” as that term is defined by the SZCDC. Accordingly, prior to any approval of the proposed development, Applicant should be required to submit revised site plans that contain the minimum required 54 parking spaces and demonstrate compliance with the backing and maneuvering standards described in SZCDC 16.94.020B.

3. Pedestrian Access.

The site plans submitted by Applicant do not provide any dedicated pedestrian access to tax lot 500 or the western boundary of tax lot 600. The plans present significant pedestrian safety concerns because they would require pedestrians seeking to access tax lots 500 and 600 to traverse the site within the vehicle travel lanes either beside or adjacent to parked vehicles. Pedestrians will also be directly exposed to delivery trucks maneuvering on the site.

The staff report proposes to address the site plan’s gross pedestrian circulation deficiencies by including a condition of approval that requires Applicant to “submit a revised plan that clearly shows a pedestrian connection will be provided to connect future development on the property to the north (tax lot 500) to the public street (Oregon Street).” The conditions of approval proposed by staff to address the site plan’s pedestrian circulation and connection deficiencies will unnecessarily defer final discretionary land use decisions that will potentially impact parking requirements, landscaping requirements, pedestrian movements and internal vehicle circulation. Such a decision would be properly subject to the same public notice, comment and appeal provisions that the current application is subject to. Prior to granting any approval of the proposed development, staff should require Applicant to submit revised site plans that show safe, adequate pedestrian connection to tax lots 500 and 600.

4. Internal Vehicle Circulation.

The site plan proposes separate 25 x 50 foot loading areas for each building. However, as noted by the staff report, the site plan does not provide required markings that demonstrate directional flows and provisions for vehicle and pedestrian safety. At a minimum, the information provided on the site plans should include turning radius overlays of delivery trucks that would be reasonably anticipated to enter onto the site. Applicant’s site plan is exceptionally tight and without this critical information it is not possible to determine whether truck circulation on the site will function in a safe and efficient manner that adequately protects internal pedestrian, bicycle and passenger vehicle trips. Prior to granting any approval of the proposed development, staff should require Applicant to submit revised site plans that demonstrate

directional flows and provisions for vehicle and pedestrian safety, including turning radius overlays of delivery trucks that are reasonably anticipated to enter onto the site.

The site plan proposes angled parking spaces on the west side of building 2. In order to access these parking spaces passenger vehicles will be required to execute a three-point "U" turn from the east side of the private street or reverse course using the loading areas located on the north side of buildings 1 or 2. Both of these turning movements are inefficient and are likely to create significant circulation conflicts and safety hazards with respect to other internal pedestrian, bicycle, vehicle and delivery truck trips. Prior to granting any approval of the proposed development, staff should require Applicant to submit revised site plans that eliminate inefficient and unsafe turning movements to access required on-site parking spaces.

The site plan does not include striping plans that designate "no parking" areas for fire lanes and fire apparatus turn-around areas. This information is especially critical in the northeast corner of the site, which contains a variety of potential movement conflicts that include a circumscribed triangular lot geometry, truck loading areas for Building 1, the trash disposal and recycling area and proposed 2 to 6-foot retaining walls. Prior to granting any approval of the proposed development, staff should require Applicant to submit revised site plans that designate "no parking" areas for required fire lanes and fire apparatus turn-around areas.

5. Building Setbacks.

The street-side minimum building setback on corner lots is 20 feet. SZCDC 16.32.050B. Buildings 1 and 2 appear to be located significantly less than 20 feet from the west side of the proposed private street. Prior to granting any approval of the proposed development Applicant should be required to submit revised site plans that show a minimum 20 foot setback from the proposed private street.

6. Landscaping.

Applicant has requested the planning commission to approve the proposed landscape buffer adjacent to the site's parking areas by interpreting the 10-foot minimum width standard as a 10-foot "minimum average" width. If the city council had intended the standard to be interpreted as a "minimum average," the council could have easily included "minimum average" when it adopted the standard. It did not, however, and the site plan should be required to comply with the 10-foot standard in all instances.

Summary

For the reasons stated above, the Langers object to any approval of the development plans submitted by Mr. Lucas. The staff report acknowledges many of the deficiencies noted above. Other interested parties have identified similar site plan deficiencies in both written and oral testimony. The response provided by Mr. Wechner does not respond to any of the site design deficiencies noted in the staff report or in the written and oral testimony provided by other interested parties. Where a tentative site plan does not comply with applicable development standards, the local government may not defer further consideration of the standards to a later

Ms. Julia Hajduk
13 December, 2007
Page 6

date. The local government must either require that the development plan be revised to comply with the applicable development standards or adopt findings explaining why the applicant is authorized to deviate from applicable standards under local code provisions allowing such deviations. *Southview Homeowners Ass'n v. City of Philomath*, 21 Or LUBA 260 (1991).

Staff's proposal to approve the project with conditions of approval requiring Applicant to submit revised site plans that demonstrate compliance with applicable site plan standards is inappropriate because it defers significant discretionary decision-making activities to later stages in the approval process such as the engineering improvement plan and building permit plan review processes where public notice and an opportunity to comment is not ordinarily provided. These decisions would be properly subject to the same public notice, comment and appeal provision that the current application is subject to. We believe it makes better sense to consider all required discretionary land use decisions at one time rather than piecemeal them out over as many as three processes. Accordingly, prior to issuing any final land use approval for the proposed development, Applicant should be required to submit revised site plans that demonstrate compliance with all applicable discretionary land use standards.

Thank you for your time and attention to this matter. If you have any questions about any of the issues we have raised please contact me at the phone number listed above,

Sincerely,

ANDREW H. STAMP, P.C.

Andrew H. Stamp

AHS:bc
cc:

Client (Via U.S. Mail)
Peter Livingston
Bill Monahan



Pacwest Center, 1211 SW 5th Ave., Suite 1900, Portland, OR 97204 | Phone 503.222.9981 | Fax 503.796.2900 | www.schwabe.com

PETER LIVINGSTON

Admitted in Oregon and Washington

Direct Line: 503-796-2892

Home Phone: (503) 233-9313

E-Mail: plivingston@schwabe.com

December 14, 2007

VIA E-MAIL HAJDUKJ@CI.SHERWOOD.OR.US

Ms. Julia Hajduk
Planning Manager
City of Sherwood
22560 SW Pine Street
Sherwood, OR 97140

Re: Oregon Street Industrial Building
SP 07-08
Our File No.: 117935/157587

Dear Ms. Hajduk:

We represent the applicant, J. Patrick Lucas ("Applicant"). This letter responds to the comments dated December 4, 2007, that were filed by William A. Monahan on behalf of Provident Development Group, LLC ("Provident"). The responses are organized by the numbered sections in Provident's letter.

1. Provident makes a series of arguments against the staff's application of the code to the parking requirements. Unfortunately, both Provident and staff make an erroneous assumption about the nature of the proposed access.

Applicant has consistently maintained that the access to Tax Lot 500 is a private access driveway, not subject to the development standards for a private or public street or adjacent parking. The Declaration of Private Access and Utility Easement, dated July 1, 2002, which is attached to my letter of November 30, 2007, specifies, "The Easement is and shall be a *permanent private access* and utility easement." It does *not* grant the city or the owner of Tax Lot 500 the right to develop a private or public street over the objections of the property owner. The original plat did not require the development of a road.

Therefore, the fact that the proposed parking might not be permitted on a private or public street does not mean it cannot be permitted in this case, where no private or public street is being proposed. SMC 16.94.020(1)(B) states, "Groups of more than four (4) parking spaces shall be served by a driveway so that no backing movements or other maneuvering within a street, other than an alley, shall be required." Applicant has proposed a *driveway*, so that no backing movements or other maneuvering will occur within a *street*. Therefore, the proposed development complies with the code.

2. Provident contends the proposed parking configuration creates safety concerns. In fact, SMC 16.94.020(1)(B), which addresses parking areas, states, "All parking areas shall meet the minimum standards shown in Appendix G." Appendix G (attached) shows the minimum standard for 90 degree drive-in parking aisle width minimum is 23 feet. Since the proposed access is 45 feet in width near Oregon Street, narrowing to 34 feet in width near Building One, this standard is easily met.

Moreover, Applicant's engineer has provided written testimony to the effect that the proposed parking is safe.

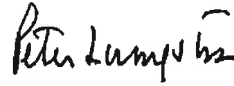
3. Provident once again objects to the planned development on the ground that the 17 proposed parking spaces must be considered "temporary," "as they will need to be removed later when the adjacent parcel to the east is developed." The adjacent parcel to the east, Tax Lot 600, does not have access to the site and cannot be provided access. Therefore, the premise of Provident's argument is flawed.
4. Provident raises a series of objections to staff's interpretation of the code to allow multiple/mixed uses. Applicant has no objection to the approach taken by staff to parking, other than the fundamental objection that staff mistakenly has concluded the proposed private access is a private or public street.
5. and 6. Provident objects that Applicant's proposed use of the easement is inconsistent with Provident's desired use of the easement. Applicant maintains that the proposed access driveway will allow Provident adequate access to Tax Lot 500.
7. Provident objects that pedestrian access to the Provident property along the sidewalk that will be built within the easement will be unsafe if the Lucas parking plan is allowed. Since there will be parking between the access easement and the sidewalk, the sidewalk will be safe. Applicant is willing to construct a sidewalk along the eastern boundary of the subject property, adjacent to Tax Lot 600, but is not willing to disturb that sidewalk with curb cuts.
8. and 9. Provident objects to the construction of a retaining wall along the Provident tract. As Provident recognizes, Applicant yielded to staff on this point,

Ms. Julia Hajduk
December 14, 2007
Page 3

and agreed that a retaining wall would not be constructed. Provident seeks a new grading plan "to address all of the concerns raised by staff through the report as well as the concerns of opponents." If a new grading plan is required, it can be done (as usual) as part of final engineering design.

Thank you for considering these additional comments.

