



**City of Sherwood
PLANNING COMMISSION**

**Sherwood Police Facility
20495 SW Borchers Drive**

July 12, 2005

Regular Meeting - 7:00 PM

A G E N D A

- 1. Call to Order/Roll Call**
- 2. Agenda Review**
- 3. Brief Announcements**
- 4. Community Comments** (*The public may provide comments on any non-agenda item*)
- 5. Public Hearing**
 - A. Sunset Minor Land Partition Appeal (MLP 05-02):** Planning Commission will conduct an appeal hearing for the property located approximately 180 feet east of the intersection of SE Sunset Blvd. and South Pine St., Tax Lot 2300, Map 2S 1 32D. The Planning Director's decision was appealed on May 31, 2005. *New evidence may not be entered into the record and citizens currently on the record are only allowed to testify.* (Heather Austin, Associate Planner, Planning Department).
- 6. Next Meeting: July 26, 2005 – Area 59 Charrette - Presentation**
- 7. Adjournment**

The following parties provided written comments during the public comment period for MLP 05-02 Sunset Minor Land Partition:

Ryan Dowdle (applicant)
15955 SW 74th Avenue
Tigard, OR 97225

Neil Fernando (applicant's representative)
LDC Design Group
7700 SW 136th Avenue
Beaverton, OR 97008

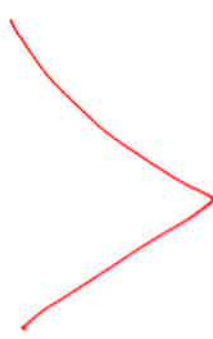
Tim Baugus
245 SE Sunset Blvd.
Sherwood, OR 97140

George Bechtold
1185 South Pine Street
Sherwood, OR 97140

Kelly and Tony Honer
1090 South Pine Street
Sherwood, OR 97140

Spencer Krueger
1120 South Pine Street
Sherwood, OR 97140

David B. Smith (representing George Bechtold, Tony Honer and Spencer Krueger)
Attorney at Law
6950 SW Hampton St., #232
Tigard, OR 97223-8331



appellants

*Per PA -
Patrick Allen, Planning Commission
Janet Mikkelsen
1190 S. Pine St.
Sherwood, OR 97140*

July 11, 2005

We are here this evening to question why you made this decision as you did and why it was made so fast, it was made in 27 working days from April 10th to May 17th. We received a "Notice of Administrative Review" for a minor land partition and a diagram of a land layout showing a private drive easement along East side of land partition and this was being done without a public hearing because it was so "MINOR".

We are a retired couple on limited income and this is the first time that we have had property next to us being developed, so we had no experience with a situation like this. The Planning Dept. had to have known when they sent out the "Notice of Administrative Review" with the diagram that the private drive easement did not meet city codes, so to meet legal frontage for all parcels you made it a right-of-way dedication in your Notice of Decision papers. On page 2 of decision it states that a minor (land) partitions shall not be approved unless: No new rights-of-way, roads, or streets are created except for widening of existing rights-of-way. Partitions creating such new streets shall be processed as subdivisions. This would have required a Public Hearing which would not have worked to your advantage I am sure.

On page 3 of notice we read: Due to the lack of legal frontage for Parcels 2 & 3, along with the issues concerning general access and connectivity, the City is requiring 1/2 of a 52-foot wide right-of way is dedicated and will extend north from Sunset Blvd. None of the 4 properties to west of partition has enough land to subdivide, so there is no need for a street or right-of-way. Only way for 2 of owners to subdivide, and 1 of them is appellant to this unjust decision, is to buy out the Flag Lot owner. This house is standing in the way of the city getting a new North/South street from Sunset to Division. This is the worst location for a new street just 183 feet from Pine and right through peoples land. We can't see any good in it and we do not want to give up our land just for benefit of others. We have no way to subdivide even if we wanted to do so. We are the only losers if the Flag lot owner sells. We will do everything we can possibly do to keep it, we have lived here for 39 years and the city is getting enough of our land as it is, all we would get from this taking of our land is 30 pieces of silver, betrayal.

