



City of Sherwood
PLANNING COMMISSION
Sherwood City Hall & Public Library
22560 SW Pine Street
December 12, 2006
Regular Meeting - 7:00 PM

A G E N D A

1. **Call to Order/Roll Call**
2. **Agenda Review**
3. **Consent Agenda: Minutes – November 14, 2006**
4. **Communications from Staff & Public**
5. **Community Comments** (*The public may provide comments on any non-agenda item*)
6. **Old Business**
 - A. **Columbia Lot Depth Variance (VAR 06-01):** The original application was a request by AKS Engineering (applicant's representative) on behalf of Jim and Susan Claus (applicants) for approval of an administrative variance (AV 06-01) to reduce the lot depth for one residential lot from the required 80 feet to 72 feet. Public testimony led to a full review under the variance criteria. The applicant appealed the original staff level denial on August 8 and the Commission accepted a staff recommended remand. On September 12 the Commission held and continued a hearing to December 12. The Commission will render a decision based on the findings of fact and criteria for Variances – Section 4.400 of the Sherwood Zoning & Community Development Code (*Heather M. Austin, AICP, Associate Planner*)
 - B. **Parks Master Plan (PA 06-04)**

Staff has prepared a plan amendment application based on criteria in Section 4.203 to integrate the Parks Master Plan with land use planning policies and strategies. The Commission held a hearing on November 14 and continued deliberation until December 12. If the Commission recommends approval it will be forwarded to the City Council for review on January 16, 2007. (*Julia Hajduk, Interim Planning Supervisor, Planning Department*)
 - C. **Economic Development Strategy (PA 06-06)**

Staff has prepared a plan amendment application based on criteria in Section 4.203 to integrate a new economic development strategy with the existing Comprehensive Plan (1991). The Commission held a hearing on November 14 and continued deliberation to December 12. If the Commission recommends approval it will be forwarded to the City Council for review on January 16, 2007. (*Julia Hajduk, Interim Planning Supervisor, Planning Department*)
7. **New Business: Public Hearing**
 - Cedar Creek Assisted Living Facility Zone Change (PA 06-05)**

The Commission will review a request for a zone change from MDRH (5.5-11 units/acre) to HDR (17-24 units/ac) at 15667 SW Oregon Street (Map/TL: 2S1W32BA600). The owner and operator of Cedar Creek Assisted Living Facility is the applicant. The zone change would allow apartments to

be built instead of single family attached units. The Commission will hold a hearing to take in public testimony. After the Commission makes a recommendation, the request will be forwarded to the City Council for a decision. *(Julia Hajduk, Interim Planning Supervisor, Planning Department)*

- 8. Comments from Commission**
- 9. Next Meeting: January 9, 2007 – 2006 Annual Report**
- 10. Adjournment**

City of Sherwood, Oregon
Planning Commission DRAFT Minutes
November 14, 2006

Commission Members Present:

Vice Chair Patrick Allen
Jean Lafayette
Dan Balza
Russell Griffin
Todd Skelton

Staff:

Kevin Cronin – Planning Supervisor
Rob Dixon – Community Development Director
Julia Hajduk – Sr. Planner
Cynthia Butler – Administrative Assistant III

Commissioners Absent:

Chair – Adrian Emery
Matt Nolan

1. **Call to Order/Roll Call** – Cynthia Butler called roll. Chair Adrian Emery and Commissioner Matt Nolan were absent.
2. **Agenda Review** - There were no changes to the agenda.
3. **Consent Agenda** – Minutes for the Oct. 10th & Oct. 24, 2006 sessions were approved.
4. **Brief Announcements** – Kevin Cronin said that he and Vice Chair Allen attended the Area 59 public hearing held at the Nov. 8th City Council session, which was continued to Dec. 5th. The Washington County Urban Planning Area Agreement approved by the Planning Commission and City Council has been signed by the Mayor. Community Planning Day was November 8, 2006. Sr. Planner, Julia Hajduk, and Associate Planner, Heather Austin facilitated an educational presentation to local elementary and middle school students. Beginning in January 2007 the Planning Commission will meet once per month instead of twice, unless submitted land use applications require the second session. Kevin recapped there will not be a session on 11/28 and there is one meeting in December on 12/14/06.
5. **Community Comments** – Vice Chair Allen opened the session to community comments.

R. J. Claus, 22211 SW Pacific Hwy. Sherwood, OR 97140 – Mr. Claus expressed concerns over the Planning Commission process for testimony in the City of Sherwood, regarding the 5-minute testimony period and disapproved of the time line and receiving a verbal one-minute notification when the period is about to expire. Mr. Claus discussed additional concerns about the City's planning process and staff, and the role of the Planning Commission. Jim Claus added that he would like staff reports to also be accessible on-line.

Vice Chair Allen responded to one of Mr. Claus' concerns regarding the role of the Planning Commission, and stated that the role of the Planning Commission is not the management and supervision of City staff, but to advise the City Council of planning policy issues.

Mr. Claus expressed concerns over the involvement of the City's police regarding his home and attendance at public meetings, and concluded that he questioned the character and statements made by the planning staff.

Vice Chair Allen said that responding to various claims made by Mr. Claus would generate many points of view and recapped that this was not the Planning Commission's role.

Lisa Jo Frech, Raindrops 2 Refuge, 22461 SW Pine St. Sherwood, OR – Lisa introduced herself as the new director of Raindrops 2 Refuge.

Vice Chair Allen asked if there were any other community comments. There were none.

6. New Business - Public Hearings:

A. Parks Master Plan (PA 06-04)

Dan Balza read the Public Hearing Disclosure Statement. Patrick Allen asked Kevin to recap the process involving the Parks Board and various related committees. Kevin said that the review of the project included technical staff, YMCA staff, School District, and members of the community in various forums. Parks Board members included parents, YMCA members, and other community citizens that covered a broad representation of the community. Youth and adults within the community were surveyed to glean comprehensive information used in the study. Patrick asked if there were any strong interests expressed by community members that did not make it into the master plan. Kevin said that a dog park was of particular interest that was not included. Kevin added that based on possible future funding sources it was not possible to include all interests expressed by the community.

Jean Lafayette referred to a concern expressed previously by Matt Nolan regarding SDC's and the current commitments for these funds. Jean asked Kevin to clarify if it was accurate that SDC funds were already committed for 5 years. Kevin stated that the Parks Master Plan is a new 20-year plan policy adopted by legislation that will require cost analysis for implementation in the next 5 years. Kevin said that once SDC funds are repaid for Snyder Park decisions will need to be made on future use for SDC's. Other options would be to apply for grant funding or partner with members of the community to finance implementation. Jean Lafayette clarified that the Parks Master Plan policy document will be provided to the budget committee when budget decisions are made. Kevin confirmed, and reiterated that the Parks Master Plan policy document affects the Comprehensive Plan policy and does not change the Code.

Vice Chair Allen asked if there was further discussion for staff prior to opening the public hearing. There were none. Vice Chair Allen reiterated the 5-minute time limit for public testimony would be observed, and the he would provide the 1-minute reminder as needed using a non-verbal flashcard.

Rob Dixon addressed commissioners by stating that due to the accusatory nature of Mr. Claus' comments toward City planning staff, he requested permission from commissioners to excuse planning staff from the room during Mr. Claus' testimony. Rob added that planning staff will respond to any questions or direction provided by the Commission to staff upon their return to the session. Vice Chair Allen accepted the request, but said that he preferred that Rob remain.

Rob confirmed. Planning Supervisor, Kevin Cronin and Sr. Planner, Julia Hajduk left the room during Mr. Claus' testimony. Cynthia Butler remained as the recording secretary.

R.J. Claus, 22211 SW Pacific Hwy. Sherwood, OR 97140 – Mr. Claus stated that he would like to have a hearing continuance for 2 weeks so that he would have time to review information further and provide written comments. Mr. Claus expressed concern over property he owns that appears on related maps, and said that he was unaware until tonight that his property was affected. Mr. Claus discussed the history of property he owns referred to as the McFall property, and how it potentially relates to map designations in the Parks Master Plan. Mr. Claus speculated on the time line of decisions made by the City in relation to this project that may have negative implications for his properties.

Jean Lafayette asked for clarification of the location of the McFall property referred to by Mr. Claus. Mr. Claus confirmed the location of the property on the map.

Vice Chair Allen asked if there were any further questions for Mr. Claus. There were none.

Thomas Claus, PO Box 1631 Sherwood, OR 97140 - Thomas Claus stated that he is a resident of Nevada, but has also obtained a post office box in Sherwood. Thomas stated that he would also like a hearing continuance and asked that the official record for the hearing remain open for two weeks to submit written comments. Thomas Claus stated that none of the information provided clearly outlines the consequence for the various levels of habitat distinction on their property. Thomas addressed Page 3 of 8 in the staff report that references a neighborhood plan in SE Sherwood, and said the intent of the reference was unclear. Thomas expressed concern on family-owned properties shown on maps within the Parks Master Plan with varying levels of classification assigned to them, and said that more time and clarification from staff is needed to understand the consequences of those distinctions. Thomas asked if information on the maps will be immediately implemented if the plan amendment is adopted even if the text amendment process for the plan would not be completed or implemented until 2008.

Vice Chair Allen clarified that the reference on Page 3 of 8 of the staff report refers to the Goal 5 Natural Resources plan amendment that will go before City Council on Dec. 5th. Thomas Claus said that it was his understanding that Goal 5 does not have consequences for specific habitat distinction, and that this information would be found in the Comprehensive Plan. Thomas asked for clarification. Vice Chair Allen confirmed, and added related text changes for Goal 5 would be found in Chapter 2 of the zoning code. Thomas asked how to find this information on the web site. Vice Chair Allen said he would ask staff to provide the link to this information.

Vice Chair Allen asked if there was any further testimony. There was none.

Vice Chair Allen asked that planning staff return to the room. Patrick asked staff if there was a time line requiring that a continuation for deliberation of the Parks Master Plan amendment be schedule to a 2nd meeting in November. Kevin responded that there was no deadline. Patrick asked Kevin to confirm if keeping the record open until Nov. 29th would provide staff enough time to compile any new information into a response and listen to the taped record. Kevin confirmed.

Thomas Claus (from audience, inaudible on tape) addressed Vice Chair Allen with a request for the Commission to create a motion that instructs planning staff to communicate responses to his testimony after they have reviewed the taped record. Vice Chair Allen stated he defers to City staff to determine how to communicate with public and that it was not his role to mandate that process.

Vice Chair Allen stated that the official record would remain open for 2 weeks until 5PM on November 29, 2006, and that deliberation would be continued to December 12, 2006.

Jean Lafayette motioned to keep the record open until 5PM on November 29, 2006 and that deliberation on the Parks Master Plan (PA 06-04) would be continued to the December 12, 2006 session.

Russell Griffin seconded.

Vice Chair Allen asked if there was further discussion on the motion. There was none. A vote was taken:

Yes – 5 No – 0 Abstain – 0

Motion carried.

< Note that Side B begins at number 68 on the automatic counter. Some of the tape advanced prior to the start of public hearing PA 06-06, however the recording engaged to tape continuously and all of the session was recorded. >

B. Economic Development Strategy (PA 06-06)

Vice Chair Allen opened the public hearing on the Economic Development Strategy (PA 06-06) at 7:55 PM.

Kevin Cronin recapped the process to date and said that the strategy is in 3 parts: Goals & Objectives; Economic Opportunities Analysis; and the Action Plan. Kevin said that the Planning Commission will consider the first two parts. The Action Plan is a guiding document for SURPAC and City Council for administration of the Action Plan and for budget purposes. Lee Weislogel, SURPAC Chair, provided information followed by PowerPoint presentation by consultant representatives Kirsten Greene, Cogan Owens Cogan, and Todd Chase, OTAK.

Lee Weislogel, SURPAC Chair - Lee said that the Economic Development Strategy addresses the economic health of the City particularly considering the 80% residential status of the community. Lee stated that the City is underserved by industrial development resulting in impacts to the tax base. Lee recapped that the process has involved multiple meetings with consultants, workshops, surveys of local businesses, and public interaction. Lee stated that SURPAC recommends continued work with City staff to oversee and lead the effort on a daily basis to implement the detailed Action Plan.

Vice Chair Allen recommended holding questions for after the PowerPoint presentation.

Kirsten Greene, Cogan Owens Cogan, 813 SW Alder St. Portland, OR 97205 – Kirsten briefly recapped the process and began the presentation at 8:05 PM

< PowerPoint presentation >

Todd Chase, OTAK, 17355 SW Boones Ferry Rd. Lake Oswego, OR 97035 – Todd spoke about the Economic Opportunities Analysis and said that Sherwood is one of the fastest growing cities in the region. Business growth brings employment and funding to the tax base. Todd recapped the various methods used to evaluate data in the plan and stated that Sherwood has a good amount of developable commercial and industrial lands, in addition to vacant and re-developable land options.