Very truly yours,



Peter Livingston

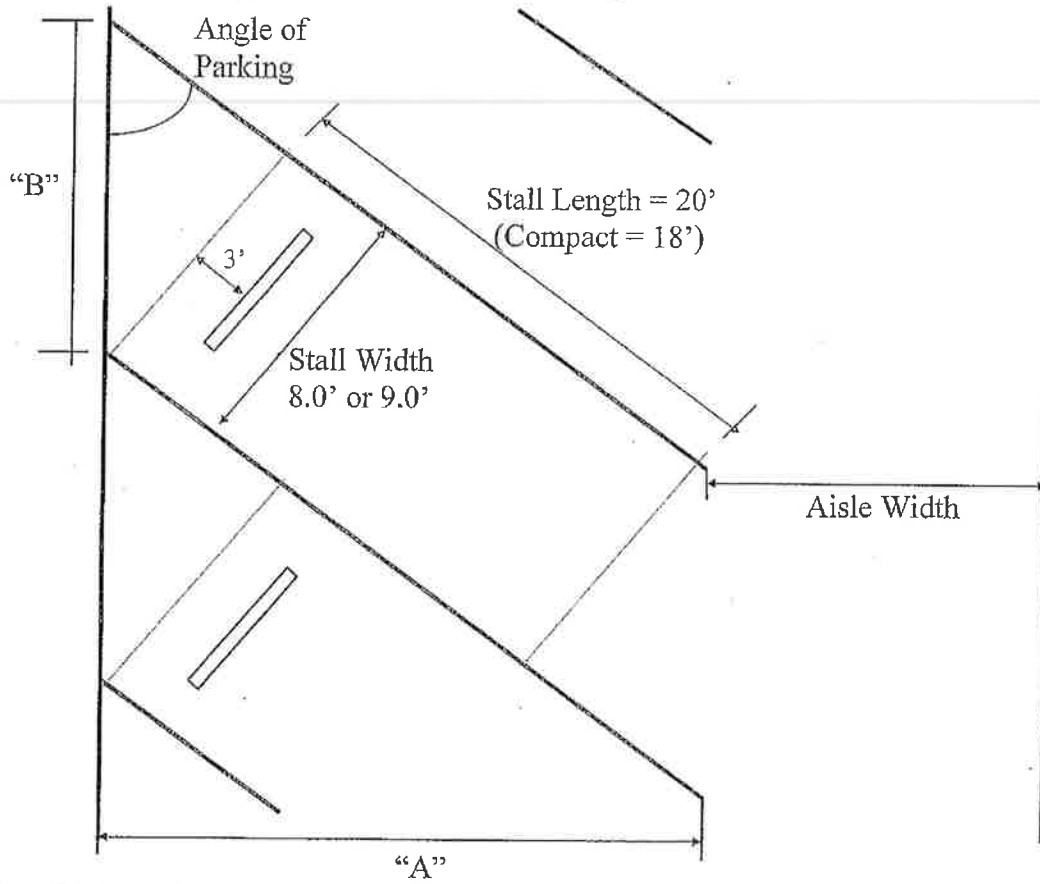
PLI:mka

cc: Mr. J Patrick Lucas
Dave Wechner

APPENDIX G

MINIMUM PARKING STANDARDS

Minimum Standards for Parking Areas



Angle of Parking	Direction of Parking	Aisle Width		"A"		"B"	
		Stall Width		Stall Width		Stall Width	
		8'	9'	8'	9'	8'	9'
30°	Drive-In	12.5	12.5	17.8	18.2	18.0	19.0
45°	Drive-In	12.5	12.5	20.5	20.9	12.7	13.4
60°	Drive-In	19.0	18.0	21.8	22.1	10.4	11.0
60°	Back-In	17.0	17.0	21.8	22.1	10.4	11.0
90°	Drive-In	23.0	23.0	20.0	20.0	9.0	9.6
90°	Back-In	22.0	22.0	20.0	20.0	9.0	9.6

ENGINEERING PLANNING
FORESTRY

12011 NE 99th Street, Suite 1530
Vancouver, WA 98682
Phone: (360) 882-0419
Fax: (360) 882-0426



LANDSCAPE
SURVEYING

Offices Located In:
SHERWOOD, OREGON
REDMOND, OREGON
VANCOUVER, WASHINGTON
www.aks-eng.com

MEMORANDUM

To: Patrick Allen, Chair Sherwood Planning Commission
From : David L. Wechner, M.S. AICP Principal
Date: December 21, 2007
AKS Job: 1741

Re: **Oregon Street Industrial Building, SP 07-07:** Comments during the 'applicant's rebuttal' portion of the open record period December 15 to 21, 2007.

This memorandum is focused upon the rebuttal to those items raised by others in the open record period December November 27, through December 14, 2007 for the Oregon Street Industrial Building project, Sherwood Case File #SP07-07.

Since the initial public hearing, City Planning Department staff received documents within the open record period as itemized below:

May 8, 2006 Letter to Kevin Cronin, Planning Manager from Michael Robinson, attorney

October 15, 2007 Letter to Julia Hajduk, Planning Manager from Michael Robinson, attorney

November 30, 2007 Letter to Julia Hajduk, Planning Manager from Peter Livingston, attorney
(attached: July 1, 2007 Declaration of Private Access and Utility Easement, Doc. 2002-111387)

December 4, 2007 Letter to Julia Hajduk, Planning Manager from William Monahan, attorney

December 7, 2007 Memorandum to Patrick Allen, Chair from Dave Wechner, AKS Engineering

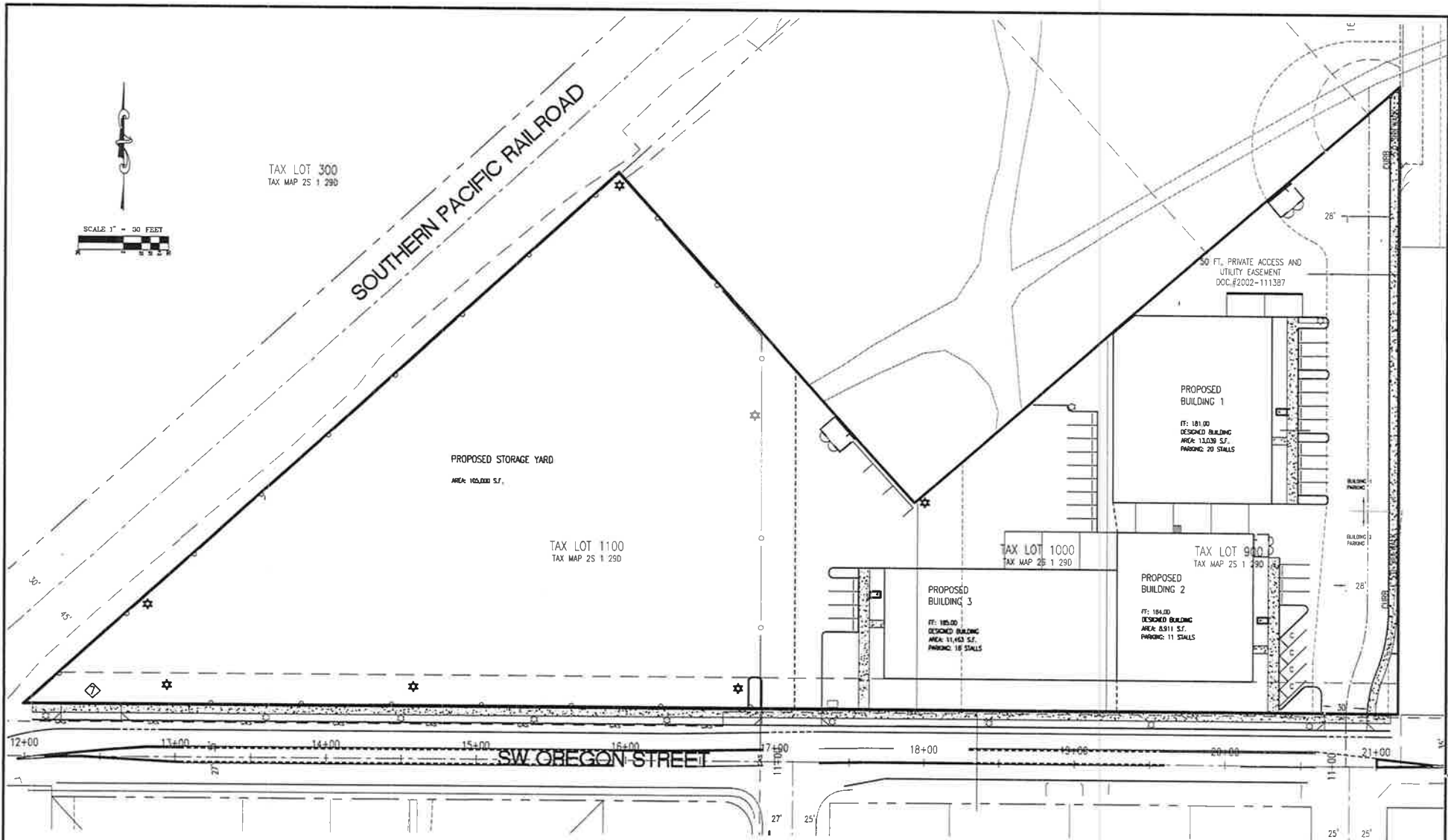
December 7, 2007 Letter to Patrick Allen, Chair from Peter Livingston, attorney

December 13, 2007 Letter from Brian Cavaness**

December 14, 2007 Letter to Julia Hajduk, Planning Manager from Peter Livingston, attorney

(** Applicant received notice of this document filed with the City, but has not received a copy)

Since the public hearing of November 27, 2007, the applicant has met with opponents of the development, and come to agreement on several issues. The following amendments to the private



REVISIONS:

**PRIVATE ACCESS
EXHIBIT**

ENGINEERING • PLANNING
SURVEYING • FORESTRY

13910 SW CALSKRAN DR., SUITE 100
SHERWOOD, OR 97140
PHONE: (503) 325-8700
FAX: (503) 325-8989

AKS
ENGINEERING & FORESTRY

Office Located At:
SHERWOOD, OREGON
REDMOND, OREGON
VANCOUVER, BRITISH COLUMBIA

PROJECT NO. P-065-PH1-1000
DATE: 05/2007

PREPARED FOR: PACIFIC RAIL, LLC
20417 SW 80TH BOGERS RD, STE 150
SHERWOOD, OR 97140
Ph: (503) 217-5590
FAX: (503) 217-5004

**15104 SW OREGON STREET
PHASE I**

SHERWOOD
TAX LOTS 900, 1000, AND 1100

OREGON
WASHINGTON COUNTY TAX MAP 25200

DATE: 12/20/07

PRELIMINARY
NOT FOR
CONSTRUCTION

JOB NUMBER
1741

SHEET
1 OF 1

TO: PLANNING COMMISSION

App. Submitted: 10-23-07
App. Complete: 11-21-07
Hearing Date: 01-08-08
120-Day Deadline: 03-20-08

FROM: PLANNING DEPARTMENT

Heather M Austin

Heather Austin, AICP, Senior Planner

I. APPLICATION INFORMATION

Owner/Applicant:

Patrick Lucas
20512 SW Roy Rogers Road, Suite 150
Sherwood, OR 97140

- A. Location: 16103 SW First Avenue, Tax Map 2S132BC, Tax Lot 2901
- B. Proposal: The applicant is requesting a modification to an approved Site Plan to change the second story of a three story building from residential use to commercial use. The request involves the Old Town Lofts project approved in 2004 and would include changing four (4) residential apartment condominiums to four (4) professional office condominiums. The applicant is also proposing to remove the finials on the roof shown in the original approval (see applicant's submittal, Exhibit A).
- C. Background: Chapter 16.90.020.3.A of the Sherwood Zoning and Community Development Code (SZCDC) requires that any proposed changes to approved plans shall be submitted for review to the City. Changes that are found to be substantial, as defined by 16.90.020, shall be submitted for supplemental review together with a fee equal to one-half (1/2) the original site plan review fee. The review is required to be in accordance with Section 16.72. In addition, because this constitutes a change to a plan originally approved by the Planning Commission, the modification must also be reviewed by the Planning Commission.
- The building is currently under construction as it was originally approved. All original conditions of approval are still applicable except as modified by any approved changes. Approval of this proposal will result in an interior change to the units on the second floor as well as removal of the finials on the roof shown in the original approval.
- D. Parcel Size: The Old Town Lofts building sits on a parcel that is 5,000 square feet in size.
- E. Existing Development and Site Characteristics: The Old Town Lofts project is currently under construction and is framed and roofed.
- F. Zoning: The site is zoned Retail Commercial (RC) in the Old Town Overlay. Professional services (i.e. office uses) are permitted per Chapter 16.28.020.A, and residential units are permitted when located secondarily to commercial uses in the RC zone in Old Town per Chapter 16.162.030.E.

- G. Adjacent Zoning and Land Use: The site is bounded on the northwest and southwest by properties zoned Retail Commercial (RC) and developed with commercial uses (a beauty salon and a funeral parlor, respectively). The site is bordered by SW Washington Street on the northeast and SW 1st Street on the southeast. The properties on the other sides of these streets are also zoned RC and developed with commercial uses.
- H. Review Process and Type:
Section 16.90.020.1 states that Site Plan review is required for the substantial alteration of an existing structure and further identifies substantial alteration if:
- A. The activity alters the exterior appearance of a structure, building or property.
 - B. The activity involves changes in the use of a structure, building, or property from residential to commercial or industrial.
 - C. The activity involves non-conforming uses as defined in Chapter 16.48.
 - D. The activity constitutes a change in a City approved plan, as per Chapter 16.90.020.
 - E. The activity is subject to site plan review by other requirements of this Code.
 - F. Review of any proposed activity indicates that the project does not meet the standards of Chapter 16.90.020.