On page 7 of decision notice, second paragraph under Code 6.304.02 Future Street Systems, one sentence reads: Such roads could be shifted either to the east or west depending upon potential agreement of adjacent property owners. Well, we argue that if Mr. Dowdle needs street to be able to build on his property he can build the street on his own property and leave us alone. If Mr. Dowdle does not have enough property to put street on his land, he needs to make it a smaller project or put on east side of his property and that would give City a place to get a North/South Street, Mr. Dowdle his 26feet ROW' and the three sites, that have enough land to subdivide north of his partition, to subdivide when they desire. This is the most logical solution to this situation and hurts no one

Exhibit A

RECEIVED

JUL 12 2005

BY ha
PLANNING DEPT

- at
Planning
Commission
Meeting
from Mrs.
Mickelsen

We should not have to give up land for Mr. Dowdle so he can have a street to have legal frontage for parcel 2 and 3 of his land partition, every other developer has to put in his own streets to have his parcels frontage conform to the 25-foot requirement for frontage on a street and it is not a half street that is required. Mr. Dowdle is not giving up any land to build the half street. He is just using his private drive easement for the half street and the other half will have to be built by any other property owner who wants to subdivide their land. Well, we will have no use for this street and hence do not have to sell our land to our neighbor to finish out this street to Sunset. Mr. Dowdle is the one benefitting from this section off Sunset so the neighbors should pay him for a 26 foot of land needed for them to complete the street for their use, not taking our land. So what He needs to do is move his first 82 feet of ROW over 26 feet to the East and put his section there and have a reservation for future Row where the first private drive easement was located. His lot size will be smaller but they can refigure the layout. Our lot size would have been smaller if we had to sell, he benefits with having street so he can build and we would have been left with nothing

The TSP continues with discussion of requiring streets and access to be reviewed in light of traffic impacts and connectivity. The following is a list of Sherwood Transportation System Plan references on such issue:

Chapter 2, Goal 3, Policy 2: The City of Sherwood shall require dedication of land for future streets when development is approved.. The property developer shall be required to make street improvements for their portion of the street commensurate with the proportional benefit that the improvement provides the development. As I said before, this benefits Mr. Dowdle, not us. Right now they could dump the whole thing in Lake Erie and We would be overjoyed. We were ok with the Private Drive Easement because it was on his property and he had the right to put the drive there, but when he says they need our land something is way out of wack.

APPROVED MINUTES

City of Sherwood, Oregon
Planning Commission Minutes
July 12, 2005

1. Call to Order/Roll Call

Commission Members Present:

Russell Griffin
Jean Lafayette
Matt Nolan
Dan Balza
Todd Skelton

Staff:

Pam Beery – City Attorney
Kevin Cronin, Planning Supervisor
Heather Austin, Associate Planner
Rob Dixon – Community Development Director
Cynthia Butler, Administrative Assistant

Commission Members Absent:

Chair – Adrian Emery

Vice Chair Allen called the meeting to order at 7 PM.

2. Agenda Review

3. Brief Announcements – Kevin Cronin reported on the Parks Master Plan process and stated that Ann Roseberry, Parks Director, and Rob Dixon, Community Development Director would like to create a “Super Parks Board Group” to facilitate public involvement in the Parks process and is seeking a liaison from the Planning Commission and the Cultural Arts Board. Kevin asked if any commissioners were interested. Todd Skelton volunteered. Meeting dates & times will be determined at a later date. SOQ’s are currently being reviewed, followed by an RFP process for those selected. It is expected to be approximately two months before a contract is initiated and the new Super Parks Board Group would convene.