Vice Chair Allen asked the consultants to clarify if the pie chart analysis on Page 5 of the presentation represents that an estimated 50%-60% increase in commercial and industrial lands is needed. Todd confirmed.

Dan Balza asked if it was evaluated how much staff resource time was required to implement the Economic Development Strategy. Jeff responded 1. FTE.

Vice Chair Allen asked commissioners if there were any further questions of staff. There were none. The session was opened for public testimony at 8:20 PM.

R.J. Claus, 22211 SW Pacific Hwy. Sherwood, OR 97140 – Jim Claus stated that he wanted a 2 week continuance of the hearing and copies of the documents presented, so that he has time to review the information and to comment. Mr. Claus said that this was the first time he had an opportunity to review the charts provided in the presentation. Mr. Claus asked for clarification if the maximum load that should be applied to property under development per acre is approximately 80k-100k. Mr. Claus stated that burden to his property per acre was approximately 1 million dollars. Mr. Claus added that he would like to have his attorney to review the information. Jim Claus questioned the ability to achieve the densities and infrastructure shown in the documents, and discussed various ordinances and the ordinance process. Mr. Claus questioned prior consulting policies of OTAK on a previous project, and said that he believes the City is preventing development of his property.

Vice Chair Allen asked if there was any further testimony.

Todd Chase asked if he could provide rebuttle testimony to Mr. Claus' testimony.

Vice Chair Allen stated a preference to closing the hearing, leaving the official record open for 2 weeks until 5 PM on November 29th, and continue deliberation to the December 12th session.

Jean Lafayette asked Vice Chair Allen to clarify that if the public hearing is closed, and the written record is left open for 2 weeks for staff to provide further information, whether or not commissioners could ask questions of OTAK after the public hearing is closed. Vice Chair Allen said that OTAK consultants are associated with City staff and would be considered as part of staff for discussion.

Jean Lafayette motioned that the official record for the Economic Development Strategy (PA 06-06) remain open for 14 days, until 5PM on November 29, 2006 and that deliberation will be continued to the December 12th session.

Dan Balza seconded.

Vice Chair Allen asked if there was any further discussion on the motion. There was none. A vote was taken:

Yes – 5 No – 0 Abstain – 0

Motion carried.

7. SWOT Presentation to City Council – December 5, 2006: Commissioners discussed future work program goals with Staff and compiled information for the SWOT worksheet that will be presented to City Council on December 5, 2006, which identifies areas that the Planning Commission would like to address in the upcoming year. Patrick Allen was nominated to represent the Commission at the December 5th council session.

Rob Dixon briefly discussed the next fiscal year's budget and stated that long range planning activities are expected to reduced by 50%.

8. Comments from Commission - Vice Chair Allen asked if there were further comments by commissioners. There were none. Patrick asked Kevin if work sessions required advance public notice. Kevin confirmed they did not. Commissioners adjourned to a work session on planning process at 8:45 PM.

9. Next Meeting: December 12, 2006 – Columbia Lot Depth Variance; Cedar Creek Assisted Living Zone Change; Deliberation continuation on the Parks Master Plan (PA 06-04) and the Economic Development Strategy (PA 06-06).

10. Adjournment – Vice Chair Allen adjourned the work session at 9 PM.

End of minutes.

TO: PLANNING COMMISSION

Pre-App. Meeting: None
App. Submitted: April 14, 2006
App. Complete: July 13, 2006
Original Hearing Date: Sept. 12, 2006
120-Day Deadline: Oct. 11, 2006

FROM: PLANNING DEPARTMENT

Heather M Austin

Heather Austin, AICP, Associate Planner

This variance request, to reduce a lot depth from the required 80 feet to 72 feet (see attached plat map), was submitted to the Planning Department on January 17, 2006 as part of the Columbia Partition Final Plat submittal. On February 13, 2006, the application was deemed incomplete because a fee had not been submitted with the variance request. On April 11, 2006, staff met with Thomas Augustus Claus and Michael Gunn, the applicants' son and attorney. At this meeting, the required fee was submitted. The application was deemed complete on April 14, 2006.

On April 21, 2006 staff mailed public notice of the proposed variance to property owners within 100 feet of the site and posted notice on the site. Staff received public testimony from two parties, one of whom requested a public hearing. Per Sections 4.402.03.A and 4.402.03.C of the Sherwood Zoning and Community Development Code, if a person provides public testimony requesting a public hearing, that hearing must be held and the applicant must pay the additional fees required. Staff then sent a letter to Thomas Augustus Claus notifying him of the request for a public hearing and the additional fee required because he had met with staff as the applicant's representative earlier in the month. Thomas Augustus Claus did not receive the letter and staff failed to send the letter to Jim and Susan Claus, the owner/applicant on record.

Because staff had not received a response from Thomas Augustus Claus to schedule a public hearing and the application was approaching the 120-day deadline, staff denied the variance request. Jim and Susan Claus appealed the denial based on the fact that they never received notice of the public hearing requirement. At the same time the appeal was submitted, the additional fee for the public hearing was submitted. Staff recommended the Planning Commission remand the variance request back to Planning Staff to take through the appropriate process. The Planning Commission supported this recommendation and remanded the decision on August 8, 2006.

A public hearing was held on September 12, 2006 in which staff recommended denial of the variance based on findings that the applicant had not met several of the variance criteria (see attached staff report dated September 5, 2006). The Planning Commission requested that the applicant extend the 120-day deadline to December 12, 2006 to see if the proposed infill standards would be adopted by City Council and applicable to this project.

At the time of printing of this staff report, the City Council had not yet heard and deliberated on the infill standards. The City Council will review the infill standards at their meeting on Tuesday, December 5, 2006 and staff will have an update at the Planning Commission hearing regarding the outcome of that hearing. Generally, however, if the City Council approves the infill standards as proposed, they would apply to this lot depth and a variance would not be necessary. In this case, the applicants could record the two plats already proposed, each with two parcels. They could later apply for a partition on the largest parcel under the infill standards and apply for the lot depth reduction per the infill standards at the same time. While approval is not guaranteed, staff sees compliance with the infill criteria as more feasible than compliance with the variance criteria.

PARTITION PLAT

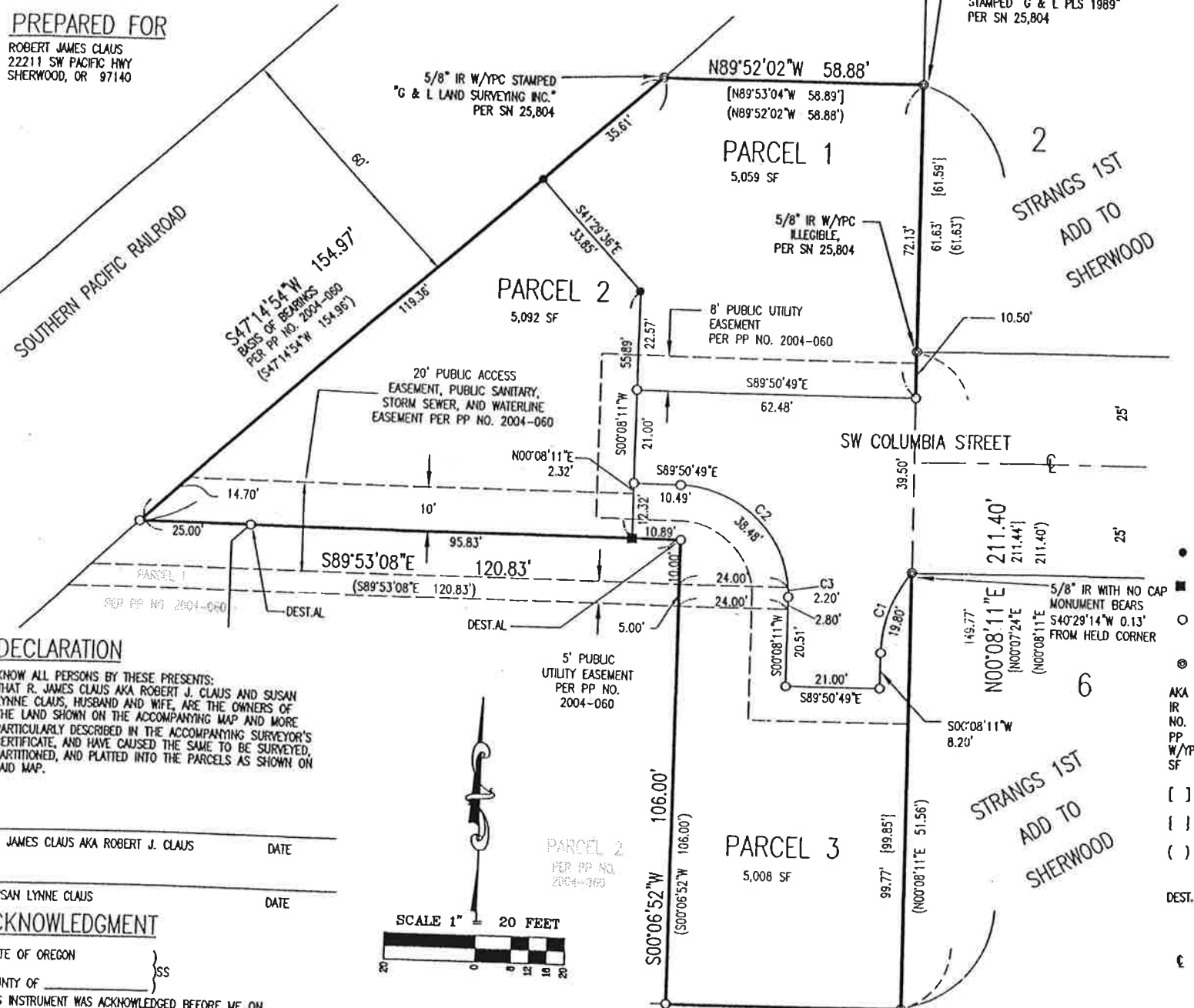
A REPLAT OF PARCEL 3 PER PARTITION PLAT NO. 2004-060

LOCATED IN THE NORTHWEST ONE-QUARTER OF SECTION 32, TOWNSHIP 2 SOUTH, RANGE 1 WEST, WILLAMETTE MERIDIAN, CITY OF SHERWOOD, WASHINGTON COUNTY, OREGON

DATE: _____

PREPARED FOR

ROBERT JAMES CLAUS
22211 SW PACIFIC HWY
SHERWOOD, OR 97140



DECLARATION

KNOW ALL PERSONS BY THESE PRESENTS: THAT R. JAMES CLAUS AKA ROBERT J. CLAUS AND SUSAN LYNN CLAUSS, HUSBAND AND WIFE, ARE THE OWNERS OF THE LAND SHOWN ON THE ACCOMPANYING MAP AND MORE PARTICULARLY DESCRIBED IN THE ACCOMPANYING SURVEYOR'S CERTIFICATE, AND HAVE CAUSED THE SAME TO BE SURVEYED, PARTITIONED, AND PLATTED INTO THE PARCELS AS SHOWN ON SAID MAP.

R. JAMES CLAUS AKA ROBERT J. CLAUS DATE

SUSAN LYNN CLAUSS DATE

ACKNOWLEDGMENT

STATE OF OREGON }
COUNTY OF _____ } SS
I, SURVEYOR, WAS ACKNOWLEDGED BEFORE ME ON _____
R. JAMES CLAUS AKA ROBERT J. CLAUS AND SUSAN LYNN CLAUSS.

SURVEYOR SIGNATURE

PUBLIC

MISSION NO.

COMMISSION EXPIRES:

NARRATIVE

THE PURPOSE OF THIS SURVEY IS TO PARTITION THE PROPERTY DESCRIBED AS PARCEL 3 PER PP NO. 2004-060. MY BASIS OF BEARINGS IS BETWEEN FOUND MONUMENTS AS NOTED PER PARTITION PLAT NO. 2004-060. I ESTABLISHED THE OUTER BOUNDARY OF SAID PARCEL 3 BY HOLDING FOUND MONUMENTS AS NOTED. I THEN SET INTERIOR MONUMENTS PER MY CLIENT'S INSTRUCTIONS.

DOCUMENT NO 94-100421

CURVE TABLE					
CURVE	LENGTH	RADIUS	CHORD	BEARING	DELTA
C1	19.80'	29.00'	19.42'	S19°41'41"W	39°07'00"
C2	38.48'	24.50'	34.64'	N44°51'19"W	89°59'00"
C3	2.20'	24.50'	2.20'	N02°26'11"W	5°08'44"

I, KEITH R. _____
CERTIFY THAT _____
AND EXACT CO.