The proposed modification meets "A" and "D", therefore full site plan review is required. The original plan was reviewed by the Planning Commission. Therefore, the Planning Commission must review this modification via a Type IV review process.

- I. Public Notice and Hearing: Notice of the January 8, 2008 public hearing on this application was published in The Times, posted and mailed to property owners within 100 feet of the site on December 18, 2007 in accordance with Chapter 16.72.020 of the Sherwood Zoning and Community Development Code.
- J. Review Criteria: Required findings for site plan approval are found in Chapters 16.90.020.4 and 16.162 (Old Town Overlay) of the Sherwood Zoning and Community Development Code.

II. PUBLIC COMMENTS

Public notice was mailed on December 12, 2007. No public comments were received as of the date of this report.

III. AGENCY COMMENTS

Agency notice provided and all agency responses are part of the official record for this project. The following is a brief synopsis of the comments received:

Sherwood Broadband provided comments that the requirements for Sherwood Broadband have changed since original approval of this project and that the applicant should provide one 4" conduit along the frontage of Washington and 1st Street and that this conduit should connect to the city's existing conduit system located between 1st and 2nd streets. Additionally, the applicant should install one 1 ¼" conduit connecting the city's conduit system into the applicant's building terminating in the telecommunications closet.

Clean Water Services provided general comments for this project and stated that a CWS Pre-Screening Site Assessment was issued for this site on August 13, 2007 and sensitive areas do not appear to exist on site or within 200' of the site.

Tualatin Valley Water District, Bonneville Power Administration, ODOT Signage, Kinder Morgan and Raindrops 2 Refuge all responded stating that they have no comments regarding this proposal.

Washington County, ODOT, Sherwood School District, Tualatin Valley Fire and Rescue, PGE, NW Natural, Metro and Tri-Met were provided agency notice but did not comment.

IV. SITE PLAN REVIEW – REQUIRED FINDINGS (CHAPTER 16.90.020.4)

A. The proposed development meets applicable zoning district standards and all provisions of Divisions 5, 6, 8 and 9.

FINDING: Compliance with the criteria in Divisions 2 (dimensional standards), 5 (Community Design), 6 (Public Improvements), 8 (Environmental Resources) and 9 (Old Town Overlay) is addressed further in this report under Section V.

B. The proposed development can be adequately served by services conforming to the Community Development Plan, including but not limited to water, sanitary facilities, storm water, solid waste, parks and open space, public safety, electric power and communications.

FINDING: The site has already been reviewed for compliance with this standard with the prior Land Use approval, Engineering Plan approvals and Building Permits. The modification to change the use of the second floor from residential to office does not increase the demand for public services; therefore, this standard has been satisfied.

C. Covenants, agreements, and other specific documents are adequate, in the City's determination, to assure an acceptable method of ownership, management and maintenance of structures, landscaping and other on-site features.

FINDING: The building sits on the entirety of this site and there are no other on-site features or landscaping. The building owner will maintain the building or enforce maintenance amongst the condominium owners. This standard has been met.

D. The proposed development preserves significant natural features to the maximum feasible extent, including but not limited to natural drainageways, wetlands, trees, vegetation, scenic views and topographical features, and conforms to the applicable provisions of Chapters 5 and 8 of this Code.

FINDING: The modification does not increase the building footprint or impervious surface area. Therefore, there is no impact to natural areas as a result of this modification.

E. For a proposed site plan in the Neighborhood Commercial (NC), Office Commercial (OC), Office Retail (OR), Retail Commercial (RC), General Commercial (GC), Light Industrial (LI), and General Industrial (GI) zones, except in the Old Town Overlay Zone, the proposed use shall satisfy the requirements of Section 16.108.070 Highway 99W Capacity Allocation Program, unless excluded herein.

FINDING: This proposed change of use is within the Old Town Overlay Zone and is therefore exempt from the Highway 99W CAP.

- F. For developments that are likely to generate more than 400 average daily trips (ADTs), or at the discretion of the City Engineer, the applicant shall provide adequate information, such as a traffic impact analysis or traffic counts, to demonstrate the level of impact to the surrounding street system. The developer shall be required to mitigate for impacts attributable to the project. The determination of impact or effect and the scope of the impact study shall be coordinated with the provider of the affected transportation facility.

The 7th Edition of the Institute of Traffic Engineers Trip Generation Manual (2003) identifies the AM Peak trips for a residential condominium as 0.67 per dwelling unit and a general office as 1.55 trips per 1,000 square feet of office space. The four residential condominiums would have produced approximately 2.68 (0.67x4) trips in the AM Peak whereas the 5,000 square feet of office space would produce approximately 7.75 (1.55x5) trips in the AM Peak. While it is clear that the office use is anticipated to produce more trips than a residential use of the same space, it is also clear that the site as a whole (with approximately 2,500 square feet of office use on the first floor and four residential condominiums on the third floor) is not likely to produce more than 400 average daily trips.

FINDING: The proposed change of use is not likely to increase the number of average daily trips to the site above 400, therefore this standard does not apply.

- G. The proposed commercial, multi-family development, and mixed-use development is oriented to the pedestrian and bicycle, and to existing and planned transit facilities. Urban design standards shall include the following:
1. Primary, front entrances shall be located and oriented to the street, and have significant articulation and treatment, via facades, porticos, arcades, porches, Zoning & Development Code portal, forecourt, or stoop to identify the entrance for pedestrians. Additional entrance/exit points for buildings, such as a postern, are allowed from secondary streets or parking areas.
 2. Buildings shall be located adjacent to and flush to the street, subject to landscape corridor and setback standards of the underlying zone.
 3. The architecture of buildings shall be oriented to the pedestrian and designed for the long term and be adaptable to other uses. Aluminum, vinyl, and T-111 siding, metal roofs, and artificial stucco material shall be prohibited. Street facing elevations shall have windows, transparent fenestration, and divisions to break up the mass of any window. Roll up and sliding doors are acceptable. Awnings that provide a minimum 3 feet of shelter from rain shall be installed unless other architectural elements are provided for similar protection, such as an arcade.
 4. As an alternative to the above standards G.1-3, the Old Town Design Standards (Section 16.162) may be applied to achieve this performance measure.

FINDING: The only proposed change to the exterior of the building is removal of the finials on the roof, which does not put the project out of compliance with these criteria. This is not a requirement of the standards above and compliance with the Old Town Design Standards is discussed below in Section V.E. These criteria are satisfied.

V. APPLICABLE STANDARDS

A. Division 2 - Land Use and Development

The applicable zoning district standards are 16.28 (Retail Commercial) and 16.162 (Old Town Overlay). No other standards in Division 2 apply to the proposed modification.

16.28.020 – Retail Commercial (RC) Zoning District

The site is zoned Retail Commercial (RC) in the Old Town Overlay. Professional services (i.e. office uses) are permitted per Chapter 16.28.020.A, and residential units are permitted when located secondarily to commercial uses in the RC zone in Old Town per Chapter 16.162.030.E. This use is permitted outright.

Changes to the dimensional standards of the project (lot size, lot width, lot depth, setbacks and height) are not proposed and, therefore, dimensional standard criteria are not applicable.

FINDING: The standards of Division 2 are satisfied.

B. Division 5 – Community Design

Because the proposal involves no change to the exterior of site other than removal of finials from the roof and a change in use of the second floor from residential to office (with no exterior changes), the majority of the Community Design criteria are not applicable. In addition, the project is located within the Old Town Overlay, so parking and loading areas are not required and there is no proposed or previously approved landscaping.

16.94.020.2. Bicycle Parking Facilities

Two (2) spaces or 1 per 20 auto spaces, whichever is greater, is required for retail sales/service office uses.

No bicycle parking is shown to be provided. Because the applicant is adding four (4) office units to the building, two (2) bicycle parking spaces are required. These can be within the building or garage, or covered on the exterior of the building when located so as not to block ADA accessibility.

FINDING: The criteria of Division 5 have not been met because the applicant has not shown bicycle parking for the four (4) additional offices proposed. The criteria of this division can be met as conditioned below.

CONDITION: Prior to certificate of occupancy, submit a revised site plan that shows the location of two (2) bicycle parking spaces on-site for review and install per staff approval.

C. Division 6 – Public Improvements

No changes to the existing streets, water system, sanitary system or stormwater system are proposed or required with this proposed change of use.

16.118.020 Public and Private Utilities

A. Installation of utilities shall be provided in public utility easements and shall be sized, constructed, located and installed consistent with this Code, Chapter 7 of the Community Development Code, and applicable utility company and City standards.

B. Public utility easements shall be a minimum of eight feet in width unless a reduced width is specifically exempted by the City Engineer.

C. Where necessary, in the judgment of the City Manager or his designee, to provide for orderly development of adjacent properties, public and franchise utilities shall be extended through the site to the edge of adjacent property(ies).

D. Franchise utility conduits shall be installed per the utility design and specification standards of the utility agency.

E. Public Telecommunication conduits and appurtenances shall be installed per the City of Sherwood telecommunication design standards.

F. Exceptions: Installation shall not be required if the development does not require any other street improvements. In those instances, the developer shall pay a fee in lieu that will finance installation when street or utility improvements in that location occur.

Sherwood Broadband provided comments that conduit should be provided along the public right-of-way with conduit connecting from the public lines to the private telecommunications room. However, because no street improvements are required with this change of use application, installation is not required and the developer shall pay a fee in lieu that will finance installation when street or utility improvements in that location occur.

FINDING: The criteria of Division 6 have not been met because the applicant has not paid the fee in lieu of providing Sherwood Broadband. The criteria of this division can be met as conditioned below.

CONDITION: Prior to certificate of occupancy, pay the fee in lieu of providing Sherwood Broadband.

D. Division 8 – Environmental Resources

This project is not located within the floodplain and there are no proposed changes to existing trees, parks, open space or lighting. No additional noise, vibration, heat or glare is anticipated from the change of use from residential to office.

FINDING: The standards of Division 8 are satisfied.

E. Division 9 – Old Town Overlay

16.162.030.E Permitted Uses

FINDING: In the Old Town Overlay, residential apartments are permitted outright when located on upper or basement floors, to the rear of, or otherwise clearly secondary to commercial buildings, in the underlying RC zone only.

16.162.090.E. COMMERCIAL STRUCTURES:

Commercial standards 3, 4 and 7 apply to the proposed removal of the finials from the roof.

Commercial Standard 3: Height

In order to increase opportunities to transit, reduce transportation impacts, and promote pedestrian activity, multiple story commercial or mixed-use construction is encouraged. All new commercial and mixed-use construction in the zone is subject to the following standards:

- a. Maximum: No building may be greater than 40 feet in overall height.**
- b. Minimum: No single story building shall have a plate height of less than 16 feet high at the public right-of-way.**
- c. Variation: Building height shall be differentiated a minimum of 6” from the average height of adjacent buildings to avoid a solid street wall of uniform height. An exception to this standard will be made for buildings that incorporate a projecting vertical division in the facade treatment that visually separates the facade from adjacent buildings, such as a column, pilaster or post.**

FINDING: Removal of the previously approved finials will not increase the height over 40 feet or reduce the height below 16 feet. The building height is at least 6" higher than the closest building, the beauty shop. This standard continues to be met with the removal of the finials.

Commercial Standard 4: Horizontal Facade Rhythm

d. Cornice Details: All buildings shall have a "cap" element at the uppermost portion of the facade that visually terminates the main facade surface. Cornice details may be integrated into a stepped or decorative parapet or consist of an articulated line that projects from the main surface plane. Modest marker blocks stating building name and date of construction are strongly encouraged.

FINDING: The building has a distinct roof line separating the uppermost portion of the façade from the roof itself. The finials that are proposed for removal are not instrumental in satisfying this criterion and, therefore, removal of the finials does not make the project out of compliance with this standard. However, removal of the finials does not waive the requirement from the original notice of decision that the roof-mounted equipment be screened from view.