Kevin said the Southeast Sherwood Neighborhood meeting was held from 6-7 PM prior to the Planning Commission session this evening. The meeting was very interactive and approximately 40 people were in attendance. Minutes will be available to the public soon. Kevin asked the commission to authorize Staff to submit a DLC technical assistance grant application for economic development analysis, so that data and findings can be available to develop a strategy as defined by our work program. Patrick Allen confirmed with the commissioners that permission was granted. A rescheduled date for the Land Use Training originally scheduled for June 28th will be determined. August 23rd was discussed as a possibility, but not all schedules could accommodate this date. Kevin will follow-up with an email with commissioners to confirm options. Kevin reported that Commissioner Dan Balza, members of the Area 59 Project and CAC teams, and the Sherwood School District toured the site on July 7th. The Area 59 Charrette is set for Saturday, July 23rd at the Police Facility. A report and presentation will be provided at the next Planning Commission meeting on Tuesday, July 26th.

4. Community Comments – None.

5. Public Hearing – Sunset Minor Land Partition Appeal (MLP 05-02):

Vice Chair Allen read the Public Hearing Rules & Disclosure including testimony guidelines as they apply to the appeal process, and asked commissioners if they had any exparté contact, conflict of interest or bias. There was none.

Pam Beery provided a recap of the appeal hearing process and stated that appellants have raised two issues and that all testimony will be limited to those two issues under the Code. Issues are limited to those that were raised before the Planning Department, and testimony is limited to the person's currently on record and no new evidence can be submitted during the hearing. Pam Beery also stated that she reviewed the appeal document and memorandum submitted by David B. Smith (appellant's attorney) on behalf of his clients, and that it is consistent with issues raised before the Planning Department regarding access as also appropriate to be included for consideration.

Heather Austin recapped that the Notice of Decision for the Sunset Minor Land Partition was issued in May 2005 to approve the 3-lot partition. Heather stated that the public right-of-way width requirement is 26-feet on the southern portion of the tax lot. An interim access was created until and if in the future the tax lot located between the southern and northern portion of the proposed road redevelops and the road could connect through the northern portion of the property. The northern portion was left as a reservation for possible future right-of-way. The current approval for a public road does not include a connection through the northern portion of the property. Heather referenced the Code regarding the two issues on appeal. Section 7.201.03-F of the Sherwood Zoning & Community Development Code states that no preliminary plat shall be approved unless adjoining land can either be developed independently or is provided access that will allow development in accordance with the Code. Section 7.501.03-E states that minor partitions shall not be approved unless adjoining land can be developed or is provided access that will allow future development in accordance with the Code. Heather referred to the above Code requirement, "unless the land can be developed independently", and said that she provided options for redevelopment of the properties in the Staff Report. Heather stated that both appellant's properties currently have single family detached homes on them and are developed. Redevelopment may be the issue, Heather said. In Chapter 7, section 7.501.04 gives provision for future development stating that lots averaging a minimum of one acre or more may be considered to be re-partitioned or re-subdivided. Heather stated that none of the lots in question average or are above one acre, to confirm Staff's position that the two lots in question are currently developed and meet those requirements according to the Code.

Patrick Allen asked if both properties currently have access to Pine St.

Heather confirmed.

Patrick Allen said he received testimony request cards from applicants, Ryan Dowdle and Neil Fernando and called them forward for their testimony.

Ryan Dowdle, applicant, resides at 24655 SW Grandvista Dr., Sherwood, OR 97140: Ryan stated that he has lived in Sherwood for 6 years and the he purchased the property in November, 2004. Ryan stated that he and his brother planned on building three homes on the

partitioned property, each live on two of the lots and sell the third. Ryan said that in January 2005 he contacted all of the neighbors to see if there may be a consensus for developing the entire area as a subdivision. Ryan stated initially there was interest from everyone except for the owners of Lot 2200. Ryan said that further communication with neighboring landowners became cumbersome and he decided to move ahead with his own land partition application. Since that time, Ryan said that he believes the neighboring property owners who initially expressed consensus for partitioning their land have again become interested, but that the project was larger than he wanted to become involved with by that time and he decided focus on his own application. Ryan stated that he has complied with the City at all levels, has communicated with each neighbor of his property, and that installing the road as approved by the City does not deny access to any of the neighbors for developing their property.