REGI
PROFE
LAND S

OR
KEY
KEITH R.
2
EXPIRES

CITY OF SHERWOOD
Staff Report

Date: September 5, 2006
File No: VAR 06-01
Columbia Lot Depth Variance

TO: PLANNING COMMISSION
FROM: PLANNING DEPARTMENT

Pre-App. Meeting: None
App. Submitted: April 14, 2006
App. Complete: July 13, 2006
Hearing Date: Sept. 12, 2006
120-Day Deadline: Oct. 11, 2006

Heather M Austin

Heather Austin, AICP, Associate Planner

Proposal: The applicant has requested a variance to the lot depth standard of eighty (80) feet in the Medium Density Residential High (MDRH) zone. The applicant proposes a seventy-two (72) foot lot depth, resulting in a variance request of eight (8) feet or ten percent (10%) (see Exhibit A). The subject lot is Parcel 3A of partition plat MLP 04-02 Columbia Partition. MLP 04-02 received preliminary plat approval from the Planning Department in February 2005.

I. BACKGROUND

A. Applicant/Owner:

Jim Claus and Susan Claus
22211 SW Pacific Highway
Sherwood, OR 97140

Applicants Representative:

Keith Jehnke, AKS Engineering and Forestry
13910 SW Galbreath Drive, Suite 100
Sherwood, OR 97140

- B. Location: The site is not currently addressed but is identified as Parcel 3 of Partition Plat No. 2004-060. Currently, this lot is part of the larger lot identified as Tax Lot 10800 on Washington County Tax Assessor's Map 2S132BC. However, once the plat is recorded for MLP 04-02, this tax lot will cease to exist.
- C. Parcel Size: The total size of this parcel, once MLP 04-02 is recorded, will be 5,019 square feet.
- D. Existing Development and Site Characteristics: The site is currently undeveloped.
- E. Project History: This site is part of Parcel 3 of the original Columbia Street Partition (MLP 01-02). Approval was given for the "series partitioning" of Parcel 3 of MLP 01-02 in 2005 (MLP 04-02) because the City did not have code requirements that limits *de facto* subdivisions through a partition process. However, this 2005 approval did state that parcel 3A, as proposed, does not appear to meet the 80-foot lot depth requirement of the MDRH zone but that such lot may be permissible if reviewed and approved through the variance process as identified within Section 4.402 of the Sherwood Zoning & Community Development Code (SZCDC). While the preliminary plat was approved, this non-conforming lot depth was recognized and called out as not permissible unless a variance was obtained. The final plat has not been recorded as the final number of lots will be reduced by one if the variance is not approved and the applicant is awaiting a "No Further Action" letter from the Department of Environmental Quality (DEQ) for a remediation effort that was commenced on site.

This application was originally submitted as an administrative variance with a staff level review and decision. However, public testimony was received requesting a public hearing per Section 4.402.03. Staff sent notification of this to the most recent contact in the file but did not send this

4. *Natural features of the site (topography, vegetation and drainage) which would be adversely affected by application of required parking standards.*

Discussion: This is not a variance to dimensional standards for off street parking spaces or the minimum required number of off-street parking spaces and therefore this standard does not apply.

Finding: Based on the discussion above, this standard does not apply.

IV. RECOMMENDATION

Based on the submitted application materials and the findings of fact contained in this report, Planning Staff recommends **DENIAL** of VAR 06-01 Columbia Lot Depth Variance.

V. EXHIBITS

- A. Preliminary Plat Map of MLP 04-02 identifying Parcel 3A and the 72.13-foot lot depth
- B. Public Testimony received from John Wild on April 27, 2006
- C. Public Testimony received from John and Julie Kandik on April 28, 2006
- D. Public Testimony received from John and Julie Kandik on August 7, 2006
- E. Public Testimony received from John and Julie Kandik on August 31, 2006

End of Staff Report

PLANNING DEPARTMENT

Pre App. Meeting: November 2, 2005
App. Submitted: July 20, 2006
App. Complete: October 9, 2006
120-Day Deadline: February 6, 2007


Julia Hajduk, Interim Planning Supervisor

Proposal:

The applicant is proposing to change the zone of an existing 1.68 parcel of land from MDRH to HDR. The specified intent of the zone change is to allow the future development of a 40 unit assisted living facility (ALF) for the elderly in association with the existing Cedar Creek Assisted Living Facility to the north. There is no site plan to be considered as part of this zone change application. The applicant's submittal is included as Attachment 1.

I. BACKGROUND

- A. Applicant/Owner:
Glenn H. Gregg, Trustee
10415 SW Terwilliger Place
Portland, OR 97219
- B. Location: The site is located at 15667 SW Oregon Street (formerly 360 NE Oregon Street) and is identified as tax lot 600 on Washington County Tax Assessor's map 2S1W32BA.
- C. Parcel Size: The parcel is 1.68 acres. The proposal is to enlarge the existing assisted living facility to the north which is on 2.42 acres for an ultimate development area of 4.1 acres.
- D. Existing Development and Site Characteristics: The lot is currently vacant. Historically, there has been a single family dwelling on the property and remnants, such as a grape arbor, play structure and non-native vegetation are visible, but no structures remain. The Tooze house was a 1920, A-frame bungalow and listed as a primary historic resource (Field No. 127) according to the Cultural Resource Inventory (1989). The structures were demolished in 2003, but a final inspection was never done to verify that all utilities were capped according to the applicable codes. There is a 0.4 acre wetland on the property to the north and a portion of the subject property. This wetland has been approved for removal by the Department of State Lands (DSL). The wetland was not identified on Metro's Regionally Significant Fish and Wildlife Habitat Map and was not identified on the City's Local Wetland Inventory.
- E. Zoning Classification and Comprehensive Plan Designation: The existing zone is Medium Density Residential High (MDRH). Section 2.104 of the Sherwood Zoning and Community Development Code (SZCDC) lists the permitted uses in this zone. The proposed zone is High Density Residential (HDR). Compliance with the permitted uses in the HDR zone is identified in Section 2.105 of the SZCDC.
- F. Adjacent Zoning and Land Use: The subject property is south of the existing Cedar Creek Assisted Living Facility, east of the Sherwood Middle School, north of two properties zoned MDRH and developed with single family residences, and west of re-developable property zoned MDRH and owned by the St Francis Catholic Church located at the end of a shared private access road.

- G. Review Type: The proposed Plan Amendment requires a Type V review, which involves a public hearing before the Planning Commission and City Council. The Planning Commission will make a recommendation to the City Council who will make the final decision. Any appeal of the City Council decision would go directly to the Land Use Board of Appeals.
- H. Public Notice and Hearing: Notice of the December 12, 2006 Planning Commission hearing and the tentatively scheduled January 16, 2007 City Council public hearing on the proposed application was published in the *Tigard-Tualatin Times* on November 30th and December 7th 2006 and posted on-site and mailed to property owners within 100 feet of the site on November 20, 2006 in accordance with Section 3.202 and 3.203 of the SZCDC.
- I. Review Criteria:
The required findings for the Plan Map Amendment are identified in Section 4.203.02 of the Sherwood Zoning and Community Development Code. In addition, applicable Comprehensive Plan criteria are: Chapter 4 – E (Residential); applicable Metro standards are: Functional Plan Title 1; and applicable State standards are: Statewide Planning Goals 10 and 12 as well as applicable Oregon Administrative Rules (OARs).

II. PUBLIC COMMENTS

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

III. AGENCY COMMENTS

Staff e-mailed notice to affected agencies on October 13, 2006. The following is a summary of comments received. Copies of full written comments are attached to the staff report.

Kinder Morgan Energy indicated that they have no concerns with this development. They indicate that their easement is well to the Northwest and will not be affected by this zone change.

Department of Land Conservation and Development (DLCD) – Verbally indicated in a phone conversation on October 16, 2006 that they did not see any conflict or concern with the proposed amendment.

The Engineering Department had an outside consultant review the project for compliance with the Transportation Planning Rule. Their analysis is included in this report. No other engineering comments were received at the time of this report.

ODOT responded indicating that they had no comment.

Clean Water Services, Bonneville Power Administration, Tualatin Valley Fire and Rescue, Pride Disposal, Division of State Lands, Portland General Electric, NW Natural Gas, Washington County, Tualatin Valley Water District, the Sherwood Police Department and Metro were provided the opportunity to comment, but provided no comments at the time this report was prepared.

IV. PLAN AMENDMENT REQUIRED FINDINGS

4.203.02 - Map Amendment

This section states that an amendment to the City Zoning Map may be granted, provided that the proposal satisfies all applicable requirements of the adopted Sherwood Comprehensive Plan, the Transportation System Plan and this Code, and A-D below.

The applicable Comprehensive Plan policies are discussed under Section V. below. Section 1.101.08 requires that all development adhere to all applicable regional, State and Federal regulations. Applicable Regional regulations are discussed under Section VI. and applicable State regulations are discussed under Section VII.

FINDING: This is discussed in detail below.

A. The proposed amendment is consistent with the goals and policies of the Comprehensive Plan and the Transportation System Plan.

Compliance with this standard is addressed below under 4.203.03.

FINDING: This is discussed in detail below.

B. There is an existing and demonstrable need for the particular uses and zoning proposed, taking into account the importance of such uses to the economy of the City, the existing market demand for any goods or services which such uses will provide, the presence or absence and location of other such uses or similar uses in the area, and the general public good.

The applicant has submitted a narrative indicating that the fact that there is a waiting list for the existing care facility (to the north), demonstrating the demand for additional units. The applicant further states that a larger facility (98 units as opposed to 76 units using the current zoning) would allow them to provide more services to residents, more opportunities to their staff for advancement and more money being spent in the City. However, the applicant has provided no quantitative data to substantiate why 22 additional units are needed in order to justify the zone change. In the past, the Planning Commission has been presented with information demonstrating the demand for an Alzheimer care facility; however, each application must be reviewed on their own merit and the applicant has the burden of demonstrating that the standards have been fully met. Even if the Commission accepts the need for the care facility, the applicant has not demonstrated the need for the increased number of units sufficient to make adequate findings.

The applicant makes the argument that their lenders and their organization will not construct more than the market will bear and that in itself demonstrates that the demand issue will be addressed. Staff is concerned about this because the zone change does not necessarily mean that the expansion is warranted based on the applicant's submittal. While a conditional zone change is a legal option, staff has recommended against it in the past.

FINDING: Due to a lack of information submitted, staff cannot find the standard has been met.

C. The proposed amendment is timely, considering the pattern of development in the area, surrounding land uses, any changes which may have occurred in the neighborhood or community to warrant the proposed amendment, and the availability of utilities and services to serve all potential uses in the proposed zoning district.

The applicant states that the amendment is timely because the site is more of an expansion of an existing zone to facilitate the expansion of the Cedar Creek Assisted Living Facility. When combined with the existing facility on tax lot 4400, the facility is surrounded on three sides by institutional uses. The applicant states that tax lot 4400 was re-zoned to HDR in 2000 (Ordinance 2000-1082) to accommodate the existing facility and that the location and approval of the existing facility supports the zone change. While staff recommended denial of the original zone change application, it was approved by the Planning Commission and City Council. However, a prior policy change to "upzone" does not constitute approval for another zone change on the basis of changing

neighborhood conditions and prior findings made for the zone change (PA 99-04) do not support the current request. The applicant has not demonstrated how the proposal would improve the neighborhood or how the neighborhood has changed in a way that would warrant the zone change.

The applicant further states that the location near the TVF&R fire station is a benefit and that the roads, sidewalks and utilities are generally in place to support development on the subject site. However, the future users are not likely users of transit in Old Town. HDR is intended to provide viable options to public transportation dependent and interested users. The City is actively developing the Old Town area to increase housing opportunities for active uses. Residential care facilities do not constitute an active use that supports the public policy and infrastructure investment in Old Town.

Staff does not disagree that from a financial management standpoint the applicant must have done their due diligence and determined it is an appropriate time to expand their facility. However, staff is concerned that the surrounding land uses have not been fully considered. Directly east of the subject site is property that is also zoned MDRH and abuts the future Adams Street extension. There are several homes immediately south of the subject site that are also zoned MDRH and located in the Old Town overlay adjacent to Oregon Street. The applicant has not discussed how this development ties into the surrounding area including the Old Town street network that is at odds with the development pattern along the private road that was created for the St. Francis Church. Staff is also concerned because the development is currently accessed by the private street and the applicant has not discussed how the increased density provided by this zone change will blend with the surrounding street pattern and property development. Comprehensive Plan Part II, Section E.2, Policy 1 states that residential areas will be developed in a manner which will insure that the integrity of the community is preserved and strengthened. One of the strategies identified to ensure this will be achieved is by locating higher density development so as to take advantage of arterial and collector streets. Comprehensive Plan, Part II, Section E.2, Policy 6 states that HDR zoned property should be designated where direct access to major fully improved streets is available. Oregon Street is a collector that has not been improved to a city standard. If and when the Adams Street extension is designed, approved, and funded will there be an opportunity to improve Oregon Street. It does not appear that this zone change is timely given the existing street pattern, designation, and lack of street improvements along Oregon Street.

FINDING: Based on the information provided, staff cannot find that the applicant has met this standard.