Commercial Standard 7: Roof Forms

Traditional commercial roof forms, including flat, single-slope, or bowstring and other trussed roofs, are all typical of downtown Sherwood. Other roof forms, particularly gables, were screened from the public right-of-way.

a. Gable, hipped or similar residential style roof forms are prohibited for commercial buildings unless screened from the public right-of-way by a parapet or false front facade.

b. Mansard-type projecting roof elements, other than small, pent elements of 6/12 pitch or less that are incorporated into a cornice treatment, are prohibited for commercial buildings in the Old Town Area.

FINDING: The building has a flat roof that is not gabled or mansard-type. The removal of the finials will not make the project out of compliance with this criterion.

VI. RECOMMENDATION

Based on a review of the applicable code provisions, staff recommends **APPROVAL with conditions** of SP 07-13 Old Town Lofts Major Modification to change the use of the second-story condominiums from residential to office and to remove the previously approved finials from the roof design.

VII. CONDITIONS

All conditions imposed by the July 6, 2004 Notice of Decision for Old Town Lofts (SP 04-7) continue to govern this decision. In addition, subject to Planning Commission review and approval, the following conditions are recommended **prior to issuance of a certificate of occupancy**:

- Submit a revised site plan that shows the location of two (2) bicycle parking spaces on-site for review and install per staff approval.
- Pay the fee in lieu of providing Sherwood Broadband.

VIII. EXHIBITS

A. Application packet submitted by applicant on October 23, 2007

RECEIVED

001 2 3 2007

Case No. SP-07-13
Fee 5644.
Receipt # 6669
Date 1/23/07
TYPE _____



Home of the Tualatin River National Wildlife Refuge

City of Sherwood
Application for Land Use Action

Type of Land Use Action Requested:

- | | |
|---|---|
| <input type="checkbox"/> Annexation | <input type="checkbox"/> Conditional Use |
| <input type="checkbox"/> Plan Amendment | <input type="checkbox"/> Minor Partition |
| <input type="checkbox"/> Variance | <input type="checkbox"/> Subdivision |
| <input type="checkbox"/> Planned Unit Development | <input checked="" type="checkbox"/> Site Plan |
| <input type="checkbox"/> Sign Permit | <input type="checkbox"/> Other: _____ |

By submitting this form the Owner, or Owner's authorized agent/ representative, acknowledges and agrees that City of Sherwood employees, and appointed or elected City Officials, have authority to enter the project site at all reasonable times for the purpose of inspecting project site conditions and gathering information related specifically to the project site.

Note: See City of Sherwood current Fee Schedule, which includes the "Publication/Distribution of Notice" fee, at www.ci.sherwood.or.us. Click on City Government/Departments/Finance.

*Refer to individual Checklists for above application types on details for required submittal materials to be provided with this completed Land Use Application Form, at time of submittal.

Owner/Applicant Information:

Applicant: <u>Patrick Lucas</u>	Phone: <u>503-217-5190</u>
Applicant Address: <u>20512 SW Roy Rogers Rd., Suite 150</u>	Email: <u>jpatricklucas@yahoo.com</u>
Owner: <u>Patrick Lucas</u>	Phone: <u>same</u>
Owner Address: <u>same</u>	Email: <u>same</u>
Contact for Additional Information: <u>Michael C. Robinson</u>	Phone: <u>503-727-2264</u>

Property Information:

Street Location: 16103 SW First Avenue

Tax Lot and Map No: 2S132BC Tax Lot 2901

Existing Structures/Use: _____

Existing Plan/Zone Designation: Retail Commercial (RC); Old Town Overlay (OT), Smockville District

Size of Property(ies) Approximately 5,000 square feet

Proposed Action:

Proposed Use: Modification to SP 04-07

Proposed Plan/Zone Designation: N/A

Proposed No. of Phases (one year each): Single phase

Square footage of structure (if proposed): 14,600 square feet

Square footage of parking, &/or seating capacity (if proposed): As approved

Number of lots (if applicable): N/A

Standard to be Varied & How Varied (Variance Only): N/A

Continued on Reverse
Updated July 2007


LAND USE APPLICATION FORM

Purpose and Description of Proposed Action: Modification to site plan approval to
change second floor from residential condominiums to offices

Authorizing Signatures:

I am the owner/authorized agent of the owner empowered to submit this application and affirm that the information submitted with this application is correct to the best of my knowledge.

I further acknowledge that I have read the applicable standards for review of the land use action I am requesting and understand that I must demonstrate to the City review authorities compliance with these standards prior to approval of my request.

X 
Applicant's Signature

10-17-07
Date

X 
Owner's Signature

10-17-07
Date

To be submitted with the Application:

To complete the application, submit * fifteen (15) copies of the following (collated in sets with plans folded, not rolled):

1. *A brief statement describing how the proposed action satisfies the requested findings criteria contained in the Development Code for the action requested.*
2. *Necessary information identified on Checklist(s) pertaining to specific land use action requested (available at counter & on-line). To help expedite your completeness review, include a completed copy of Checklist(s) to verify submitted information.*

*Note that the *final* application must contain fifteen (15) folded sets of the above, however, upon initial submittal of the application and prior to completeness review, the applicant may submit three (3) complete folded sets with the application in lieu of fifteen (15), with the understanding that fifteen (15) complete sets of the application materials will be required before the application is deemed complete and scheduled for review.

BEFORE THE CITY OF SHERWOOD PLANNING COMMISSION

In the Matter of an Application by	)	NARRATIVE ADDRESSING
Old Town Properties, LLC	)	APPLICABLE APPROVAL
Modification to the Approval in City	)	CRITERIA WITH PROPOSED
of Sherwood File No. SP 04-07	)	FINDINGS OF FACT AND
	)	CONCLUSIONS OF LAW FOR A
	)	TYPE IV SITE PLAN REVIEW OF A
	)	NEW MIXED-USE BUILDING IN
	)	THE OLD TOWN OVERLAY
	)	DISTRICT LOCATED AT
	)	16103 SW FIRST AVENUE

I. Overview

The site is located at SW First Street in Retail-Commercial ("RC") and Old Town Overlay District ("OT") (Smockville Area) zoning districts. The site contains approximately 5,000 square feet. The applicant received approval from the Planning Commission on July 6, 2004 for a three (3) story mixed-used building. (**Exhibit "A", Staff Report Adopted by Planning Commission and Notice of Decision**) The applicant proposes to modify the approval to change the four (4) residential condominium units on the second level to four (4) professional office condominium units. The approved four (4) residential condominium units will remain on the third floor. The building exterior will be identical to the exterior in the original approval with one exception. The applicant proposes to delete the finials on the roof shown on the original approval.

II. Description of Proposal

The approved building contains a lower floor parking area, commercial space on the ground level and eight condominium units on the upper two levels. The applicant proposes to change the use of the condominium units from residential to commercial office on the second floor.

Access to the parking garage will be from First Street. While off-street parking is not required in the OT zoning district, the proposal provides one (1) parking space for each condominium unit as originally approved.

The architectural style of the building will be identical to approved plans.

The site is abutted on two sides by public streets, on one side by a future parking lot and on the other side by an existing developed lot.

Notwithstanding the proposed use change, the remaining elements of the building remain the same.

III. Process

Sherwood Development Code ("SDC") Section 5.102.03 requires substantial changes to a Site Plan Review be submitted for supplemental review. SDC Section 5.102.01(B) defines substantial changes to include changes to use. Therefore, this application must be amended following the same process as followed for the original approval to change the four (4) residential condominium units on the second floor to office uses.

IV. Applicable Approval Criteria

1. SDC Section 5.102.04, Site Plan Review

Response:

This section requires that the proposed development meet the applicable zoning district standards and all provisions of SDC Chapters 2, 5, 6, 8 and 9. The City can find that Chapter 2, "Land Use and Development," is satisfied because the proposed use proposed permitted uses outright in the RC and OT zoning districts. The building meets the dimensional requirements. The building also meets the height limit of 40 feet pursuant to SDC Section 9.202.06(C).

The City can find that the application meets SDC Chapter 5, "Community Design." Attached to this application is **Exhibit "B"**, which describes how Chapter 5 is satisfied.

The City can find that Chapter 6, "Public Improvements," is satisfied. The City previously found no improvements in the public right-of-way would be required on either street frontage. The site plan does not encroach into the right-of-way. The City also found that there was adequate sanitary sewer, water supply and stormwater treatment facilities.

The City can find that Chapter 8, "Environmental Resources," is satisfied. None of the environmental resources regulated by this chapter are found on the property.

The City can find that Chapter 9, "Historic Resources," is satisfied. The application, explained in Exhibit A, meets the requirement of the historic resources chapter.

2. **"The proposed development can be adequately served by services conforming to the community development plan, including but not limited to water, sanitary facilities, stormwater, solid waste, parks and open space, public safety, electric power and communications."**

Response:

The City can find based on the findings for SDC Chapter 6 that this standard is met.

3. **"Covenants, agreements and other specific documents are adequate, in the City's determination, to ensure an acceptable method of ownership, management and maintenance of structures, landscaping and other on-site features."**

Response:

The City can find that all proposed improvements will be located on private property and will be maintained by the property owner. The applicant will provide CC and R's for the City's review.

4. **"The proposed development preserves significant natural features to the maximum feasible extent, including but not limited to natural drainageways, wetlands, trees, vegetation, scenic views and topographical features, and confirms that the applicable provisions of Chapters 5 and 8 of this Code."**

Response:

The City can find that SDC Chapters 5 and 8 are satisfied.

5. **"For a proposed site plan in the . . . Retail Commercial ("RC") zone, *except in the Old Town Overlay zone*, the proposed use shall satisfy the requirements of Section 6.307 Highway 99W Capacity Allocation Program, unless excluded herein." (emphasis added).**

Response:

Because this property is located within the Old Town Overlay zone, it is exempt from this requirement.

V. Conclusion

For the reasons contained herein, the City can find that this application satisfies the applicable approval criteria.

CITY OF SHERWOOD
Staff Report

Date: June 8, 2004
File No: SP 04-07 Old Town Lofts

Deleted: May 23, 2003
Deleted: 03-03 Bank of America Site Plan

TO: PLANNING COMMISSION

_App. Submitted: 04-09-04
_App. Complete: 05-07-04
_Report Date: 06-08-04
_120-Day Deadline: 09-04-04

Deleted: Sidney Scarboro
Gensler

FROM: PLANNING DEPARTMENT

Anne Elvers, Associate Planner

Formatted: Indent: Left: 0"
Deleted: Keith B. Jones, AICP
Senior Planner
MANAGER:
Dave Wechner, Planning Director
Deleted:

I. APPLICATION INFORMATION

- A. Applicant & Owner: Old Town Properties, LLC
17400 SW Upper Boones Ferry Road
Suite 230
Durham, OR 97224
Contact: Mark Stewart
C/o Mark Stewart & Associates, Inc.
8137 SW Seneca
Tualatin, OR 97062
- B. Location: 250 NW 1st Street, Tax Lot 2901 of Tax Map 2S132BC
- C. Site Size: approximately 5,000 square feet
- D. Existing Development and Site Characteristics: This site is developed with an older commercial building and has a small park-like area with mature trees.
- E. Request: This application proposes to demolish the building on site and construct a three story mixed use building.
- F. Zoning Classification and Comprehensive Plan Designation: Retail Commercial (RC)—Old Town Overlay District (OT), Smockville Area
- G. Adjacent Zoning and Land Use: Adjacent properties are also zoned Retail Commercial. The site is flanked by a funeral home and a beauty salon. Commercial uses are located on the opposite side of NW Washington and SW First Streets.
- H. Review Type: Type IV, Site Plan Review of new building in the Old Town Overlay District

Deleted:
Contact:
Gensler
Sidney Scarboro
311B Occidental South, Suite 350
Seattle, WA 98104
Deleted: Regal Cinemas (Juniper Ridge) Site, unaddressed Juniper Ridge Pad 1
Deleted: located on
Deleted: Parcel
Deleted: 1100
Deleted: 2S129B
Deleted: 25,000 square feet approximate.
Deleted: and Site Characteristics
Deleted: flat undeveloped retail pad.