Neil Fernando, applicant's representative from LDC Design Group, resides at 7770 SW 136th Ave., Beaverton, OR 97008. Neil stated that he has witnessed Ryan Dowdle's efforts, time and money spent over the past months as he communicated with neighboring property owners over various ways they may be interested in possibly jointly developing their property. It was ultimately decided to pursue the three-lot partition. Neil said he wanted to save some of his time for testifying in rebuttal if necessary, and wanted to "thank City Staff for a fantastic job in helping them work through this project."

Patrick Allen asked if there were any questions by commissioners of the applicants.

Jean Lafayette asked for clarification on which map shows the road as proposed.

Heather Austin said that Attachment D in the City's Staff Report is the proposed road that has been approved.

Ryan Dowdle said that the driveway shown on the map will not remain if the remaining property owners decide to develop their properties and continue the road in the future. Ryan said he has dedicated 26-feet of his property to right-of-way and is willing to work with the neighbors, but he cannot put a 52-foot road on his property that would leave just 9 feet for a house. Ryan stated that he feels he is doing all he can.

Jean Lafayette asked to clarify the current proposal and asked Ryan Dowdle if his proposal is to build a half-street with sidewalks with a temporary driveway, and that if neighboring property owners develop in the future there will be provisions for continuation of the street through the northern portion of the property.

Ryan Dowdle confirmed. Ryan said it was his understanding that Lot 2000 is willing to sell and move.

Jean Lafayette asked to clarify that if Lot 2000 sold and moved the back property of Lot 2000 would be the continuation of the road.

Ryan Dowdle confirmed.

Patrick Allen asked if there were any other questions for the applicants. There were none. Patrick said the applicants had 23 minutes remaining for rebuttal if they choose. Patrick asked if there were any other proponents who wanted to testify. There were none.

David B. Smith, attorney for appellants', resides at 6950 SW Hampton St., Ste. 232, Tigard, OR. 97223. David stated that he was not challenging the City's Notice of Decision for Approval, but rather two conditions attached to the decision. Mr. Smith said the first condition challenged is regarding a private access easement along the proposed new dedicated right-of-way for the benefit of Parcel 3. The second condition challenged calls for a reservation for future right-of-way from Tax Lot 2000 to the northern boundary of Tax Lot 2300, the parcel being partitioned. Mr. Smith said that it is not their intent to require the applicant give up additional property, but are requesting the Planning Commission to reverse these two conditions. Instead of requiring future reservation of right-of-way, that the right-of-way be dedicated as in the southern portion of the property. Mr. Smith said the right-of-way would belong to the City instead of remaining vacant under the control of the applicant, which would facilitate use of owners of Tax Lots 1700 and 1800 for better future development options.

David Smith also requests that instead of a private access easement to benefit Parcel 3, that a private access easement be established to benefit Parcel 3, and Tax Lots 1700 and 1800. Mr. Smith said the current conditions do not comply with the requirement to provide access to adjoining lands for development. Mr. Smith said the City's Code defines access as a way by which vehicles and pedestrians can enter and leave property. Mr. Smith said that with a reservation of a future right-of-way on the northern portion of the property, and with no private access easement, vehicles and pedestrians cannot enter and exit from Tax Lots 1700 and 1800. Mr. Smith said the City's Staff Report says access can be provided from future actions and he referenced the four identified possibilities listed in the Staff Report. Mr. Smith said that the options listed depend on future actions.