D. Other lands in the City already zoned for the proposed uses are either unavailable or unsuitable for immediate development due to location, size or other factors.

The applicant paid staff time for the Planning Department to prepare a map identifying High Density Residential land that was vacant and/or re-developable in the City. The analysis segregated properties less than .25 acres and those greater than .25 acres from developed HDR property. The premise of the requested zone change is the need to accommodate a 40 unit ALF on property that is large enough to accommodate the proposed intensity. The existing zoning would only allow 18 units on the 1.68 property. The applicant states that there are only three HDR properties large enough to accommodate the planned 40 unit facility. Their narrative indicates that these sites are generally encumbered by floodplain and/or topography that make them unsuitable for the density of development needed. The applicant has established that there are no sites currently zoned and sized appropriately for a 40 unit development. The applicant has also indicated that the subject site is the most appropriate site for a rezone to accommodate the proposed density due to the proximity to the existing Cedar Creek Assisted Living Facility.

FINDING: Based on the quantitative analysis provided by the applicant, staff finds that the applicant meets this standard.

4.203.03 - Transportation Planning Rule (TPR) Consistency

- A. Review of plan and text amendment applications for effect on transportation facilities. Proposals shall be reviewed to determine whether it significantly affects a transportation facility, in accordance with OAR 660-12-0060 (the TPR). Review is required when a development application includes a proposed amendment to the Comprehensive Plan or changes to land use regulations.**
- B. "Significant" means that the transportation facility would change the functional classification of an existing or planned transportation facility, change the standards implementing a functional classification, allow types of land use, allow types or levels of land use that would result in levels of travel or access that are inconsistent with the functional classification of a transportation facility, or would reduce the level of service of the facility below the minimum level identified on the Transportation System Plan**
- C. Per OAR 660-12-0060, Amendments to the Comprehensive Plan or changes to land use regulations which significantly affect a transportation facility shall assure that allowed land uses are consistent with the function, capacity, and level of service of the facility identified in the Transportation System Plan.**

The City Engineer sent the submitted transportation data to Jeff Wise of HDJ Engineers for a third party review of the application information for compliance with the TPR. Mr. Wise indicated that he had reviewed the traffic study portion of this application and agrees with their trip generation for all scenarios. He also agrees that the addition of 7 PM peak hour trips as indicated in a comparison of the best and highest uses for the current and proposed zoning is insignificant. He indicates that this number of trips in a planning mode analysis of future capacity would not change the results of the analysis in the TSP and that this proposed change in land use is consistent with the identified function, capacity, and performance standards (e.g. level of service, volume to capacity ratio, etc.) of the adjacent roadways. He further indicated that no reduction in the performance of an existing or planned transportation facility below the minimum acceptable performance standard identified in the TSP or comprehensive plan is expected with the proposed zone change. It should be noted that the TSP did identify several areas that may operate below minimum performance standards, however, none of these facilities are in the vicinity of the access of this parcel to the roadway system. Therefore, it can not be said without question that additional trips from this development will worsen the performance of an existing or planned transportation facility that is otherwise projected to perform below the minimum acceptable performance standard identified in the TSP or comprehensive plan.

FINDING: Based on the traffic analysis of a professional traffic engineer the City consulted, the proposed zone change is consistent with the Transportation Planning Rule.

V. APPLICABLE COMPREHENSIVE PLAN POLICIES

The applicable portions of the Comprehensive Plan include Chapter 4, Land Use, Section E – Residential; and Section H - Economic Development.

Residential Land Use

Policy 1 Residential areas will be developed in a manner which will insure that the integrity of the community is preserved and strengthened.

Policy 2 The City will insure that an adequate distribution of housing styles and tenures are available.

Policy 3 The City will insure the availability of affordable housing and locational choice for all income groups.

Policy 4 The City shall provide housing and special care opportunities for the elderly, disadvantaged and children.

Policy 5 The City shall encourage government assisted housing for low to moderate income families.

Policy 6 The City will create, designate and administer five residential zones specifying the purpose and standards of each consistent with the need for a balance in housing densities, styles, prices and tenures.

While the proposal does provide special care opportunities for the elderly, the City's zoning ordinance already complies with this policy by allowing residential care facilities in most residential and commercial zones. The proposed amendment would allow greater density, which would provide more opportunity for elderly housing opportunities consistent with Policy 4; however Policy 6 indicates that higher density development should be located with direct access to arterial and collector streets.

Economic Development Policies and Strategies

Policy 2 The City will encourage economic growth that is consistent with the management and use of its environmental resources.

Policy 5 The City will seek to diversify and expand commercial and industrial development in order to provide nearby job opportunities, and expand the tax base.

By changing the zone to HDR, the assisted living facility will develop an additional 40 units on the subject site. The expansion of the assisted living facility will create some new jobs, which would not necessarily be found in the existing zone; however, the applicant has not demonstrated that the employment base will be significantly increased by changing the existing MDRH zone to HDR. In addition, the applicant has not demonstrated that this zone change and potential expansion of the assisted living facility will increase the assessed value in such a way that expands the tax base beyond what would be permitted in the existing zone.

FINDING: The proposal does not appear to be consistent with the location standards for high density residential development and does not fully support the economic development goals.

VI. APPLICABLE REGIONAL (METRO) STANDARDS

The only applicable Urban Growth Management Functional Plan criteria are found in Title 1 – Housing. The City of Sherwood is currently in compliance with the Functional Plan and any amendment to the Sherwood Plan & Zone Map must show that the community continues to comply. The applicant has provided no discussion or evidence to demonstrate how this Plan Amendment will continue to comply with the applicable Functional Plan elements.

However, this Title requires that cities provide, and continue to provide, at least the capacity specified in Table 3.01-7. Table 3.01-7 indicates that Sherwood's dwelling unit capacity is 5,216 and the job capacity is 9,518. The proposed amendment will provide greater housing opportunity and will not result in the loss of jobs. In fact, by increasing the housing capacity of the zone, thereby enabling the existing assisted living facility to expand onto the property at the density they

have found necessary, the zone change will add units and a few jobs that would not have otherwise been provided in the MDRH zone.

FINDING: Based on staff's analysis, the proposed zone change is consistent with the Metro Functional Plan criteria and the City would continue to be in compliance if the zone change were approved.

VII. APPLICABLE STATE STANDARDS

The applicable Statewide Planning Goals include: Goal 10 and Goal 12.

Goal 10 - HOUSING

This goal specifies that each city must plan for and accommodate needed housing types, such as multifamily and manufactured housing. It requires each city to inventory its buildable residential lands, project future needs for such lands, and plan and zone enough buildable land to meet those needs. It also prohibits local plans from discriminating against needed housing types.

This goal is addressed by the existing Comprehensive Plan. While the City anticipates the need to complete an update to the Comprehensive Plan in 2008, the current plan is acknowledged and addresses housing needs identified in the Comprehensive Plan. However, increasing the density without the loss of commercial or industrial zoning will not result in a conflict with other land use needs.

Goal 12 - TRANSPORTATION

The goal aims to provide "a safe, convenient and economic transportation system." It asks for communities to address the needs of the "transportation disadvantaged."

Goal 12 is implemented by OAR 660-012-0000. Compliance with this Goal and the OAR was discussed above.

FINDING: The proposed zone change is generally consistent with State standards have been met.

Staff assessment and recommendation on Plan Amendment:

Based on the analysis above, the applicant has provided inadequate information to make findings in full support of the proposed amendment specifically regarding Criteria B and C and Residential Policy 6. Therefore, staff recommends DENIAL of the proposed plan amendment, based on the information provided by the applicant.

VIII. RECOMMENDED CONDITIONS OF APPROVAL

As the staff recommendation is denial, no conditions are recommended. If the applicant presents additional information at the public hearing that allows the Planning Commission to make findings in full support of the zone change, conditions may be needed.

IX. ATTACHMENTS

1. Applicant submittal packet

R. James Claus, Ph.D.
22211 SW Pacific Hwy.
Sherwood, OR 97140

November 22, 2006

RECEIVED

NOV 22 2006

BY KA
PLANNING DEPT

Sherwood Planning Commission
22560 SW Pine Street
Sherwood, OR 97140
Fax: (503) 625-5524

Re: Ordinances PA 06-04 and PA 06-06

Dear Members of the Planning Commission:

I have become deeply concerned about the changes that have occurred in Sherwood in recent years. A number of years ago, municipal mismanagement over Local Improvement Districts (LIDs) had nearly driven this city into bankruptcy. A group of Sherwood landowners came together and encouraged the City to adopt system development credits and traffic impact fees to help pull the City out of debt. We even objected that they were not set high enough in the beginning. In return, we asked for two things: one, that the public meetings would be opened, so staff activity could be scrutinized (because it was staff that had caused the bankruptcy problem over the LIDs); and two, that the City not expand staffing and other expenses, but rather stay lean. We had high hopes for the future of the City, but management of the City has not turned out as we expected or as was promised.

Mark Cottle set the City on a different course. After some of the City staff were fired or let go due to their insistence that they, rather than the citizens, could develop land use policy for the city and their refusal to implement policies that the elected officials and citizens wanted, Cottle became very protective of the City staff. He started allowing them to direct policy and protected them from their misappropriations and other acts. Cottle, in my opinion, clearly misrepresented his intentions until he became mayor, and then as he swung into full steam, he began to shut down public input.

Meaningful public input in a public meeting can only occur where two circumstances are in place: first, citizens must know prior to the meeting what will be discussed so they can prepare comments; and second, where time limits are set, the commission or council members should ask follow-up questions to allow the citizen to fill in the gaps in their testimony. Right from the beginning, Mayor Cottle set limits on what citizens would be allowed to address during public meetings – which was direct, open censorship – and how much time they would have to say it. Questions almost never followed the citizen's five minute testimony. Mayor Cottle even allowed staff to verbally interrupt citizens' testimony to give one-minute warnings that their allotted five minutes were almost up, rather using a mechanical timer or flashing a card, as is standard in public hearings. This, of course, flustered many citizens by interfering with their flow of thought. He also brought in police to sit in on the public meetings, ready to hastily remove any citizen who

Sherwood Planning Commission
November 22, 2006
Page 2 of 4

disagreed or tried to argue. Had his censorship policy been challenged in a federal court, it would very likely have been thrown out. Certainly, this approach was not what Hardy Myers intended when he wrote the Public Meetings and Records Manual.

In my opinion, someone does not shut down public input and protect the staff unless certain motives are involved. A desire for good government would not compel someone to do that. A desire to control land use development, on the other hand, might. I believe that is what has happened in Sherwood. Under Mayor Cottle, and continuing under Mayor Mays, land use development decisions began to be politically motivated. Our recent variance hearing on our Columbia Street development was the first time in years that I have seen open public debate of the sort that a public record could be created.

You stated that all legal rights and claims need to be made. To begin, therefore, please note that the Planning Commission is violating the First Amendment. Citizens are granted a mere five minutes to speak on any agenda item. Citizens are not able to know, prior to attending a meeting, what items may be on the agenda so they may prepare comments, and five minutes is insufficient to address an agenda item about which one had no foreknowledge. You also have a Fourteenth Amendment problem with Due Process and Equal Treatment. For instance, how is it that Ken Shannon knew about the cross-easements and with that knowledge could demand that we purchase his property if we wanted to develop our property at 22211 SW Pacific Hwy., yet at the same time we knew nothing about the cross-easements? Who violated Due Process and Equal Treatment and withheld that information from us?

You are also lacking in the area of equitable treatment of citizens – and this goes beyond constitutional issues. To see what I am saying, you need to understand two principles in law: "estoppel" and "laches." Estoppel means someone is prevented, or "estopped," from acting. "Laches" occurs when someone has failed to exercise a right or to act in a timely manner and should have known better. "Estoppel by laches" means that because one party waited too long to act, they have lost the right to act.

In my opinion, this is what has occurred with our property on Columbia Street. We initially could have walked straight in and received a permit to subdivide that property into six parcels and build six housing units on them. But when we approached the Planning Department, we were asked to agree to a compromise deal in which we would donate and build a turnaround, and the City would give us a staff variance on the setback that would allow us to have the six lots to which we were legally entitled. So far as I know, Oregon law did not require us to install the turnaround. But in reliance on the City's commitment to us to approve a staff variance, we changed position, deeded ground to the City of Sherwood, and paid to install a turnaround. The deal was so certain that the Building Department even required us to pay to install six utility hook-ups in anticipation of the future parceling. All of this cost us \$200,000 we would not otherwise have had to spend.

But before we could get the variance, a "new" staff came along. They told us that it was too bad we had changed our plans in reliance on the City's promises, but they would not grant the variance without a public hearing. Then the staff took a position against granting the variance. Understand that the only reason we need a variance is because the City exacted property from us for the turnaround.

The only reason we have not filed for the original six lots to which we were entitled is because the City then placed a phony condition on developing the land, erroneously claiming the soil was contaminated. The staff spread that word around to anyone who was interested in purchasing the property and as a result, we were unable to sell the lots.