Date: June 8, 2004

Deleted: 03-03 Bank of America Site Plan

Deleted: 01-06 Sherwood Friends Church Fast-Track Site Plan Review

Deleted: : 5-23-03

Deleted: 9-4-2001

Deleted: ???

Deleted: conspicuous

- I. Public Notice and Hearing: The site was posted, notice placed in five places throughout Sherwood, and property owners within 100 feet of the site were mailed notice of the application.
- J. Review Criteria: Required findings for site plan approval are found in Section 5.102.04 *Community Design and Appearance* and Chapter 9 *Historic Resources* of the Sherwood Zoning and Community Development Code.

II. PUBLIC COMMENTS

No public comments were received as of the date of this report.

III. AGENCY COMMENTS

The City requested comments from affected agencies. All original documents are contained in the planning file and are a part of the official record on this case. The following information briefly summarizes those comments:

The City Engineer made the following comments dated April 12, 2004:

General

1. Final engineering plans for any improvements in the public right-of-way (ROW) must be submitted and approved by the Engineering Department prior to construction. If the conditions proposed in this memo are adhered to, no construction, other than lateral connections, will be needed in the ROW.
2. Engineering plans for public improvements must be submitted separately from building plans. These plans shall be 24"x36" and stamped by a P.E.

Streets & Transportation

1. First Street is included in the city's upcoming Downtown Streetscapes project, and Washington Street will be a transition area for the Downtown Streetscapes project. Therefore, the applicant will not be required to do any improvements within the ROW.
2. The project is exempt from the 99W CAP because it is located in the Old Town Overlay District.
3. The applicant proposes a 22-foot wide garage door exiting onto First Street from a parking area inside the building. While this is acceptable, Engineering suggests a narrower garage door to reduce the impact on the streetscape adjacent to the building.
4. The plans also appear to show some intrusion into the right-of-way from the brickwork on the column along the building frontage. The applicant needs to revise the plans to eliminate this intrusion into the right-of-way at the sidewalk level.

Water, Sanitary Sewer, and Stormwater

1. The site is served by water, sanitary sewer, and stormwater systems. Only private laterals will be required to connect to these utilities.

Stormwater treatment is handled by regional stormwater facilities to be constructed as part of the Downtown Streetscapes project.

Deputy Fire Marshal : Eric McMullen provided comments dated May 4, 2004 for this development. Please see the attached document for details.

Building Official: Gene Walker indicated that the applicant should be aware that the new building code is scheduled for adoption on October 1, 2004.

Tualatin Valley Water District: Stu Davis, Senior Engineer, stated that a fixture unit count will be required to verify water requirements for the site.

Deleted: 03-03 Bank of America Site Plan
Deleted: 01-06 Sherwood Friends Church Fast-Track Site Plan Review
Deleted: : 5-23-03
Deleted: 9-4-2001

IV. SITE PLAN REVIEW – REQUIRED FINDINGS (SECTION 5.102.04)

A. Required findings for a Site plan Review are found in Section 5.102.04 of the Community Development Code. Section 5.102.04.A. requires the proposed development to meet the applicable zoning district standards and all provisions of Chapters 2, 5, 6, 8 and 9.

Chapter 2 - Land Use and Development

2.109 Retail Commercial (RC)

Finding: General retail trade and professional offices are permitted outright. The Old Town Overlay allows secondary living units in the RC zone through Section 9.202.03(E).

2.110.05 Dimensional Standards

Finding: The site meets all dimensional requirements. Height is limited to forty (40) feet per Section 9.202.06(C), and the building as proposed does not exceed this limitation.

Chapter 5 - Community Design

5.203.01 Perimeter Screening and Buffering

A minimum six (6) foot high sight-obscuring wooden fence, decorative masonry wall or evergreen screen shall be required along property lines separating single and two-family uses from multi-family uses, and along property lines separating residential zones from commercial or industrial uses. In addition, plants and other landscaping features may be required by the Commission in locations and

Deleted: <#>Terry Keyes in a memo dated April 29, 2003 indicated that the proposal meets the Highway 99W CAP Ordinance as stated in the Trip Allocation Certificate issued on March 26, 2002. The proposed access onto Marketplace Drive must not be installed because it is 80 feet from Tualatin-Sherwood Road. The short distance from Tualatin-Sherwood Road would likely create queuing problems and have negative impacts on traffic flow at the Tualatin-Sherwood/Market Place Drive.

Deleted: B.
Deleted: Eric McMullen submitted a letter dated May 5, 2003. Fire hydrants are required within 250 feet of the building as measured by the fire district and must be within 15 feet of an approved fire access roadway and marked with a reflective blue marker.

Deleted: ¶
¶
¶
¶

Formatted: Font: Not Bold, Underline

Deleted: .

Formatted: Tabs: 1.81", Left

Deleted: s

Deleted: Professional services including financial

Deleted: 109

Deleted: .

Deleted: s

Deleted: 2. Chapter 4 – Planning Procedures¶
A. In the case of a yard or other dimensional variance, except lot area, the applicant shall address the findings in Section 4.401.02 as well as show the approval will result in:¶
I. . More efficient use of the site¶
¶
Findings: The requested variance is minimal and will allow for tool storage in an efficient location¶
¶
Preservation of natural features, where appropriate¶
¶
Findings: The proposal will preserve [1]

Deleted: 03-03 Bank of America Site Plan
Deleted: 01-06 Sherwood Friends Church Fast-Track Site Plan Review
Deleted: : 5-23-03
Deleted: 9-4-2001

sizes necessary to protect the privacy of residences and buffer any adverse effects of adjoining uses.

Finding: The site has no adjacent residential uses or zoning.

5.203.02 Landscaping - Parking and Loading Areas

- A. Total Landscaped Area
- B. Adjacent to Public Rights-of-Way
- C. Perimeter Landscaping
- D. Interior Landscaping

Finding: No off-street parking is required in the Smockville Area of the Old Town Overlay District. The parking spaces provided for the residents of the building will be in an enclosed garage. Overall, no landscaping is required proposed on this site.

- E. Landscaping at Points of Access - *When a private access way intersects a public right-of-way or when a property abuts the intersection of two (2) or more public rights-of-way, landscaping shall be planted and maintained so that minimum sight distances shall be preserved pursuant to Section 2.301.*

Finding: No landscaping is proposed where the private driveway into the private parking garage intersects the public right-of-way.

5.700 Signs

Finding: Details on wall signs have not been provided at this time. No free-standing signs are proposed.

5.500 Material Storage

5.502 Outdoor Sales and Merchandise Display

Finding: The site plan does not show any outdoor material storage, sales or display.

Chapter 6 – Public Improvements

Formatted: Not Expanded by /
Condensed by

6.300 Streets

Finding: As mentioned in the City Engineer's land use comments, no improvements in the public right-of-way will be required on either street frontage. Also, the plans show elements of the proposed building encroaching into the right-of-way, which is prohibited. The need for the building to be altered so that no intrusions into the right-of-way occur is addressed in the conditions of approval.

Deleted: 03-03 Bank of America Site Plan

Deleted: 01-06 Sherwood Friends Church Fast-Track Site Plan Review

Deleted: : 5-23-03

Deleted: 9-4-2001

- 6.401 Sanitary Sewers - Required Improvements
6.501 Water Supply - Required Improvements
6.601 Storm Water - Required Improvements

Finding: Private laterals will be required to connect for sewer and water service. It is anticipated that the site will have adequate services for the proposed uses. Stormwater treatment will take place in a regional facility that will be constructed as part of the Downtown Streetscapes project.

Chapter 8 - Environmental Resources

Formatted: Indent: Left: 0.5", First line: 0.5", No bullets or numbering, Hyphenate, Tabs: Not at -0.5"

8.304.07 Trees on Property Subject to Certain Land Use Applications

Finding: The tree inventory provided was found to be incomplete. There are several trees on the site that are proposed to be removed which will require mitigation. A complete tree inventory and mitigation measures must be completed prior to grading permit issuance (see conditions of approval).

8.305 Wetland, Habitat and Natural Areas

Finding: According the CWS Sensitive Area Pre-Screening Site Assessment performed by Chuck Buckallew on March 30, 2004, there are no sensitive areas on or within 200' of this site. No further site assessment or service provider letter is required.

8.304.06 Street Trees

Finding: No street trees will be required since the site is located within the Downtown Streetscapes project area. This City project will include the addition of street trees per the Downtown Streetscapes Plan.

Chapter 9 - Historic Resources

9.202.03 Permitted Uses

Finding: Offices and residential apartments are permitted outright in the Old Town (OT) Overlay District.

9.202.06 Dimensional Standards

In the OT overlay zone, the dimensional standards of the underlying RC, HDR and MDRL zones shall apply, with the following exceptions:

A. Lot Dimensions

Minimum lot area (RC zoned property only): Twenty-five hundred (2,500) square feet.

Finding: The lot is approximately 5,000 square feet.

Deleted: 03-03 Bank of America Site Plan
Deleted: 01-06 Sherwood Friends Church Fast-Track Site Plan Review
Deleted: : 5-23-03
Deleted: 9-4-2001

B. *Setbacks*

Minimum yards (RC zoned property only): None, including structures adjoining a residential zone, provided that the Uniform Building Code, Fire District regulations, and the site design standards of this Code, not otherwise varied by Section 9.202, are met.

Finding: No setbacks are proposed. The building must meet any setback required by the Uniform Building Code and TVF&R, if applicable.

C. *Height*

The purpose of this standard is to encourage taller buildings in the Old Town area consistent with a traditional mixed-use building type of ground floor active uses with housing or offices above.

Except as provided in Section 9.202.08, subsection C below, the maximum height of structures in RC zoned property shall be forty (40) feet in the "Smockville Area" and fifty-five (55) feet in the "Old Cannery Area". Limitations in the RC zone to the height of commercial structures adjoining residential zones, and allowances for additional building height as a conditional use, shall not apply in the OT overlay zone. Chimneys, solar wind devices, radio and TV antennas, and similar devices may exceed height limitations in the OT overlay zone by ten (10) feet.

Minimum height: A principal building in the RC and HDR zones must be at least sixteen (16) feet in height.

Finding: The height of the building is shown as 37.5' (measured from the base to the midpoint of the highest gable). In a similar Old Town development, Planning Commission found that the fineals on the building were similar to a parapet and would therefore be allowed to exceed the height limitation of Section 2.306.03.

D. *Coverage*

Home occupations permitted as per Section 2.203 and 9.202.03 may occupy up to fifty percent (50%) of the entire floor area of all buildings on a lot.

Finding: No home occupations are proposed.

9.202.07 Community Design

A. *Generally*

In reviewing site plans, as required by Section 5.100, the City shall utilize the design standards of Section 9.202.08

Deleted: 03-03 Bank of America Site Plan

Deleted: 01-06 Sherwood Friends Church Fast-Track Site Plan Review

Deleted: : 5-23-03

Deleted: 9-4-2001

Finding: See findings for Section 9.202.08

B. Landscaping for residential structures

Finding: The proposed structure will be commercial on the first floor with secondary dwelling units on the upper floors; therefore, this section does not apply.

C. Off-Street Parking

For all property and uses within the "Smockville Area" of the Old Town Overlay District, off-street parking is not required. For all property and uses within the "Old Cannery Area" of the Old Town Overlay District, requirements for off-street automobile parking shall be no more than sixty-five percent (65%) of that normally required by Section 5.302.02. Shared parking agreements may be approved, subject to the standards of Section 5.3030.01.

Finding: An enclosed parking facility on the first floor of the building is proposed. The parking facility is approximately 2,430 square feet in area, and will be used by the occupants of the residential units.