In regards to Staff's reference of Chapter 7, section 7.501.04 of the Code regarding lot size standards for redevelopment, Mr. Smith asked to consider another interpretation of this section that includes: reference to the opening sentence, "in addition to the findings required by 7.501.03, the City Manager or his/her designee must find, for any partition creating lots averaging one (1) acre or more, that the lots may be re-partitioned or re-subdivided in the future in full compliance with the standards of this Code". Mr. Smith this section does not apply to Tax Lots 1700 and 1800, but with Parcels 1, 2 and 3. Mr. Smith then addressed the development and re-development issue by quoting Chapter 7, section 7.501.03 – Minor partitions shall not be approved unless: #E, "Adjoining land can be developed, or is provided access that will allow future development, in accordance with the Code", and stated that additional findings need to be made regarding this provision of the Code in relation to the other properties.

Mr. Smith addressed the issue of redevelopment versus development, and stated that although it is true Tax Lots 1700 & 1800 presently have access off Pine St., these lots cannot be developed with the current access off Pine St. Mr. Smith referred to his memorandum and cited the case of McFall vs. the City of Sherwood. Mr. Smith said the decision on the access issue in the McFall case was based on access conditions that exist at the time the application is approved.

Mr. Smith said the current situation is the flip side of the McFall case, and that there presently is no access to allow future development, but in the future there may be.

Mr. Smith said in order for access to be provided the right-of-way needs to be dedicated and an access easement must be created to benefit the adjoining lands. Mr. Smith said they are not asking the applicant to extend a full street, but requesting a modification of the two conditions to guarantee access that will allow the redevelopment of the two tax lots in the northern section of the property.

Pam Beery asked Mr. Smith if he had copies of his memorandum for the Planning Commission.

Mr. Smith stated that he did and that he provided two copies to Heather Austin.

Heather Austin said that she received two copies at City Hall on Friday, July 8th.

Pam Beery stated that she had one copy and would like to make sure the Planning Commission has copies. These were distributed.

Mr. Smith said that the memorandum contains the same information he has provided testimony for tonight, and that he would be happy to answer any questions.

Patrick Allen asked if the commissioners had any questions.

Dan Balza asked if the lots have access to Pine St. now, why they would not have access for future development.

Mr. Smith said the lots off Pine St. are long and narrow and in order to divide the lots and still meet lot dimension requirements, it will be necessary to partition the lots such that the back lots will not have any access to Pine St.

Dan Balza reiterated that the front lot would have access to Pine St. and the back lot would have access to the proposed street.

Mr. Smith confirmed.

Patrick Allen asked Mr. Smith to confirm if it was his assertion that Option 1 on the City's Staff Report would not apply in this case, because it relies on consolidating two existing access points into one access point.

Mr. Smith confirmed, as it applies to future access.

Patrick Allen stated that currently Tax Lots 1700 and 1800 each have their own driveway. In Option 1, one driveway is created that is placed in the middle to provide access to two flag lots.

Heather Austin said that Option 1 is based on current Pine St. improvements. Nothing currently exists to keep these two tax lots from having separate driveway access points, the scenario was provided as a future option to include the Pine St. improvements.

Patrick Allen said the topic will be revisited during staff comments.

Jean Lafayette said she would like to take time out to read David Smith's memorandum.

Patrick Allen adjourned for a 10 minute recess at 7:40 PM to allow commissioners to review Mr. Smith's memorandum. Patrick also confirmed that Mr. Smith had 18 minutes remaining to testify and that questions from commissioners would follow Mr. Smith's testimony.

>> 10 minute break <<

Patrick Allen reconvened the hearing at 7:50 PM. Patrick said that during the break a discussion arose regarding who may testify this evening. Patrick read the list of parties on record who have provided written comments during the public comment period for the Sunset Minor Land Partition, MLP 05-02 and as such are allowed to testify. Patrick stated that based on his discussion with Janet Mickelson, property owner, and her extensive contacts with City Staff about the application during the review process her testimony this evening should also be allowed. Patrick asked if there were any concerns about doing this.

Jean Lafayette asked for clarification whether Mrs. Mickelson appeared before City Staff during the process and made statements.

Patrick Allen confirmed. Patrick said the Code refers to testifying to the decision-making authority, who is Kevin Cronin, Planning Supervisor for the City of Sherwood Planning Department, however as the case has come before the Planning Commission on appeal he believed it was reasonable to allow Mrs. Mickelson's testimony.