It has been five years since the City made its deal with us to exchange the dedication and construction of a turnaround for a staff variance that would allow us to build six units. After five years, I simply do not believe the City has any right to go back on that deal. The equitable treatment embodied in estoppel and laches prevent the City from going back on it. And this has not been the only situation in which we have not received equitable treatment from the City of Sherwood.

I want you to understand our objection to the parks overlay. We are objecting because we had no idea it even existed. All of a sudden, with no warning or discussion, every useful aspect of that entire property at 21805 SW Pacific Hwy. has been declared a public park. It has effectively been rezoned. This is in sharp contrast to everything the staff told us when we purchased it not that long ago. And I simply do not believe that a park overlay can just instantly be placed on a property like that. It takes a considerable period of time to achieve that level of planning on such a project. As many times as we have been in contact with the City regarding this and other properties in the area, someone could – and should – have told us this was being planned. No one did. In fact, the City staff represented precisely the opposite on the property.

Is it a coincidence that our property at 22211 SW Pacific Hwy., formerly the most developable commercial property in Sherwood, is suddenly undevelopable because conditions and restrictions have suddenly been placed on it that render development entirely uneconomical? Is it a coincidence that none of these restrictions and conditions were ever discussed in public either?

Did staff not know about the plans for either of these properties? Who did know? Does the City of Sherwood have a gatekeeper for all development – someone who is privy to information the rest of us do not have?

The staff say these new restrictions, conditions, and overlays are simply supplemental to existing regulations. That is not true. These are new regulations. And it seems every time we turn around, something new is pulled out of the pocket. We can only assume that even more awaits discovery. The public hears a general goal. Later they hear a general strategy. But the logistics are always kept under cover.

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If I understand correctly, the job of the Planning Commission, in part, is to advise the City Council on "new" regulations. But I am not even asking that much of you. I am asking only that someone tell us what the regulations are. Apparently we cannot develop 21805 SW Pacific Hwy. We cannot develop 22211 SW Pacific Hwy., either. All because of "supplemental" changes created behind closed doors, with no public input and without the knowledge of the affected property owners, and only revealed at the time development permits were sought.

I can think of no other reason for not publishing these "supplemental" changes until the time a property owner seeks development permits than to be sure the plans remain optional, so that they may be applied or not, depending upon who is applying for the permits. If the right person came in, then the secret map would stay in the pocket.

Any help you can give us would be appreciated.

Sincerely,



Jim Claus 

cc: Governor Ted Kulongoski, Fax: (503) 378-6827
Senator Gordon Smith: Fax 503-326-2900
Senator Ron Wyden, Fax: (202) 228-2717
Rep. David Wu: <http://www.house.gov/writerep/>
"Big Look" Task Force: big.look@state.or.us
Sherwood City Council: citycouncil@ci.sherwood.or.us
Attorney General Hardy Myers: doj.info@state.or.us
Sherwood Planning Commission: cronink@ci.sherwood.or.us
Paul Elsner, Berry & Elsner: paul@gov-law.com
Anthony Roberts, Editor, Sherwood Gazette: aroberts@commnewspapers.com

file copy

December 11, 2006

City of Sherwood
Planning Commission
22560 SW Pine Street
Sherwood, OR 97140

Re: AV 06-01 Columbia Street Lot Depth Variance

Public members request the denial of the above-referenced variance.

This is our street. Columbia Street. The photo below is representative of the congestion and parking insufficiency on Columbia Street.

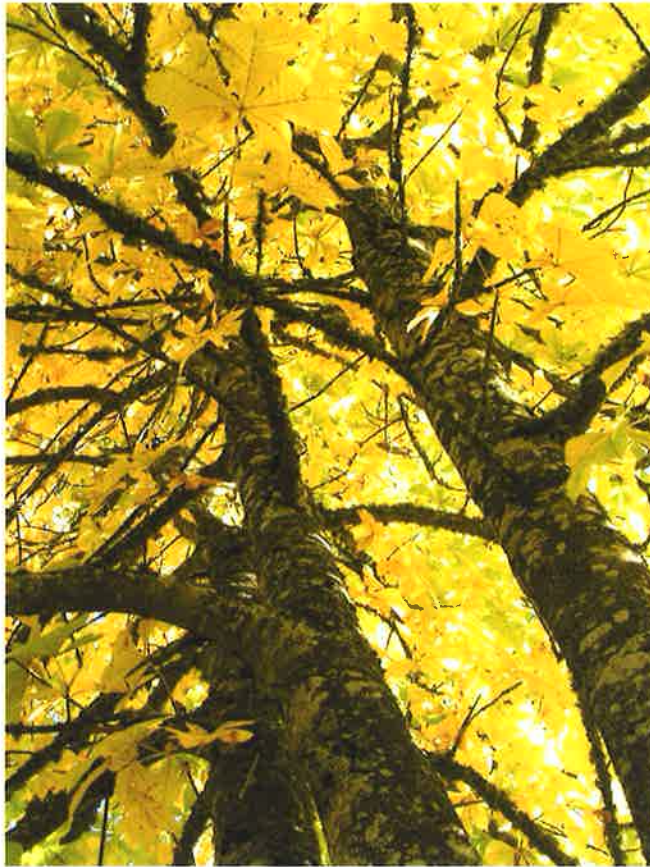


The subject property is shown on page 2. It abuts Cedar Creek to the rear. The area to the front of the lot is capped contaminated soil. Applicants did not provide neighborhood residents with any courtesy notification of the contaminated soil or the remediation efforts. While it may not have been a requirement to notify residents living on the street, a courtesy notification would have been appreciated by all Columbia Street residents. If applicants did not see fit to notify current residents of the environmental issues involving the subject property, how can anyone feel confident that applicants would advise residents or the City about any unexpected findings that might be encountered while developing this property?



The applicant's engineering report in the City's file indicates that additional parking has been created by the capping of the contaminated soil. (See Exhibit A.) However, no additional parking has been created – only a fire lane which is posted in several places “Fire Lane – No Parking.” Should any municipal work need to be done in the capped area, notification would be required and city workers would have to be fully-informed of the contaminants they may encounter. Overcrowding of such a sensitive area, in public members' opinion, would be detrimental to the neighborhood.

The subject property is near a sensitive area with Cedar Creek being in such close proximity. On page 3, is a photo of a special old chestnut tree (probably 50 to 60 years old) that is very close to the property and could be in danger of being harmed or even removed by the development of this property. To lose this very special tree would be a great loss to Sherwood residents who have enjoyed this tree season after season.



Please do not allow the overcrowding of our neighborhood by allowing the variance to move forward. We are already living with congestion, and the undesirable affects of that congestion. Just because a developer could add additional housing by lessening the lot size and providing the purchaser of that property even less living area than existing housing, doesn't mean that we should allow it.

Open space or additional parking would be far more preferable to the residents who live on Columbia Street now than the added burden of another dwelling that will bring additional congestion and change the dynamics of our neighborhood.

Applicant is developing two other lots on Columbia Street. This application is the developer's request to cram more housing into an already tight area. There are plenty of developing areas in Sherwood and we do not need to forever change the footprint of our street by allowing overcrowding. We just don't need the housing that bad.

This application, if allowed, could enable applicants to maximize development profits at the expense of those residents who already live on Columbia Street and have for years. Some residents have been on the street for over twenty years. Residents currently living on Columbia Street are living on lots that are within City specifications and no allowances were added to their lots to allow development. There seems to be NO reason to do so here. Even if the setback in the front of the development were 20 feet as required, the lack of space would create additional parking stresses on an already parking-stressed street and put a housing unit that much closer to Cedar Creek. This does not preserve natural features, provide adequate light, air and privacy to adjoining properties, and adequate access would be in question based on the already maximum density on the street. Allowing higher density on Columbia Street is undesirable and stretches the limits of the infrastructure already in place. As you can see by the photograph provided earlier

in this letter, our street has reached maximum capacity. Please do not allow additional overcrowding on our street by allowing this variance. Denial of the application is appropriate at this time.

Thank you for your consideration.

Property Owners / Public Members - John and Julie Kandik
16045 SW Columbia Street
Sherwood, Oregon 97140

soils was the chosen method as noted by myself in additional notes on page 5 and included in the November 22, 2002 submittal. (See attached). In the October 21, 2002 Squier letter Scott Schoemaker states that the design provided by AKS adequately remediates the Arsenic in TP-SA1. AKS considered the October 21, 2002 Squier letter as adequately addressing item 1 above.

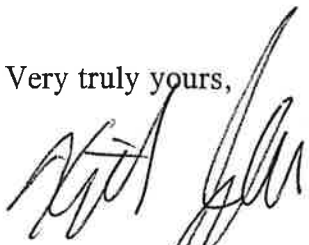
The exact test pit location was tied by AKS surveyors immediately after the test results were received and is shown on the attached Slag Cap Sketch Map. This test pit location closely matches that shown on Squier's Figure 2. AKS then designed additional parking over this location to meet the Squier requirements of capping this area. It was this design and location that was reviewed by Squier prior to their letter of October 21, 2002. It should be noted that Squier faxed AKS only pages 1-6 of their report, and AKS did not receive copies of Table 1, Figures 1-12 and Appendix A until recently. A copy of the Table, Figures and Appendix is attached.

The second submittal design included a mid-slope flow spreader below the stormwater pond. This flow spreader was located at the edge of the Clean Water Services (CWS) riparian buffer area. This spreader was placed mid-slope because performing work inside this CWS riparian area requires an additional environmental report (by a private consultant) and review and approval of this report by CWS. The design used in the second submittal was trying to avert the costs and time delay of this CWS process. The Squier report found that the mid-slope soils were too erodible for the proposed flow spreader and recommended three alternative stormwater disposal methods (page 5 of report). AKS chose the first alternative, to extend the storm line down to the drainage creek at the bottom of the slope. This was outlined in a note placed on the Squier report and included in the 11/22/02 submittal to the City. This effectively answered item 2 from above.

The stormwater pond was added in the second submittal and is located near the slope break. After the third submittal, the City requested a review of the slope stability for the pond in this location. Squier reviewed the design and recommended that a "positive leakage protection system" be utilized. AKS designed a detention pond system using PVC film geomembrane fabric as the leakage protection system as shown on the fourth submittal submitted 11/22/02. This adequately addressed item 3 from above.

AKS has been working on this project for several years and is anxiously awaiting its completion. The geotechnical information requested by the City after the third submittal was provided in the fourth submittal. All of the City comments from the third set of redlines were carefully addressed by AKS in order to get these plans approved on this fourth submittal. AKS believes that the all of the information necessary to review the fourth submittal was provided.