D. Off-Street Loading

- 1. Off-street loading spaces for commercial uses may be shared and aggregated in one or several locations in a single block, provided that the minimum area of all loading spaces in a block, when taken together, shall not be less than sixty-five percent (65%) of the minimum standard that is otherwise required by Section 5.303.01B.*
- 2. For all property and uses within the "Smockville Area" of the Old Town Overlay District, off-street loading is not required.*

Finding: No off-street loading areas are proposed.

E. Signs

In addition to signs otherwise permitted for home occupations as per Section 2.203.01, one (1) exterior sign, up to a maximum of sixteen (16) square feet in surface area, may be permitted for each approved home occupation.

Finding: No home occupations are proposed.

F. Non-conforming uses

Finding: This standard does not apply.

G. Downtown Street Standards

Deleted: 03-03 Bank of America Site Plan

Deleted: 01-06 Sherwood Friends Church Fast-Track Site Plan Review

Deleted: : 5-23-03

Deleted: 9-4-2001

All streets shall conform to the Downtown Street Designations and Street Standards in the City of Sherwood Street Cross-sections dated May 1999, and as hereafter amended. Streetscape improvements shall conform to the Construction Standards and Specifications adopted by Ordinance 98-1065, and as hereafter amended.

Finding: As previously mentioned, the streetscape improvements will be added by the City according to the Downtown Streetscapes Plan.

9.202.08 Standards for All Commercial, Institutional and Mixed Use Structures

A. Building Placement and the Street

Finding: The proposed building will be placed abutting the property lines on the street sides of the lot. The sidewalks will be located entirely in the public right-of-way; therefore, the development is not providing any additional sidewalk area other than what is proposed by the Downtown Streetscapes Plan. This method will meet the requirements of this subsection.

B. Reinforce the Corner

Finding: The building is shown to be located at the property lines, there is an entrance shown at the corner of the lot and the entrance to the private parking garage is not located within 40' of the corner. The plans meet the requirements of this subsection.

C. Residential Buffer

Finding: This development does not abut nor is across the street from a residential zone, therefore, this subsection does not apply.

D. Main Entrance

Finding: The main entrance is recessed and covered to provide weather protection and is located at the corner of the site; therefore, this subsection has been fulfilled.

E. Off-Street Parking and Loading Areas

Finding: The off-street parking provided will be an enclosed garage on the first floor. The parking garage meets this standard as it consists of less than 50% of the site.

Deleted: 03-03 Bank of America Site Plan
Deleted: 01-06 Sherwood Friends Church Past-Track Site Plan Review
Deleted: : 5-23-03
Deleted: 9-4-2001

F. *Exterior Finish Materials*

Finding: The narrative provided by the applicant indicates the first 30" of the base of the building will be finished in stone veneer, and the remaining 8' of the main floor will finished in San Francisco Cobble Field cultured stone. The exterior finish materials on the second and third floors facing the adjacent parking lot and the beauty salon will include 6" wide Vertical Hardiplank siding. The second and third floor siding on the street-facing sides of the building will be of cedar channel type. The requirements of this subsection have been met.

G. *Roof-Mounted Equipment*

Finding: The applicant has stated that HVAC equipment and satellite dishes will be placed on the roof, but will be set back from the street-facing perimeters of the building 3 feet for each one foot of height of the equipment. A detail has not been provided.

H. *Ground Floor Windows*

Finding: The ground floor of the building facing SW 1st Street does not provide the required amount of window space. The building has 100' of frontage which would require 50 linear feet of window length. The plans show approximately 28' of window length—just more than half of what is required. The windows must also comprise 25% of the total ground floor wall area, however the proposed window area is approximately 18%.

The ground floor along SW Washington has 50' of frontage and 24' of window length (25' is required). The amount of window area meets the 25% requirement.

I. *Distinct Ground Floor*

Finding: The proposed building design meets the requirements of this subsection through the changing of building materials and textures and including a row of clerestory windows along the building's street faces.

I. *Roof*

Finding: The 8/12 pitch of the proposed roof design exceeds the 6/12 pitch requirement of this subsection.

Deleted: ¶

B. **The proposed development can be adequately served by services conforming to the Community Development Plan, including but not limited to water, sanitary facilities, storm water, solid waste, parks and open space, public safety, electric power and communications.**

Finding: Specific facility information was previously addressed under the "Chapter 6" findings.

Deleted: 03-03 Bank of America Site Plan
Deleted: 01-06 Sherwood Friends Church Fast-Track Site Plan Review
Deleted: : 5-23-03
Deleted: 9-4-2001

- C. **Covenants, agreements, and other specific documents are adequate, in the City's determination, to assure an acceptable method of ownership, management and maintenance of structures, landscaping and other on-site features.**

Finding: All improvements are on private property and will be maintained by the property owner.

- D. **The proposed development preserves significant natural features to the maximum feasible extent, including but not limited to natural drainageways, wetlands, trees, vegetation, scenic views and topographical features, and conforms to the applicable provisions of Chapters 5 and 8 of this Code.**

Finding: As previously mentioned, CWS has stated that there are no potentially significant sensitive areas on the property. A tree report and approved mitigation plan is required in the conditions of approval.

- E. **For a proposed site plan in the Neighborhood Commercial (NC), Office Commercial (OC), Office Retail (OR), Retail Commercial (RC), General Commercial (GC), Light Industrial (LI), and General Industrial (GI) zones, except in the Old Town Overlay Zone, the proposed use shall satisfy the requirements of Section 6.307 Highway 99W Capacity Allocation Program, unless excluded herein.**

Finding: This property is located within the Old Town Overlay Zone, and is therefore exempt from this subsection.

VI. RECOMMENDATION

Based on a review of the applicable code provisions, agency comments and staff review, staff APPROVES with conditions SP 04-07 Old Town Lofts Site Plan. Conditions are as follows:

Deleted: Based on a review of the applicable code provisions, agency comments and staff review, Staff recommends the application be continued to a specific date or denied based on the inability to make the necessary findings at this time.

CONDITIONS OF APPROVAL

- A. General conditions:

The following applies throughout the development and occupancy of the site:

1. Compliance with the Conditions of Approval is the responsibility of the developer.
2. This land use approval shall be limited to the submitted preliminary plans stamped April 9, 2004, prepared by Mark Stewart and Associates, except as indicated in the following conditions. Additional development or change of use may require a new development application and approval.
3. The developer is responsible for all costs associated with public facility improvements, if applicable.

Deleted: 03-03 Bank of America Site Plan

Deleted: 01-06 Sherwood Friends Church Fast-Track Site Plan Review

Deleted: : 5-23-03

Deleted: 9-4-2001

4. **This approval is valid for a period of two (2) years from the date of the decision notice.** Extensions may be granted by the City as afforded by the Sherwood Zoning and Community Development Code Section 5.102.06.

5. Unless specifically exempted in writing by the final decision, the development shall comply with all applicable City of Sherwood and other applicable agency codes and standards except as modified below:

B. Prior to grading the site or the demolition of structures:

1. Obtain City of Sherwood Engineering Division approval of grading plans and erosion control.
2. A complete tree inventory and mitigation plan must be submitted to and approved by the Planning Department prior to issue of grading permits.
3. Any existing wells, septic systems and underground storage tanks shall be abandoned in accordance with Oregon state law.
4. A demolition permit shall be obtained from the Sherwood Building Department prior to demolishing any structures.

C. Prior to development of the site and connection to public utilities:

1. Receive approval of engineering plans for all public improvements (water, sewer, stormwater and streets) from the Sherwood Engineering Division. The engineering plans shall conform with the Sherwood Public Works, Clean Water Services, Tualatin Valley Water District, Tualatin Valley Fire & Rescue and other applicable requirements and standards. The plans shall be in substantial conformance with the plans stamped April 9, 2004, prepared by Mark Stewart and Associates.

D. Prior to building permit approval:

1. The engineering plans shall be approved and an Engineering approval letter issued to the Building Department. Street elevations, invert elevations and public utility locations shall be verified by the Engineering and Building Departments to be the same on both the building site plans and the public improvement plans.
2. The building plans shall be verified by the Planning Department to ensure conformity to the Conditions of Approval.
3. All building and site plans shall comply with Tualatin Valley Fire & Rescue requirements.
5. A geotech report and/or compaction test shall be provided if required by the Building Official or City Engineer.

Deleted: 03-03 Bank of America Site Plan

Deleted: 01-06 Sherwood Friends Church Fast-Track Site Plan Review

Deleted: : 5-23-03

Deleted: 9-4-2001

6. No portion of the building may be shown within the public right-of-way up to seven (7) feet above the sidewalk level.
7. A detail of the roof equipment must be reviewed and approved by the Planning Department per the requirements of Section 9.202.08(G) *Roof Mounted Equipment*.
8. Updated plans showing conformance of the building with Section 9.202.08(H) *Ground Floor Windows*.

E. Prior to receiving an occupancy permit

1. All public improvements consistent with approved Engineering Plans and ODOT approved plans shall be completed, inspected and approved by the City of Sherwood, Clean Water Services, ODOT, Tualatin Valley Fire & Rescue, Tualatin Valley Water District and other applicable agencies.

F. On-going Conditions

1. The continual operation of the property shall comply with the applicable requirements of the Sherwood Zoning and Community Development Code.

VII. ATTACHMENTS

1. Engineering comments by Terry Keyes dated April 12, 2004
2. TVF&R comments from Eric McMullen, Fire Marshal, dated May 4, 2004
3. Site Plan
4. Narrative received April 9, 2004 from applicant
5. Color rendering of building provided by applicant

End of Report

2. **Chapter 4 – Planning Procedures**

A. *In the case of a yard or other dimensional variance, except lot area, the applicant shall address the findings in Section 4.401.02 as well as show the approval will result in:*

1. *More efficient use of the site*

Findings: The requested variance is minimal and will allow for tool storage in an efficient location

Preservation of natural features, where appropriate

Findings: The proposal will preserve significant trees.

3. *Adequate provisions of light, air and privacy to adjoining properties; and*

Findings: Additional trees should be planted to mitigate the impacts to adjacent property.

4. *Adequate access*

Findings: Access is not affected.

Findings: The approval criteria of Section 4.401.02 is addressed as follows:

No variance request shall be granted unless each of the following is found:

A. *Exceptional and extraordinary circumstances apply to the property which do not apply generally to other properties in the same zone or vicinity, and result from lot size or shape, legally existing prior to the effective date of this Code, topography, or other circumstances over which the applicant has no control.*

Findings: The site slopes and has many existing trees on the site. Allowing the variance would allow flexibility to place the structure without removing and healthy significant trees.

B. *The variance is necessary for the preservation of a property right of the applicant substantially the same as owners of other property in the same zone or vicinity.*

Findings: Adjacent property is used differently and is zoned differently than the subject property.

C. *The authorization of the variance will not be materially detrimental to the purposes of this Code, or to other property in the zone or vicinity in which the property is located, or otherwise conflict with the goals, objectives and policies of the Comprehensive Plan.*

Findings: The amount of variance requested, 3 feet in a 20-foot setback is a minor adjustment.

D. *The hardship is not self-imposed and the variance requested is the minimum variance which would alleviate the hardship.*

Findings: As stated above the variance requested is minor.

E. *The hardship does not arise from a violation of this Code.*

Findings: The applicant has applied for site plan review and is following the proper procedures.

EXHIBIT "B"

**RESPONSE TO SHERWOOD DEVELOPMENT CODE ("SDC")
CHAPTER 5, "COMMUNITY DESIGN"**

1. SDC 5.203.01, "Perimeter Screening and Buffering"

RESPONSE:

The site is not adjacent to residential uses or zoning, therefore, this section is inapplicable.

2. SDC 5.203.02, "Landscaping – Parking and Loading Areas."

RESPONSE:

Subsections (A) – (D) are satisfied. No off-street parking is required in the Smockville area of the Old Town Overlay District. The parking spaces provided for the residents of the building will be in an enclosed garage. No landscaping is required nor proposed on this site.