Jean Lafayette confirmed.

Patrick Allen asked if there were any other concerns regarding this interpretation for Mrs. Mickelson's ability to testify. There were none.

Russell Griffin acknowledged exparté contact and stated that he knows Mr. Dowdle from attending the same church, but does not socialize with Mr. Dowdle and believes he can be objective in the hearing process.

Patrick Allen confirmed the acknowledgement would be noted for the record.

Jean Lafayette acknowledged that Mr. Bechtold handed her a copy of a document and if can be interpreted as exparté contact she would like it noted on the record.

Patrick Allen stated this would be a broad interpretation of exparté contact, but that it would be noted for the record. Patrick asked if Mr. Smith if he had anything further to say before opening questions to him by the commission.

David Smith said he had nothing further to add and was ready for questions.

Jean Lafayette asked for clarification on what sections referred to on Page 15 that Mr. Smith was proposing to be removed.

Patrick Allen inserted that he was looking at the same question as Commissioner Lafayette and added that it may be helpful to reference Mr. Smith's language on Page 8 of his memorandum, and Page 15 under Conditions on the City's Staff Report.

David Smith said that the 1st bullet on the top of Page 15 of the Notice of Decision states, "the dimensions of Parcels 1, 2 & 3 modified to allow a minimum.." – the 2nd sentence reads, "the 25-foot wide interim private access and utility easement shall be provided over the western portion of Parcel 2 to the benefit of Parcel 3. Mr. Smith said it is their recommendation that this also includes Tax Lots 1700 and 1800.

Patrick Allen asked to clarify if this scenario was Mr. Smith's item #2.

David Smith confirmed.

Mr. Smith also said that the 2nd bullet on Page 15 of the City's Staff Report says the reservation for future right-of-way be identified, and Mr. Smith said it is their recommendation that the language be changed to say right-of-way be dedicated on the plat to show the eventual extension of a 26-foot wide half-street improvement.

Patrick Allen asked for clarification on Mr. Smith's recommendation for the 2nd bullet on Page 15 of the City's Staff Report.

David Smith stated it was their recommendation to change the language to read "dedication for future right-of-way", instead of "reservation for future right-of-way". Mr. Smith the recommendations do not cost the applicant any additional funds or require any additional real estate, but changes the legal status. Mr. Smith further referenced Exhibit B of the City's Staff Report that displays right-of-way, and stated that the small "dog-leg" does not connect with the future right-of-way to the north. Mr. Smith stated that this would change if and when Tax Lot 2000 is sold, but said that the access connection should be indicated.

Patrick Allen asked Mr. Smith to clarify the difference between dedication and reservation.

David Smith said his understanding of a reservation for future right-of-way leaves fee title to the right-of-way in the hands of the developer, and dedication places fee title in the hands of the City when the final plat is recorded. Mr. Smith asked if Pam Beery, City Attorney, agreed with this definition.

Pam Beery confirmed.

Patrick Allen asked if there were any other questions for Mr. Smith. There were none. Patrick said if there are any other opponents on the record that would like to testify to please complete a testimony card. Vice Chair Allen reminded testimony is limited to 5 minutes.

Janet Mickelson, property owner, resides at 1190 S. Pine St., Sherwood, OR 97140. Mrs. Mickelson stated they are the property owners of Tax Lot 2200 at the corner of S. Pine St. and S.E. Sunset Blvd. Mrs. Mickelson read a letter that she and Mr. Mickelson authored. The letter was submitted into the record [see Exhibit A].

Patrick Allen asked if there were any questions for Mrs. Mickelson. There were none. Vice Chair Allen asked if there were any other opponents on the record that would like to testify. There were none. Patrick moved to rebuttal and asked if the applicants wanted to provide rebuttal testimony.