Very truly yours,



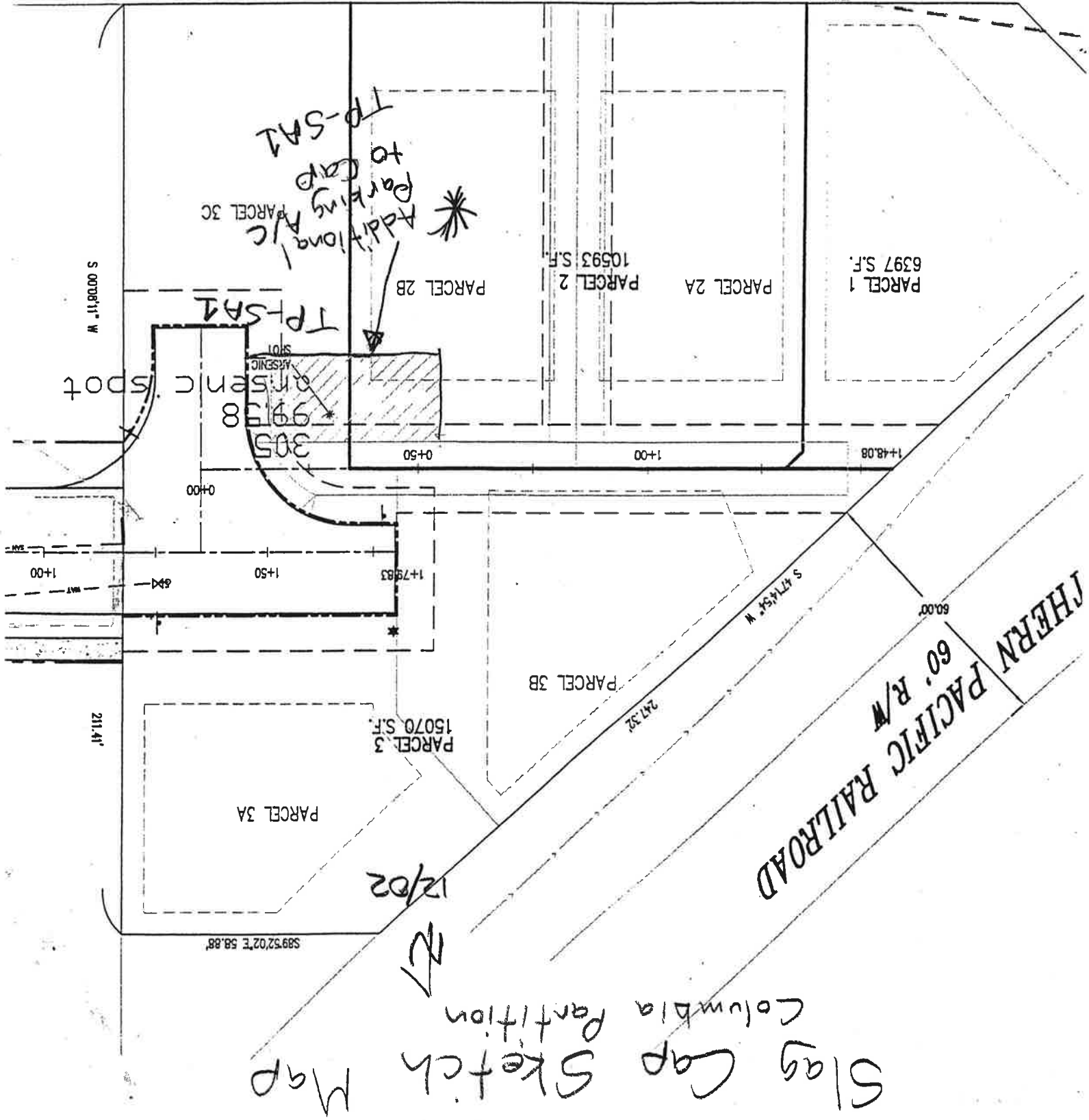
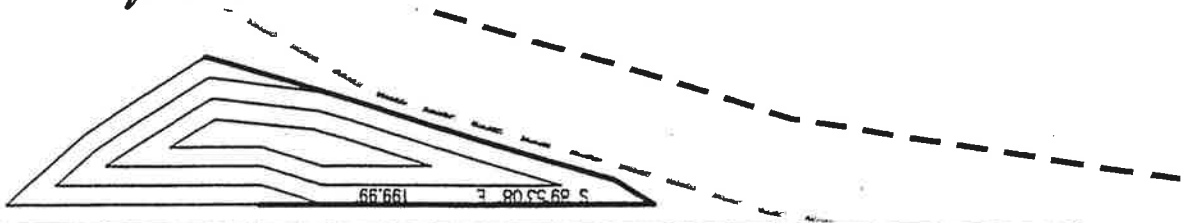
Keith Jehnke PE, PLS
AKS Engineering & Forestry, LLC

Exhibit A
Page 1

NO ADDITIONAL PARKING WAS CREATED.
ONLY A FIRE LANE

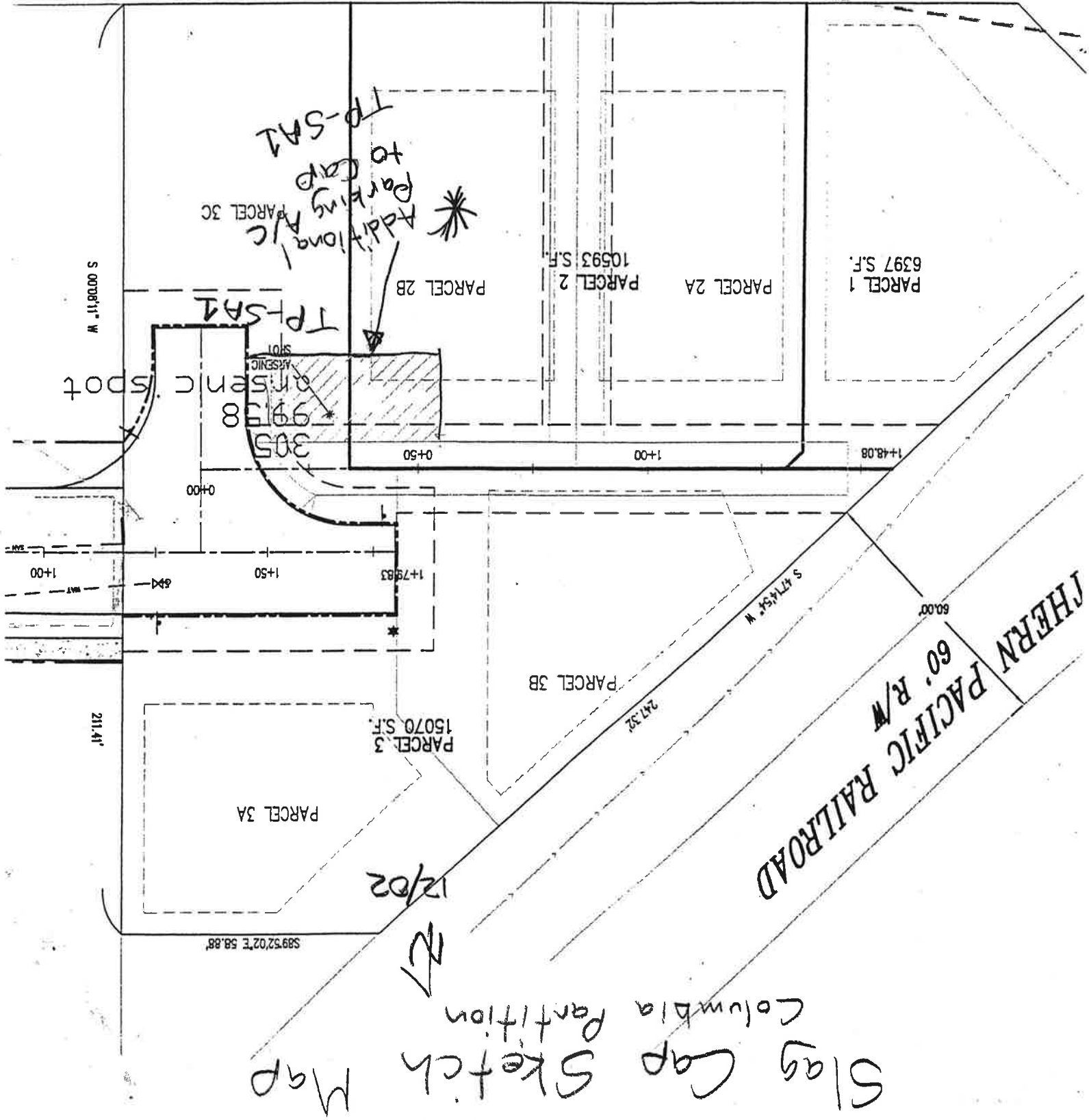
NO Additional
parking
created
ONLY FIRE LANE

Exh. b.1 A
page 2



Slag Cap Sketch Map
Columbia Partition
12/02

THE NORTHERN
PACIFIC RAILROAD
60' R/W



R. James Claus, Ph.D.
22211 SW Pacific Hwy.
Sherwood, OR 97140

December 12, 2006



City of Sherwood Planning Commission
22560 SW Pine Street
Sherwood, OR 97140
Fax: (503) 625-5524

Re: File No. VAR 06-01

Dear Commissioners:

We are in receipt of the Staff Report-Addendum, dated December 5, 2006, which we received by email from Ms. Heather Austin. We are writing this letter to inform the Commission of several inaccuracies in the report.

I would point out that the Applicant for the variance request is Keith Jehnke of AKS Engineering and Forestry. He is not mentioned anywhere in the report.

The report states that staff notified Thomas Austustas Claus (a registered attorney and resident at the time in the state of Nevada) of the request for a public hearing and the additional fee required, but that he did not receive the letter. It should be noted that the staff also failed to notify either my wife and me, the owners of the property, or the Applicant, Mr. Jehnke, who has, in all his years of working in the City, never seen this sort of mistake occur. This error on the part of the City ultimately led to denial of the variance request, which we then appealed. For this appeal, we were required to pay an additional public hearing fee. That hearing occurred on September 12 and at the hearing, staff recommended denial of the variance request.

The September 5, 2006 Staff Report provides a "Project History" that is factually inaccurate and totally misleading. As noted above, the City did not properly notify the applicant of the hearing when it denied the application. But that is possibly the most minor problem with the Project History. The entire history of our interaction with the City in our attempts to develop this property tells a far different story than the one described in the staff report.

Years ago, the City authorized the dumping of slag and sand castings on the property, as well as on adjacent property now owned by the City. The material dumped on the property did not pose any danger to the public health and safety; in fact, the level of arsenic found in the material was less than that of the parent soils beneath it and throughout Sherwood. Nevertheless, City staff libeled and slandered the property, telling every prospective buyer who queried the City about the property that it contained hazardous materials. We were forced to spend \$200,000 to haul away that material and

obtain a DEQ no further action letter before the City finally admitted that the material had posed no danger to the public.

Additionally, when we approached the City with our initial development plan for eight units, a plan that fully complied with code and could not be denied, City staff asked us to give up two units and dedicate and build a hammerhead turnaround to ease the parking problems on the street (this is formally known as an exaction). Those parking problems were directly caused by the City's own actions. It approved a 33% over-development for the duplexes located at 16034 and 16048 SW Columbia Street, with no parking provided. The result is over-parking on the street. This, combined with inadequate enforcement of the parking codes on John Kandik at 16045 SW Columbia Street, are what necessitated the dedication and construction of a turnaround on our property. In the spirit of cooperation, we agreed to the request.

Agreeing to the City's request, however, would leave us shy of the square footage needed to build six units, so the staff agreed that in exchange for our cooperation with the City's request, if we would first seek approval of a partition, they would see to it that our subsequent *de minimus* variance request for further partition was approved. That request is the one before you now – the one for which City staff have reneged on their promise to us by recommending denial. Based on the good faith assurances of staff that our variance would be approved, we submitted the initial partition, which was approved in 2002, and installed six sewer hookups, six water hookups, six electrical hookups, and six storm sewer hookups.

The report also explains that two parties submitted testimony following the April notification of neighbors within 100 feet of the site. One of those two was Mr. John Wild, who mistakenly thought the variance request would result in overloading the property by increasing the number of units at the site. He was unaware that we were allowed to build eight units there and have decreased that by 33% to six units in order to accommodate the City's request for a hammerhead turnaround. Once he understood that, he decided not to testify because his concerns were unrelated to the variance request. Had staff properly notified neighbors of the particulars of the variance request, he would never have requested a hearing.

The second individual to file comments was Mr. Kandik, who lives on Columbia Street and about whose parking habits we have complained in the past. Mr. Kandik has been repeatedly cited by the City for his parking violations and yet continues to flaunt the law by over-parking. In light of that, it is clear that his objections to our development of the property are motivated by self-interest and not by good policy.

The Staff Report not only fails to provide accurate background on the property, it also offers erroneous information to justify its recommendation for denial under several of the approval criteria:

4.401.02, Section A:

This section refers to exceptional and extraordinary circumstances that do not apply generally to other properties in the vicinity, resulting from lot size or shape, topography, or other circumstances over which the applicant has no control. The report states that the property's irregular shape was created through a partition. This is the partition that the City staff asked us to obtain with the promise that a subsequent partition, which would require a variance, would be approved. Because it was the City that made the request for this configuration and not us, and because we were good citizens and cooperated with the City's request by dedicating what would have been an illegal exaction based on the promise of the City staff, we are now being told that we do not meet this condition for approval. The fact is this condition is directly a result of the City's actions and no other property in the area or zone has this condition. We believe this criterion has been met.

4.401.02, Section B:

This section refers to the necessity of the variance for the preservation of a property right of the applicant substantially the same as the rights of other property owners in the vicinity. The report states that other property owners "would also be able to partition property" to a similar size lot as the current partitions create. This ignores entirely the duplexes on the adjacent properties. They are nonconforming as built. The property is zoned for three units, but developed to four. The structures themselves actually trespass into the street. If this illegal nonconforming development was corrected, the neighbors would not be complaining about parking, and we would not have been asked to give up two units and build a turnaround. We have already given up property rights that others in the immediate vicinity have not had to give up, and now staff does not wish to allow us to develop our property to the level it promised us – a level that would be 33% less than we could have originally built if we had not cooperated with the City. Contrast that to the 33% over-development on the neighboring duplex developments.

As your City Attorney, Paul Elsner, stated in a recent email to my attorney that the City would be "in a world of hurt" if it had to equally enforce the law on everyone and said "how the City decides to allocate its enforcement resources is up to the City" – which sounds to my like an admission that discrimination and unequal treatment are acceptable in Sherwood. We believe we have met this condition.

4.401.02, Section D:

This section states that the hardship is not self-imposed and the variance request is the minimum that would alleviate the hardship. The direct involvement of the City in creating this hardship has already been addressed above and it is clearly not a self-imposed hardship. The adjacent property has one too many units, trespasses into the

street, and does not have adequate available parking. The City allows illegal parking to continue. The problems that led the City to request that we change our initial development plans for the property were created by the City, and the "solution" that resulted in the hardship was created by the City. We maintain that this condition is met.