Subsection (E) is entitled "Landscaping at Points of Access." No landscaping is proposed where the private driveway into the private parking garage intersects the public right-of-way.

Sherwood Public Library
22560 SW Pine Street
Sherwood, Oregon 97140

Date: 1/8/08 Non-Agenda Topic: _____

Agenda Item: PA-07-01

I have read & understand Rules for Mtgs, Resolution 98-743

Applicant: Proponent: Opponent:

Name: Jim CLAYS

Address: 22211 SW Frick Hwy

City/State/Zip: Shelwood, OR 97140

Email Address: _____

I represent: Myself _____ Other

Record closed - no new items.

Date: Non-Agenda Topic: _____

Agenda Item: 8(a)

I have read & understand Rules for Mtgs, Resolution 98-743

Applicant: Proponent: Opponent:

Name: MICHAEL ROBINSON

Address: 1120 NW COUCH ST, TENTH FLOOR

City/State/Zip: PORTLAND 97209.4128

Email Address: MROBINSON@PERKINSOPE.COM

I represent: Myself _____ Other
APPLICANT

Date: 1-8-08 Non-Agenda Topic: _____

Agenda Item: _____

I have read & understand Rules for Mtgs, Resolution 98-743

Applicant: Proponent: Opponent:

Name: PATRICK LUCAS

Address: 20512 SW Roy Rogers Rd
STE 150

City/State/Zip: Shelwood OR 97140

Email Address: JPATRICKLUCAS@YAHOO.COM

I represent: Myself _____ Other

APPROVED MINUTES

City of Sherwood, Oregon
Planning Commission Minutes
January 8, 2008

Commission Members Present:

Chair Patrick Allen
Jean Lafayette
Dan Balza
Adrian Emery
Lisa Walker
Matt Nolan
Todd Skelton

Staff:

Julia Hajduk, Planning Manager
Heather Austin, Senior Planner
Stephanie Guediri, Recording Secretary

Commission Members Absent:

Council Liaison – Keith Mays

City Attorney – David Doughman

1. **Call to Order/Roll Call** – Stephanie Guediri called roll. All present.
2. **Agenda Review** - Chair Allen announced that the agenda will consist of two projects that had been continued for the purpose of keeping the written record open, and deliberation on those two, as well as one new public hearing.
3. **Consent Agenda** – Minutes from the November 27th, 2007 meeting.
Chair Allen asked for any changes or corrections to the minutes. Jean Lafayette had a question regarding the wording on page 2, section 3; referring storm water. The minutes say that the applicant was not taking any additional storm water off site. She thought they were going to be taking water off the site. Julia asked Lee Harrington of the City’s Engineering department to give an explanation. Per Lee. CWS standards require that improvements to the street facilitate that storm water coming off the half street improvements be treated. The applicant is not showing treatment of that water at this time. It is being proposed that additional storm water be drained off the site to the adjacent property on the East.
Adoption was made to approve this consent agenda including the draft minutes from the November 27th, 2007 with the modification on page two.

Yes – 7 No – 0 Abstain - 0

4. **Announcements** – Julia announced that the Brookman Road Open House is scheduled for Wednesday, January 9th in the community room in City Hall, from 6:00 to 8:30.

The Hearings Officer has approved the water reservoir at Snyder Park, which include tennis courts on top.

The Hearings Officer has also approved an expansion to an industrial building on Galbreath Street, called Galbreath-Collamette Building.

The City Council has approved the Langer project, however it was appealed to LUBA, (Land Use Board of Appeals.), so the Planning Department is working on putting that record together.

Karen Brown was introduced as the new Planning Commission Secretary.

Julia is preparing the annual report to summarize the year for the committee. She is planning to have that ready to share at the next meeting.

5. Community Comments – Chair Allen asked if there were any community comments on topics not on the agenda. There were none.

6. Old Business:

Chair Allen opened the **Former Driftwood Mobile Home Park Plan Amendment**. Chair Allen explained that the record had closed so new testimony will be taken, and the disclaimer statement will not be read. Chair Allen asked if any commission members have had exparté contact or developed any bias or conflicts of interest. None declared.

Julia addressed Commission reminding them that originally the Planning Commission considered the amendment and heard public testimony then decided to leave the record open. Information that was submitted at the hearing is listed in the Staff Report:

Submitted at the hearing Exhibit F from Mara Danielson at ODOT

Exhibit G from Margaret Smith which was read into the record.

Exhibit H written testimony from Joe Broadhurst that was read into the record.

Exhibit I submitted at the hearing

Also in the packets are Exhibit J which is information submitted by the applicants representative Leslie Hauer, which included a memo from ED Hovie and Co. addressing the issue of need.

The packet also includes information from staff in response to the Planning Commission questions regarding timing horizon for the capital improvement program, additional information on the Langer project and capacity allocation information.

Staff is continuing to recommend approval. However based on ODOT's comments and applicants comments staff is recommending an additional condition and modification of condition to say that the site is limited to 480 trips per day. If more trips are requested now or in the future, a plan amendment with TPR (Transportation Planning Rule) analysis will be necessary to remove the trip limit. The applicant requested removal of the reference to the Medium Density Residential Low and make the reference to the 480 trips per day which would have been allowed in MDRL and staff is in support of this change.

Planning Commission had asked if they could recommend any other zones than those requested. Per Julia, under the advice of the attorney, what has been requested is Retail Commercial so that that is what needs to be reviewed. The merits of that application are what are being reviewed. If the Commission doesn't agree with the analysis and information provided, then a recommendation reflecting that would be given to the City Council, who will make the final decision. Chair Allen asked for clarification on whether or not a recommendation for denial would go to City Council as well. Julia's response was that recommendation for either approval or denial would be given to City Council. Jean Lafayette asked about how the trip rate was determined. After some discussion it was determined that as part of the recommendation the

Commission could ask that the trip rate be calculated again to confirm the math was done correctly. Jean Lafayette brought up the issue of allowing commercial signs. David Doughman from the city attorney's office recommended care be used in writing terms regarding commercial advertising. He cautioned that flat out saying we don't want commercial advertising is not a good direction to take. He would recommend asking staff to take a look at signs as an issue. Senior Planner Heather Austin, suggested saying that any site plan must get ODOT approval for any outdoor advertising. David concurred.

Chair Allen questioned determining the issue of need. He was hoping that if the need for additional Retail Commercial zoning is not demonstrated that a different zoning may work. Per Julia, that is not what the question is before the commission. The zone that is being requested is Retail Commercial. If you feel that they have not demonstrated the need, then the recommendation should be denial. However, he discussed that the Commission could indicate that if they were to come back with a different proposal it might work better, or if they were able to provide more evidence to the City Council that demonstrates a need in more detail that may work. Chair Allen asked staff, that given the economic opportunities analysis and the medium scenario, how has the need been demonstrated. Julia's response is that she has looked at the economic opportunities analysis by its self, not as it was adopted into the comprehensive plan. In the economic opportunities analysis, there was a range of low, medium and high growth scenarios. She looked at the range and the high growth rate, along with the Eric Hovee report that discussed why the high growth scenario may be more appropriate. SURPAC and the City Council as well as the Planning Commission all took a medium ground approach, but that doesn't mean that is how growth will actually happen. Chair Allen commented that the commission didn't take the medium ground as an approach; rather, they adopted it as a desirable policy outcome. The Commission stated that Medium Residential is now what is in the comprehensive plan. Julia concurred but explained that in a comprehensive plan amendment need must be demonstrated and that through the Hovee report and the applicants new market analysis it is likely that they will be able to demonstrate a need for higher growth.

Commissioner Lafayette has concerns with how the traffic is being dealt with. In order to comply the applicant can not reduce the level of service on the thoroughfare and the allowed land use must be consistent with function, capacity and level of service. With that in mind, changing it from a use that will allow approximately 450 trips to something that will allow a lot more trips isn't consistent with capacity. If we allow a commercial zone, but then don't allow them to have commercial zone trips we would be hearing a variance application based on a self inflicted hardship. Julia's response is that the scenario described won't happen. The applicant can't ask for a variance. As a condition from ODOT the applicant has to stay within the limit. If they want to exceed that limit they would have to come back for another plan amendment and comply with the transportation planning rule. Per Commissioner Lafayette, another statement that was made at the original hearing was that if the City or ODOT increase the capacity this applicant could gain benefit from that. How would the capacity gained be divided? Julia's response was that if capacity were increased the applicant would need to come in for a plan amendment to comply with the transportation planning rule and that would be a whole new analysis that the Planning Commission and Council would have an opportunity to review. The way staff is recommending it be conditioned is that the applicant will have come back if they want to increase the number of trips to show that they have met the transportation planning rule and have an entire new TPR analysis.

Chair Allen summarized the commissions conversation by saying that they are not able to see justification for changing the zoning to Retail Commercial, however if they were faced with an application for Office Commercial they might be able to recommend approval to the Council and that if the Council were to find in favor of the change they would need to revise the trip limit to comport with the corrected math. The Planning Commission would also like to go on record that they feel it would be much easier to find favorably for an Office Commercial rezone.

Commissioner Lafayette added that the condition be changed to say "funded and installed" if Council determined the need issue had been met. Julia summarized by saying that she could see 3 issues: Commission is recommending denial based on the fact the Planning Commission doesn't feel that the applicant has demonstrated a need for Retail Commercial; however if the Council finds in favor of the rezone that the trips need to be revised to correct the math and that the condition will need to be revised to say transportation improvements have to be funded and installed. Chair Allen added the commentary that based on what they have seen they think an application for Office Commercial would be more easily supported by the Commission subject to an actual application and public testimony and hearing and all required processes.

Julia noted that she had received a blue card saying that someone else wanted to speak. The record for public testimony has already been closed on this project, so no further testimony will be allowed.

Commissioner Lafayette questioned the findings in the staff report need to be modified. Julia recommended revising the commissions input and have Chair Allen review it, then that would be sent forward to the council as the commission's recommendation.

Chair Allen added that revised finding needs to make reference to the preferred outcome from the adopted Economic Development Plan for the City that envisions the Medium scenario being the desired policy outcome.

Chair Allen then asked for a motion.

Commissioner Lafayette moved that the Planning Commission recommend denial of PA 07-01 based on the staff report, findings of fact, public testimony, staff recommendation, agency comments, applicant comments and conditions and findings as revised to be heard at the February 5, 2008 City Council meeting.

Motion seconded.

Chair Allen asked for votes. All in favor, non opposed

Motion carried.

6.2 Chair Allen moved onto the next agenda item which is the continuation of Public Hearing 07-08, the **Oregon Street Industrial Park**. Chair Allen reminded all that the record was closed. He asked if any new exparté contacts or any bias on conflicts of interest. None stated.

Julia began by referring to the Addendum Staff Report dated December 31, 2007. That report should summarize the exhibits that have been received during the different comment periods. The staff report includes H through O, and a brief description of what each exhibit says, and if necessary a staff response. Staff does have several recommended changes to conditions: C1-A, a new condition C-6, revisions to D-4, D-17, D-18 and a new condition G-4.

Commissioner Allen asked about the possibility mentioned in the addendum staff report of re-opening the hearing to allow the submittal of a full exhibit that was originally submitted with only one page. In talking with the applicant and those affected they all concur that the record does not need to be re-open. Staff has looked at the page that was missing and feels that most of

the items that they had asked to be conditioned have been addressed. Regarding a letter from Mr. Stamp, that if in the final site plan review staff finds that there is discretion necessary to review the final site plan for conditions, the Planning Department would re-notice the project. If it was determined to be a substantial change, it would go back through the process and back to the Planning Commission if necessary.