Ryan Dowdle said that he did meet with Mr. and Mrs. Mickelsen in April and conveyed the options that he and other neighbors were interested in doing, and asked if the Mickelsen's were interested in selling any of their property. The Mickelsen's were not interested and Ryan dismissed the idea of including their property. The City has approved the 26-foot road is sufficient and would entirely be located on his property. Ryan said there was never a meeting with the entire neighborhood, but that he approached neighbors individually. When consensus was not possible Ryan decided to move on with his original project.

Ryan further stated that if in the future the road is proposed to continue to the northern portion of the property, he feels the road would land-lock Tax Lots 1500 and 1600. Ryan also said there would likely be other neighborhood issues that would need to be addressed if road were continued north that he believes the City may have not fully considered. Ryan stated turnaround space for fire safety may be an issue and that he doesn't believe Tax Lots 1500 and 1600 would be able to fully develop their property. Ryan stated that he believes Tax Lot 2000 is approachable and that the road could go through this location, and that it would not affect Tax Lot 2200. Ryan also said that further extension of the proposed road to the north would also involve Tax Lot 2100, and that he believes the owner of this lot is also waiting for the project to come through.

Neil Fernando said that if the road is extended north as requested by Mr. Smith, and Option 1 of the City's Staff Report is used as a reference, Tax Lots 2, 3 & 4 would develop. Neil said the brunt of the cost of taking down Tax Lot 2000 would be held by Tax Lots 1500 and 1600. Neil stated that he is a registered Engineer and works with Fire Marshals on a daily basis, and that if this scenario occurs that the Fire Marshall would never allow it. Mr. Fernando said the reason is that there is a serious grade involved. Mr. Fernando said that they had even discussed sprinklers on the house for Lot 3. Neil referenced the grading data on the initial application and said the grading drops from 342 feet to 328 feet, which is a 14-foot drop in grade within about 160 feet. Mr. Fernando said this would be quite a bit for a fire truck to ascend and that this could potentially mean there would be two homes that the Fire Marshall would not have access to. Neil stated he did not feel this would be a feasible option. Mr. Fernando said it is their request that the Conditions of Approval remain with just one change: that the reservation of right-of-way language be changed to dedication of right-of-way, and that this was their intention to dedicate the property as public right-of-way.

Patrick Allen asked if there were any other questions on rebuttal for the applicants.

Jean Lafayette asked for clarification if the applicants, Mr. Fernando and Ryan Dowdle, are stating that they approve changing the original wording on Page 15 of the approved

application under the 2nd bullet point from reserving to dedicated right-of-way to include the width.

Neil Fernando asked if Jean Lafayette was referring to the 2nd condition on Page 15.

Jean Lafayette confirmed.

Neil Fernando confirmed and stated further that they recommended removing “reservation for future”, and instead state “right-of-way to be dedicated on the plat.”

Jean Lafayette asked if the applicant’s disagreed with allowing Tax Lots 1700 and 1800 access through Parcels 2 & 3.

Neil Fernando confirmed and stated this is correct because it is not feasible.

Ryan Dowdle said that he has no problem with his neighbors developing along with him, which is why he originally tried to put the road through to make the subdivision complete, but found it difficult to facilitate and did not want to further delay his project. Ryan also stated that to extend the driveway 20 more feet for fire truck access is more than is necessary for him to do, and that another option is available for neighbors to act upon if they chose to pursue it.

Patrick Allen asked if there were any further questions of the applicants. There were none. Vice Chair Allen closed the public hearing at 8:10 PM and asked City Staff for final comments.