In closing, this Staff Report not only misstates facts, it is the staff themselves who illegally exacted land from us for a turn-around, illegally forced us to give up units while giving the benefit to the neighboring property owners, failed to notify us of the initial hearing, and so poorly wrote the hearing notice that neighbors who otherwise would not have requested a hearing misunderstood the variance request and did. There is no reason why we should continue to be subjected to unequal and discretionary treatment in our efforts to lawfully develop our property.

Sincerely,

A handwritten signature in cursive script that reads "Jim Claus". The signature is written in dark ink and is positioned above the printed name.

Jim Claus

cc: Governor Ted Kulongoski, Fax: (503) 378-6827
Senator Gordon Smith: Fax 503-326-2900
Senator Ron Wyden, Fax: (202) 228-2717
Rep. David Wu: <http://www.house.gov/writerep/>
"Big Look" Task Force: big.look@state.or.us
Sherwood City Council: citycouncil@ci.sherwood.or.us
Attorney General Hardy Myers: doj.info@state.or.us
Sherwood Planning Commission: cronink@ci.sherwood.or.us
Paul Elsner, Berry & Elsner: paul@gov-law.com
Anthony Roberts, Editor, Sherwood Gazette: aroberts@commnewspapers.com

APPROVED MINUTES

City of Sherwood, Oregon
Planning Commission Minutes
December 12, 2006

Commission Members Present:

Chair Adrian Emery
Vice Chair Patrick Allen
Jean Lafayette
Dan Balza
Matt Nolan

Staff:

Julia Hajduk – Interim Planning Manager
Rob Dixon – Community Development Director
Heather Austin – Associate Planner
Cynthia Butler – Admin. Assistant III
City Attorney – Chris Crean

Commissioners Absent:

Russell Griffin
Todd Skelton

1. Call to Order/Roll Call – Cynthia Butler called roll. Commissioners Russell Griffin and Todd Skelton were absent.

2. Agenda Review - Julia Hajduk stated that the applicant for the Cedar Creek Assisted Living Zone Change application (PA 06-05) requested a continuance to reschedule the public hearing for the February 13, 2007 Planning Commission session, to allow time to address items outlined in the staff report. Planning staff approved the reschedule request. Chair Emery confirmed that PA 06-05, Cedar Creek Assisted Living Zone Change public hearing was rescheduled to a date certain, February 13, 2007.

Jean Lafayette later in the session addressed this topic and stated that past hearing continuance requests were approved by the Planning Commission based on specific criteria and not a planning staff level decision. Jean provided a copy of a memo dated in 2001 from Chair Emery confirming this process. Julia Hajduk deferred to City Attorney, Chris Crean to clarify. Chris stated that Code policy current defers to the Planning Director's decision, as long as such requests do not exceed 245 days total for all extensions. Chris added that if another policy exists it is not in the Code. Jean stated she would provide a copy of the 2001 memo to planning staff. Patrick Allen stated that he would like staff to have the discretion for making such decisions. Julia Hajduk concluded that staff would look at the Oregon Revised Statutes (ORS.) language for more clarification.

3. Consent Agenda – Minutes from the November 14, 2006 session were approved by vote:
Yes – 3 No – 0 Abstain – 2

Chair Emery and Matt Nolan stated that they abstained as they were not present at the November 14th session.

4. Community Comments – Chair Emery asked if there were any community comments. There were none.

5. Brief Announcements – Julia Hajduk recapped that the final steps for the Goal 5 Natural Resources (PA 06-02), and Infill Standards (PA 06-03) plan amendments were approved by the Planning Commission on November 14th, and will become effective on January 5, 2007. Julia said that the City Council approved the Area 59 plan amendment (PA 06-01) on December 5, 2006 with the condition of removing the MX Overlay Zone. A final order for Area 59 will be presented at the January 16, 2007 City Council session. Julia referred commissioners to a memo by Heather Austin regarding a seminar on December 1, 2006 attended by planning staff on Legal Issues in Planning, and said some of the land use law materials were attached for their reference.

Julia Hajduk explained the new non-verbal procedure for staff's notification to those providing testimony when the 5-minute testimony period is about to expire that was established due to concerns expressed regarding the verbal interruption by staff for this purpose. Staff will display a blue 1-minute flash card when 1-minute remains, and a red solid color flashcard when time is expired. Jean Lafayette later asked that text be added to the Rules for Public Hearings and the Public Hearings Disclosure Statement to reflect the use of the flash cards. Staff confirmed.

6. Old Business - A. Columbia Lot Depth Variance (VAR 06-01) – Chair Emery asked for staff comments to begin review of the Columbia Lot Depth Variance application that was continued from the September 12, 2006 Planning Commission session.

Chair Emery asked if there was any exparté contact, bias or conflict of interest to declare. Patrick Allen stated that he had conversations with the applicant, James Claus, and asked if the applicant would consider requesting a further continuance in order to reapply under the recently approved Infill development standards, which would allow what the applicant is seeking without a variance. Patrick added that he was not certain what the applicant has decided and that the discussions did not introduce any bias nor affect his ability review the application.

Heather said that staff continues to recommend denial on the application and that an addendum staff report has been provided in commissioner packets. Heather stated that additional written testimony was received from the applicant, James Claus, and property owners John and Julie Kandik, which was also included in the packets. Heather said that the written testimony received from Mr. Claus claimed that there are errors in the staff report, which staff has reviewed for accuracy and that it is staff's position that errors do not exist. Heather reiterated that Pages 3 & 4 of the staff report specifically recaps findings made by staff to support that criteria on the application have not been met. Heather clarified any confusion that may exist over the parcel numbering from the original application in 2001 to the current references, and provided a diagram of the original parcel map to commissioners to assist in clarification. Regarding written testimony from the Kandiks', Heather said the letter objects to parking issues that do not apply to the variance criteria requirements of the application. Heather concluded that staff would like to defer further staff discussion or response on the application after testimony has been received.

Chair Emery opened the session for testimony from the applicant, James Claus.

Michael Gunn, Gunn & Cain LLP, PO Box 1046, Newberg OR 97132 – Mr. Gunn represents the applicant, James & Susan Claus. Mr. Gunn referred to the September 12, 2006 public hearing, and said although the record was left open for public testimony his client would like the

hearing reopened to include more testimony and documentation into the record. Mr. Gunn recapped the applicant's original request for the continuance and waiving the 180 days, and added that his clients would like the commission to rule on the variance this evening. Mr. Gunn said that if the variance is approved the applicant has 3 lots instead of 2 on which to develop, and asked Chris Crean to confirm if this was accurate.

Chris Crean, City Attorney - confirmed and recapped the original approval on the application to allow 2 partitions, with a 3rd approval pending a variance of the dimensional standards on the 3rd parcel. Chris added that staff's addendum dated December 5, 2006 recaps this information.

Michael Gunn stated that the applicant is not withdrawing the application and requested that the hearing be re-opened to allow submittal of additional documentation that Mr. Gunn said was faxed to the city attorney's office yesterday to David Doughman's attention, and allow additional response to the criteria.

Chris Crean confirmed that the Commission can re-open the public hearing if desired.

Chair Emery reopened the public hearing on VAR 06-01 – Columbia Lot Depth Variance at 7:40 PM.

Michael Gunn recapped events from the September 12th Planning Commission session and said that criteria #A appeared to be an area most undecided. Mr. Gunn referred back to the history of the creation of the hammerhead configuration and conversations with Dave Wechner, Planning Director at that time. Mr. Gunn stated that based on the applicant's information regarding the agreement between Dave Wechner and the applicant, criteria #A would be satisfied. Regarding criteria #D, Mr. Gunn again referred to agreements the applicant states were made with Dave Wechner and reiterated that the hardship was not self-imposed and satisfies criteria #D. Mr. Gunn recapped that his notes reflect that criteria items #A and #D were satisfied at the September 12th session. Mr. Gunn recapped criteria items #C and #E were agreed upon as being met, leaving criteria #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... and added that he thought this was the primary undecided standard to be met. Mr. Gunn said that the applicant cannot develop in the same manner as other property owners in the same vicinity, due to the hammerhead configuration requiring the variance, which is a hardship that is not self-imposed, and Mr. Gunn said should satisfy criteria #B.

Thomas Claus, PO Box 1631, Sherwood OR 97140 – Thomas Claus reiterated that he believed all criteria had been met and recapped points on criteria items #A, #B, & #D. Thomas Claus addressed #A & #D together and said that both apply to unique circumstances and referred to an attachment in the staff report regarding right-of-way (ROW). Mr. Claus reiterated that the ROW entering Columbia St. was pre-existing the applicant's ownership of the property, which is a unique circumstance. Mr. Claus added that neighboring properties have existing conditions that are non-conforming to underlying zone standards and are examples of unique circumstances, including parking issues and carport locations in the ROW that do not allow space for a sidewalk. Thomas Claus stated that the applicant's property would be developed in keeping with the character of the neighborhood, which is single-family detached housing in residential zoning. Mr. Claus said that at the time the original application was passed the Code did not permit the creation of any new ROW in a partition request, and added that new public ROW was

created with the turnaround that subsequently restricted the property and required a variance for the lot depth to develop the parcel. Thomas Claus addressed item #B and agreed with Mr. Gunn's testimony previously on this criteria. Mr. Claus stated that the applicant is not requesting to build within the setback standards, but is requesting the variance to allow the parcel to be used for the lowest density possible to keep within the character of the neighborhood, which is a property right that all neighboring property owners currently enjoy.

James Claus, 22211 SW Pacific Hwy., Sherwood OR 97140 – Mr. Claus addressed Patrick Allen and referred to their previous conversation prior to the commission session and said that although he was considering dropping the application his family encouraged him to continue the process through legal counsel. Mr. Claus recapped his letter dated December 12, 2006 and said that the staff report had inaccuracies, and discussed parking issues raised by the neighboring property owner's letter. Mr. Claus added that contributing to the parking problem in the area are illegal intrusions from other neighboring property owners into the public right-of-way, and that these parking issues have been brought to the City's attention and nothing has been done. Mr. Claus also referred to the original site plan diagram for this project dated 2001, and said that based on facts provided in Thomas Claus' testimony and conversations he had during the original application with Planning Director, Dave Wechner, they meet all of the criteria required for the variance. Mr. Claus discussed considerable costs that he has incurred on the project, and related these directly to original agreements made with the City particularly regarding the public improvements that were done and the hammerhead configuration that resulted. James Claus added that on the original application it was also evident that he installed 6 single family hookups that were approved by the Engineering Dept. Mr. Claus concluded that his mistake was trusting the City in the agreements made regarding the future variance that would be required.

Thomas Claus, PO Box 1631, Sherwood OR 97140 – Thomas Claus referenced the site plan from the original application and said that the parcel clearly shows plans for future development based on the identification of the easements and utilities, which were submitted to the Planning and Engineering Departments. Mr. Claus added that the storm water facility and public access easement are shown directly in the middle of the future 2 lots to be shared equally. Thomas Claus said the new Infill standards are again discretionary and would be under design review evaluation by planning staff and the Commission. Mr. Claus recapped that the applicant dedicated the property as right-of-way on the original application and was not under any obligation to do so, and said he believed the application met the criteria and asked commissioners to approve the variance.

Chair Emery asked for staff comments.

Heather Austin addressed comments made by the applicant regarding code compliance issues that were reported and said she forwarded complaints to Dean Casey, the Code Compliance Officer for the Sherwood Police Dept. who has investigated and cited as necessary for code violations on Columbia Street.

Patrick Allen asked Heather to clarify that none of the parking or code compliance issues raised are relevant to the criteria for the variance application. Heather confirmed.

Heather referred to the applicant's comments about agreements made with former Planning Director, Dave Wechner, and stated that she spoke to Mr. Wechner who told her that he did not

want to testify and that he did not recall conversations claimed by the applicant. Heather asked for clarification from the applicant why they did not originally submit a 6 lot subdivision instead of going through the partitioning process if 6 lots were planned. Heather added that the lot reduction could have been obtained through the PUD process. Regarding the dedication of right-of-way, Heather affirmed that it is accurate that new ROW cannot be dedicated in a minor land partition process in the current Code, but said existing ROW can be expanded. Patrick Allen said his interpretation of expanding ROW would be widening rather than extending. Jean Lafayette agreed. Patrick followed by stating that regardless of the definition it was not part of the criteria for evaluating the variance application. Heather confirmed. Heather confirmed that the City and the fire department both require the street to terminate in some manner so that a turnaround is available. Heather said that she is not certain however, that the location of Columbia Street before the original partition was created would be considered a pre-existing hardship. Heather addressed criteria in item #B regarding the equal rights for development of property owners, and stated that other property owners in the same vicinity would also be required to meet same lot depth requirements as the applicant, regardless of the parcel configuration or whether the condition was pre-existing. Heather concluded that based on this she believes that the property right is preserved, and that staff still recommended denial based on not meeting variance criteria.