Commissioner Lafayette has concerns about the amount of parking available and the 25% reduction. One of the items Planning Commission had asked for was whether or not there would be 3 tenants in the building or 1 tenant. If a reduction is granted based on the tenants, then one starts doing well and as leases expire that tenant begins occupying more of the space, will there still be adequate parking. Planning staff is working on creating a policy to review all changes in tenant spaces, by reviewing tenant improvement applications submitted to the building department, new City Business Licenses and sign permits applied for to ensure that the proposed change is consistent with what the space was originally reviewed for.

Commissioner Nolan feels that if the use is outright allowed in the zone, then you should be able to change your use. Julia's response is that if that is the case then every application should be reviewed for the most intensive use in that zone, and parking, CAP and traffic improvements should be reviewed not for what you are proposing to do, but what you could potentially do in that development. If that were the case, then this application would need to be denied because they don't meet the parking if they were to do general office for the entire building.

Chair Allen added that the idea of things being routed to Planning for review is very common in many jurisdictions.

Julia mentioned that she has had conversations with this applicant that based on their parking and their proposed use they may end up having to turn prospective tenants away. They understand that this is a possibility. If their needs change in the future they could come in for a site plan modification and provide additional parking. As proposed, with the parking provided they are limited to light industrial, multi tenants. Condition D-4 is in response to that.

Julia stated that staff goes into every development with the approach of trying to find ways to help the applicant get an approval that is feasible. This project is feasible. Chair Allen asked what the result would be if they allowed the 25% reduction in parking and shouldn't have. One of the concerns is that the overflow parking will use the residential parking across the street. Julia's response is that there are several types of tenants that could fall within a light industrial use that would still be different uses. Different uses may operate on different shifts that would not exceed the parking requirements. Heather Austin added that the criterion listed above this would be joint use, which calls out two or more uses or structures on multiple parcels of land may utilize jointly the same parking when peak hours of operations do not substantially overlap. This would require deeds, leases or contracts. In the past the Planning Department has considered deed restrictions for this type of situation. That may be a way to ensure that there are at least two uses on these parcels that would then allow the reduction in parking. Per David Doughman, Attorney for the City of Sherwood said that a condition could be added that would require a minimum of two separate uses. A deed restriction is also a possibility. Typically, if a deed restriction suggested detailed conversations with the applicant would be preferred. Often you can effectively limit the use in a condition rather than a deed restriction or contract.

Julia added that every use has a different makeup. Some may have customers coming and some may not, employee arrival and departure times can vary. The 25% reduction when multi tenants are present was intended to take into account that not all uses will have the same parking demands. Chair Allen brought up the issue of enforcement in the future. Julia concurred with the statements made by Heather earlier that multiple tenant sights through their management companies will be self limiting. As part of the building permit review the question will be asked if the proposed use will exceed the originally approved parking requirements. If the use has greater parking demands and greater CAP usage than originally approved, have they made accommodations for that increased use?

Commissioner Nolan changed his original opinion on "several uses". Use is defined as "any purpose for which a building or structure or tract of land may be designated, arranged, intended, maintained or occupied, or any activity, occupation, business or operation carried on..." As long as there are two businesses there, there will be "several" uses, so the 25% reduction of parking spaces would be allowed by the code.

Heather Austin added that as someone that has to track these issues, she shares Chair Allen's concern about tracking and enforcement in the future. Part of the process in issuing business licenses, the use is written directly on the license. The planning department maintains records of allowed uses and so it would be fairly easy to look at the uses applied for and ensure they are in fact different uses. Mechanisms for tracking are already in place.

Commissioner Walker asked if a second person with the exact same business would be denied. Heather's response was that if they were the only two there, based on this approval and adequate parking was not available, yes, a second applicant would be denied.

It is the intent of the Planning Department to notify current owners and property management companies of the proposed new policy prior to putting it into effect. Hopefully avoiding any tenant agreements being put into place that will not meet these requirements.

Chair Allen raised a question on another issue. On G-4 the term "outside sales" is mentioned; did we actually mean "outdoor sales"? Yes, outdoor sales was the intent.

Commissioners Walker and Lafayette asked for the actual number of parking spaces at this time. Julia referenced page 14 of her November 6th Staff Report, "based on the revised squared footage of 33,413 sq. ft., 54 parking spaces would be necessary which is reduced by 25% to 41, per section 16.94.010.04. 50 parking stalls are shown. This number will be reduced to accommodate ADA parking spaces and is further discussed in the report to accommodate a shared access easement with the properties to the east....". Basically they need to provide 41 parking spaces. Chair Allen asked if that includes on street sights on Oregon Street. Staff responded that there is no on street parking on Oregon Street.

Commissioner Lafayette asked about the LI use versus the commercial use. Had staff requested some action on the findings from page 6 of the original Staff Report? Julia responded by saying that originally, it looked like it was going to be office. If they ever want to change to an office use, it would be in their best interests to comply with the standard now, so that there will be fewer hurdles to clear in the future. They will still be limited to the Industrial uses at this time. This is discussed on page 3 of the addendum Staff Report; regarding the applicability of

16.90.02OG. Staff concurs in this instance because the use has been clearly stated as Industrial, however as discussed in the staff Report page 6 of 34 the elevations indicate that the standards will be met if a pedestrian connection is also provided.. Condition D-4 requires the applicant to confirm the uses. By removing any requirement to comply with that standard, they are also removing any ability to locate commercial uses including offices in this location. The applicant wanted staff to confirm that an office associated with a permitted use doesn't have to have the parking calculated at the "office" rate for that office. Staff does concur, that if you have a manufacturing company and an office that supports that, it is still considered manufacturing.

Commissioner Emery moved the Planning Commission approve the Oregon Street Industrial Park SP-07-08 based on the adoption of the staff report, findings of fact, public testimony, staff recommendations, agency comments, applicant comments and conditions as revised. Second by Commissioner Lafayette. Chair Allen asked for any discussion. None made. Chair Allen asked for a vote. All Commissioners were in favor, none opposed. Motion carried.

6.3 New Business – Chair Allen called the Public Hearing on Old Town Lofts Major Modification SP 07-13 to order and read the disclosure statement. He then asked for any exparte contact. All commission members disclosed that they drive by the site on a regular bases.

Heather Austin provided the staff presentation. She began by introducing the project as a major modification proposed to the Old Town Lofts project which was approved by the Planning Commission in 2004, original case file SP 04-07. There are two changes proposed by the applicant. One is to change the use of the second story from residential to office space. The original building was proposed with offices on the first floor and residential on the second and third floors. The proposal would change the use to office on the first and second floor and residential on the third floor. The applicant is also proposing removing the finials on the top of the building. Staff has made findings based on both of those requests.

Staff is recommending approval with two recommended conditions. The first condition is that bicycle parking is shown. Staff had not addressed this during the original application. The second is Sherwood Broadband conduit. Staff is recommending revising the condition to remove the requirement for Sherwood Broadband, fee-in-lieu for the conduit since it is already in place. They will however keep the bicycle condition. On page 6 they would revise the condition under section 16.118.020 to state that Sherwood Broadband conduit is stubbed to this property and connects into the building. This standard has been met.

Commissioner Emery asked if bicycle parking would be required inside or outside of the building. Heather's response was that they are required to provide bicycle parking, but that it could be either outside or in the parking garage.

Chair Allen asked about the downtown street plan including city provided bicycle parking. Per Heather, since there is no where in the code that exempts them from providing bicycle parking, they will have to provide it in addition to what is being provided by the City. She did add that the Commission could make a finding for that if they wanted.

Applicant invited to speak by Chair Allen.

Michael Robinson, Land Use Attorney here on behalf of Patrick Lucas. They are simply seeking the change in use for the second story of the building and removal of the finials. The applicants agree with the two recommended conditions of approval. Patrick Lucas would like to address the commission regarding the approved type of siding.

Patrick Lucas approached the commission with some general update information on the project. The building is scheduled for completion in mid March. Currently they have a restaurant in place on the ground floor of the building. It will be a Mediterranean/Lebanese restaurant. The owner currently has another restaurant in downtown Portland called Habibi.

The HVAC design has been changed on this building and it will all now be housed in the attic. There won't be any big items on the roof that need to be hidden. This equipment was the basis for the parapet/finials. Now with those items inside, the finials are no longer needed.

At this time there is no electricity to the building. In the entire area of 1st Street and Washington Street, there is not sufficient power to operate elevators, restaurants and other services. Patrick Lucas is working on negotiations with neighbors to bore under buildings to connect additional power. Attrell's has been very cooperative in allowing an easement for a power transformer in their future parking lot.

The original approval for the siding called for vertical Hardi-Plank on the North and West sides of the building and cedar channel on the side that you see from the street. The Hardi-Plank manufacturer does not make vertical Hardi-Plank. They do make a product called Sierra, which looks identical to T-1-11, which Patrick would not want to install due to appearances. He would propose using a product called Hardi stucco. Old town does not allow artificial stucco. There is however, artificial stucco on the McCormick building with batts and he would like to propose the same use on the back two sides of the Old Town Lofts Building with a larger cedar batt that was used on the McCormick building to match other existing buildings in the area. The Cedar on the North and West sides, the material agreed to, won't work because there are not many windows. Patrick has been told that if he puts the channel siding on those sides, it will shrink and the paint will show and in a couple years the appearance will deteriorate. If he uses it on the front side of the building with a number of pop outs and a smaller area, it will look much better. He is asking for direction from the Commission on this issue. Chair Allen asked Patrick Lucas if the request is to go with what was originally approved on the two sides facing the street and then to use the stucco with battens on the other sides. Patrick Lucas said yes.

Julia added that since the code does not allow artificial stucco, they are requesting clarification. The material that was conditioned is not made. Chair Allen asked if the code defines stucco. The code specifically "prohibits stucco as a primary wall surface, stucco clad foam EIFS and similar foam clad systems." (as read by Heather from the code book, page 470-90).

Julia asked that the Planning Commission clarify what their intent was in conditioning the siding originally. Did they mean that it had to be Hardi brand or just vertical siding? Mr. Lucas needs an interpretation of what the intent was, so as not to change the siding from what was originally approved.

Michael Robinson asked for confirmation and clarification by the Commission is that the condition has been fulfilled by the material before them with the description of the vertical elements given by Mr. Lucas. Chair Allen agreed.

Patrick Lucas asked to bring one more issue to light that is unrelated, while he has the chance. The code asks that they reinforce the corners in Old Town. With the large cornerstones already in place by the city, maybe he would be allowed to have a different entrance into the restaurant.

One more concern posed by the applicant refers to the approved building plans showing a smooth surface on the top of the elevation. They would like to propose installing vertical siding up to that point, and then have it flat on top. Will they have to go all the way up with the cedar or just to the roof line? Heather replied by saying that the code specifically requires that the gables be differentiated. So with what is on the approved building plans, based on what the code says not having the cedar continue into the gables would be consistent with the code. Chair Allen added that this would not require any action on the Commission's part.

Chair Allen asked if anyone was present to testify in favor of, or in opposition to, the application. No one responded.

Chair Allen closed the public hearing and asked for any final comments by staff.

Heather spoke on behalf of the Planning Staff by saying staff's recommendation to approve with the condition for the bicycle parking and remove the condition of the Sherwood Broadband fee-in-lieu still stands.

Commissioner Lafayette moved that the Planning Commission approve SP 07-13 Old Town Lofts Major Modification based on the adoption of the Staff Report, findings of fact, public testimony, staff recommendation, agency comments, which are in the Staff Report, applicant's comments and conditions as revised by the commission.

Motion second by Commissioner Nolan. All in favor. None apposed. Motion carried.

Mayor Mays has joined the meeting and was asked if he would like to make any comments on behalf of the council. He declined.

7. Next Meeting - January 22, 2008 7:00 pm: There will be an office site plan to review, and work session topics that include Commercial Industrial Design Standards and the Old Town fees and process discussion. Julia suggested hearing the office site plan first and then going into the work session. The commission agreed.

8. Adjournment – Chair Allen adjourned the session at 8:40 PM.

End of Minutes.