Patrick Allen asked Heather to address the about storm water and sanitary sewer access shown on the original map in the middle of Parcel #2. Heather that it appears to show that there was intention to divide Parcel #2, and that the access would be shared for 2 lots or serve the property to the south. Patrick asked Heather to clarify that the City's Engineering Dept. would have approved this. Heather confirmed that the Engineering Dept. would have approved public facilities and the location of these as shown on the map.

Julia Hajduk added that this would not necessarily constitute approval for future land divisions. Patrick confirmed and added that he was looking for the accumulative tangible evidence to help clarify and support what may have possibly occurred at the time, particularly regarding the proposed 6 lots and utility hookups. Patrick added that he thought it would be odd for the Engineering Dept. to approve the storm water and sanitary sewer access as shown on the map without any understanding of the intent. Heather confirmed, and added that an applicant would receive approval as long as standards were met.

Chris Crean recapped that 3 parcels were conditionally approved, the 3 parcel being tentative depending on a variance. Chris added that the existence of infrastructure may reflect an intention for 6 lots, but the last parcel remained conditional for the applicant to obtain a variance.

Patrick Allen focused on criteria #B regarding the preservation of equal property rights for owners of property within the same zone and vicinity, and said it does appear to be a circular definition by which no one could ever obtain a variance under this standard. Patrick asked staff for clarification. Julia Hajduk gave an example of property encumbered in a manner that a dwelling cannot be placed on the lot and still meet setback standards due to wetlands, steep slopes or easements. Julia said that any property owner with property in this kind of situation would have the right to place a structure on the property and to be approved for a setback variance. Patrick asked staff to clarify how a variance for a setback would be different than a lot depth variance. Julia said that staff asks if the applicant has a right to create 3 lots, or if the applicant has the right to create a specific number of units. Julia added that staff's interpretation

is the applicant maintains the same right as other property owners in the same zone and vicinity with 1 lot and the ability to create 2 units.

Chair Emery asked if there were further questions for staff. There were none.

Michael Gunn, PO Box 1046, Newberg OR 97132 – Mr. Gunn said he disagreed with staff's interpretation equating the applicant's right to place 2 units on 1 lot with 2 lots, and said the question relates to the number of square feet with what is allowed. Mr. Gunn said that the applicant's right to develop is being infringed by the lot-depth ratio requirement. Mr. Gunn reiterated that the applicant's right is divide the parcel into 2 lots and create single family dwellings on each lot, with an approved variance based on the information provided. Mr. Gunn concluded that the hammerhead and 6 utility hookups would not have been initially created in lieu of the 8 allowable units, unless there was an agreement with the City.

Thomas Claus, PO Box 1631, Sherwood OR 97140 – Mr. Claus agreed with Michael Gunn, and stated that most of the properties on Columbia St. are single family dwelling rather than higher density, and said this is the most desirable dwelling. Mr. Claus stated that a denial of the variance would also be denying the applicant the same property owner right to create single family housing.

Dan Balza asked for clarification whether the hammerhead was required by the fire department. Thomas Claus said that the fire department does require a turnaround, but that it does not have to be a publicly dedicated turnaround. Mr. Claus said that the City needed a public turnaround. Jean Lafayette asked Mr. Claus to clarify that if the turnaround had not been publicly dedicated, the applicant would not have needed the variance. Mr. Claus confirmed that the extra land that went into the public dedication would have been available for the applicant, which is 8 feet. Mr. Claus confirmed that original public dedication was 21 feet.

Patrick Allen asked for clarification why the applicant did not submit the original application as a subdivision. Thomas Claus responded that a subdivision application under the existing Code at that time was different that presently and larger public dedication would have been required, in addition to the PUD ordinance was not conducive to the land acreage.

Chair Emery asked if there were further questions for the applicant or any further testimony. There was none. Chair Emery closed the public hearing at 8:25 PM.

Chris Crean recapped that the approval criteria is the only standard to be considered on the application. Chris added that the history of the property and decisions made at the time on the application may give rise to interpretation by the Commission.

Patrick Allen referred back to criteria #B on equal property owner rights, and asked Chris Crean to clarify what qualifies as a property right in regard to variances. Chris said that defining property right can be difficult. Chris referred to Julia's previous example in addition to relaying various examples in other jurisdictions, and recapped that all properties within the same zone and vicinity are required to meet the same lot dimension standards.

Chair Emery suggested taking a 10-minute break at 8:30 PM.

< 10-minute break >

Chair Emery reconvened the session at 8:40 PM. Adrian asked commissioners for discussion on how best to proceed with enforcement under the current Code and new Infill standards are not yet in effect.

Patrick Allen stated that he was inclined to conclude findings different than staff and deferred to a recap of the required criteria:

#A – Patrick stated that unusual circumstances exist due to the shape of the parcel and its proximity to Columbia St., and that a variance would be required for the applicant to maximize efficient use of the land.

#D – Patrick discussed possibilities surrounding the original application process in 2001 and cited other circumstances that Dave Wechner, Planning Director of that time, made some decisions on property design and development geared toward benefit to the community that may not have been strictly required by the Code. Patrick cited specifically G.I. Joe's and Les Schwab as examples. Patrick added that the original site plan shows plans for 6 parcels and that it appears the applicant has met this criteria, and was not a self-imposed hardship.

#B – Patrick said he was left with a decision on whether or not circumstances allow for equal property rights for property owners, and whether or not the applicant have met this criteria. Patrick invited discussion.

Jean Lafayette asked Chris Crean to recap the legal position for criteria #B.

Chris Crean stated that to meet criteria #B, findings would have to show that a variance was required to preserve the equal rights of the neighboring property owners in that zone, per the Code.

Matt Nolan asked how a lot dimension variance could ever be obtained under Mr. Crean's explanation. Matt added that examples given have been regarding easement and setback variances. Chris Crean said a dimensional standards variance example could be the widening of a road by the Oregon Dept. of Transportation (ODOT) changing the shape of a property owner's property that no longer met dimensional standards, and said this scenario may qualify for a lot depth variance. Patrick asked how this example would be different from the applicant providing a hammerhead configuration at the City's request. Chris stated that they may be the same. Jean Lafayette added that if the applicant had not conceded to the public dedication they would not have needed a lot depth variance. Chris Crean later clarified that the hammerhead and lot configuration came into existence at the same time, and that the hammerhead was not imposed on the property.

Matt Nolan stated that if the applicant came back through the process under the new Infill standards after January 5, 2007, they would also be required to pay fees associated with a new application in addition to added time for the process. Matt added that the applicant wants to do exactly what the City wants for the "highest and best use" of the property, and that the applicant should not have to come back through the process for the same end result.

Dan Balza added that the lot still meets the minimum lot size requirement.

Patrick Allen asked Chris Crean if the Commission finds that criteria #B on equal property owner rights is met by contributing to the preservation of property rights, focusing on the ability to develop at the maximum yield allowed under Code as a matter of good public policy and efficient land use, if he could defend that finding. Chris affirmed that he could defend those findings. Chris added that interpretation of the criteria involves some discretionary decisions and that he could view either as defensible. Jean added that the applicant is also doing what is consistent with what the City wants.

Discussion ensued recapping criteria #A, #B, & #D.

Matt Nolan stated that the struggle with criteria #B could be met if the applicant is exceeding the minimum lot size and maintaining the established setbacks, which would be preserving the equal property rights of all property owners within the same zone.

Jean Lafayette added that the applicant would also be maintaining the character of the neighborhood.

Patrick Allen moved to approve VAR 06-01, Columbia Lot Depth Variance based on the following criteria findings:

#B – is met by preserving the ability to subdivide the parcel in a manner that is consistent with the minimum lot sizes and setbacks, and the residential character of the neighborhood.

#A – is met by the shape of the parent parcel and the location of the connection of Columbia Street.

#D – is met through the weight of the testimony, as well as the materials submitted with respect to infrastructure improvements on the site, which lend credence to the argument that it is not a self-imposed hardship.

Jean Lafayette seconded.

Chair Emery asked if there was further discussion on the motion. There was none. Vote was taken:

Yes – 4 No – 1 Abstain – 0

Chair Emery voted against the motion. Motion carried.

B. Parks Master Plan (PA 06-04) – Chair Emery opened continued deliberation for the Parks Master Plan at 9:05 PM.

Thomas Claus, PO Box 1631, Sherwood OR 97140 – Thomas Claus spoke from the audience stating that although he had asked for a continuance of deliberation of the Parks Master Plan from the November 14, 2006 session, his schedule did not allow him time to prepare anything additional for this evening.

Julia Hajduk added that she did have an opportunity at City Hall to talk to Thomas Claus about the Parks Master Plan Acquisition map and clarified for Mr. Claus items that he discussed at the November 14th session.

Chair Emery asked Julia to clarify the Wildlife Refuge Land Acquisition shown on the map covering the location site of a local employer, Wellens Allied. Julia confirmed the Wildlife Refuge Land Acquisition sections are conceptual only and meant to be general. Heather confirmed this intent in providing the mapping. Julia said that the recommended language was added to the map, “to be used as a tool for policy discussions”, rather than “policy decisions”.

Julia recapped that staff asks the Planning Commission to recommend for approval the comprehensive plan amendments to include the maps into the Comprehensive Plan.

Matt Nolan agreed with Adrian Emery regarding the mapping of the site over Wellens Allied and asked if it could be removed. Adrian added that as long as the Council was alerted to this area and its intent, removal should not be necessary. Matt concurred. Julia said that the mapping was adopted with the Metro bond measure and will alert the Council as recommended.

Jean Lafayette stated that the process for the Parks Master Plan was flawed and that due diligence was not done as with the Transportation System Plan, which included the Code work and details. Jean added that areas on the maps have been identified as not appropriate for acquisition, however they are being recommended into the Comprehensive Plan. Jean reiterated that the master plan should have been reviewed as a complete package.

Adrian Emery asked Julia to clarify that the Parks Master Plan is a guideline only and that later involvement will include the Code. Julia confirmed, and added that the Parks Master Plan is a Comprehensive Plan policy now. Jean expressed concern over the use of the document as policy based on her previous comments and acknowledgements of the process. Patrick said that the Commission is more familiar with using the Community Development and Zoning Code as a policy deciding tool, versus the Comprehensive Plan.

Patrick Allen moved to approve the Parks Master Plan Amendment document with edits as noted to include impact areas as noted on the maps, added legend language, and Council awareness of the map issue regarding Wellons, Inc. and Allied Systems, to forward to City Council for approval.

Matt Nolan seconded.

Chair Emery asked if there was further discussion on the motion. There was none. A vote was taken:

Yes – 4 No – 0 Abstain – 1

Jean Lafayette abstained. Motion carried.

C. Economic Development Strategy (PA 06-06) – Chair Emery opened continued deliberation on the Economic Development Strategy at 9:25 PM.

Adrian Emery asked Julia how the increased density will help jobs, and asked for clarification to Exhibit 5, Item #5 on Statewide Housing Trends. Adrian asked how the age information was obtained. Julia confirmed the information shown is the existing text and is not current information. Adrian said that he was not aware the information was based on old, existing text and this clarified his question.

Patrick Allen moved to approve the Economic Development Strategy (PA 06-06) and recommend to Council, based on staff recommendations, public testimony, findings of fact and agency comments.

Jean Lafayette seconded.

Chair Emery asked if there was further discussion on the motion. There was none. A vote was taken:

Yes – 4 No – 0 Abstain – 1

Motion carried.

7. Comments from Commission - Jean discussed the policy for an applicant requested an extension and hearing continuance, as shown in the minutes on Page 1 under Agenda Review, when the discussion of the continuance of the Cedar Creek Assisted Living Facility Zone Change (PA 06-05) application occurred.

Rob Dixon addressed commissioners regarding a recent technical work session on Measure 37 process that occurred and stated that the attendance from commissioners was limited to 3, as the session was not a formal meeting with a quorum. Rob added that he would like to have another session with the other commissioners who did not attend so that all of the Commission would have the benefit of the information, as well as to provide input. Rob will plan these and inform commissioners.

Jean Lafayette stated that she would like a summary from ODOT of the history regarding access on Hwy. 99 and specifically the McFall property. Heather Austin said that she has this information and will provide it. Patrick Allen added that he would also like from ODOT a letter or memo stating the accesses on Hwy. 99 from Meinecke to Sunset, and who owns them. Heather said that she will discuss this with ODOT.

8. Next Meeting: The next session will be on January 23, 2007. There will be no session on December 26th or January 9th. Julia confirmed that the agenda for the January 23rd session will include Pam Beery from the City Attorney's office providing land use law training, and the annual report will be presented and discussed. Julia added that January is also the time for the Commission to vote on changes, if any, to Chair and Vice Chair members.

9. Adjournment – Chair Emery adjourned the session at 9:40 PM.

End of minutes.