Pam Beery responded to the legal points regarding the case of McFall vs. City of Sherwood. Ms. Beery stated that the provisions in that case referenced by Mr. Smith turn on a different question than what Mr. Smith suggested, in her opinion. The operative facts with respect to the McFall decision that appear in this case are some that the Planning Commission has already been addressing. One is that Parcels 1700 & 1800 do each have access onto Pine St. currently. In the McFall case the pivotal point for the LUBA decision was the fact that there was existing access and LUBA deemed that sufficient under the Code, and affirmed the City’s decision that additional access did not need to be provided. Pam Beery stated that this case is similar factually because the parcels who are requesting this additional access by easement already have access on Pine St. The difference is found by looking at the Code provisions in the City’s Staff Report they speak to allowing adjacent parcels to develop, they do not speak to allow adjacent parcels to re-develop. Ms. Beery said that the interpretive question for the Planning Commission is “are Parcels 1700 & 1800 developed?”. If the commission finds that the parcels have access onto Pine St. already and that they are already developed, and there is no need to provide additional access, Ms. Beery defers to Chapter 7, section 7.201.03-F, and section 7.501.03-E.

Patrick Allen referenced Chapter 1, section 1.202.01.36 under Definitions in the Code, under Development, the definition is very broad. Patrick said the way the definition reads it could be theoretically interpreted that if more could be built that what already exists, it qualifies as development.

Pam Beery agreed that the development definition in the Code was very broad and that the interpretation Patrick expressed was one possible interpretation. Ms. Beery stated that the City is looking to the Planning Commission to clarify an interpretation.

Pam also said that under the previous LUBA ruling on the McFall 1 case it was determined that if a parcel already has existing access that the City is not required to provide additional access. What did not get considered in the McFall 1 case was the question of development, and if the City is required to consider redevelopment. Pam Beery stated that 7.501.04 in the Code addresses this issue and while she agrees with Mr. Smith that this section also addresses the size of the lots currently being reviewed, it also provides some evidence of what the City might consider re-development in this context.

Pam Beery said another view of the interpretation may be to look at the broad definition of development and to say we consider the definition broadly, and therefore we are going to include redevelopment in this Code provision. The other language Ms. Beery asked the Planning Commission to focus on is in Chapter 7, section 7.201.03-F where the language calls for development of the adjacent parcels to be done in accordance with the Code. Ms. Beery stated that one possible interpretation of this would be to say that parcels are entitled to get the density that is called for in the Code. In this case, would be two lots on the .34 acre parcel as an example. Pam stated that she believes City Staff anticipated this and as a result went through the exercise of presenting four options.

Option 1 achieves redevelopment into two parcels each on Tax Lots 1700 and 1800, and uses access on Pine St. Ms. Beery stated that the Planning Commission could make a finding that this option is possible and feasible, that there is access onto Pine St., and that even additional access onto Pine St. is possible and therefore, there is no need to provide additional access. Pam stated that this is one possible interpretation.

Jean Lafayette said that according to her calculations lots would be less than the required 7,000 square feet for this zone after the 26-foot dedication. Tax Lots 1800, 2100 and 2200 would be smaller than current zoning designates.

Heather Austin stated that a precedence was set in 2004 by the Hearings Officer regarding the Day Minor Land Partition, when the Hearings Officer approved a 10% reduction of lot size due to a right-of-way dedication that caused the lot size to be reduced. This was discussed at a pre-application conference with the property owner of Tax Lot 1800 as a possibility.

Kevin Cronin stated that City Staff is working on infill and redevelopment standards for zoning codes to allow consideration for lot size reduction, and whether changes are done through precedence or legislative amendment to the Code, the City will be addressing this.

Patrick Allen stated the proposed project appears to be creating either rights-of-way or reservations for rights-of-way, and asked Staff how this qualifies for a minor land partition if there is a prohibition on no new rights-of-way roads or streets to be created?

Kevin Cronin said that originally when Staff reviewed the project it was a flag lot, but after discussion a public street was recommended. Staff continued through the minor land partition process because the application was for three lots or less.

Heather Austin said that there is also a bit of discrepancy in the Code because it does not address major land partitions that do include rights-of-way. The Code only addresses minor land partitions and subdivisions, and that this is a gray area that Staff struggles with in reviewing development applications.

Jean Lafayette asked to confirm that a driveway already exists.

Patrick Allen said that the Staff Report states, “no new rights-of-way or streets are created except for the widening of existing rights-of-way”, not driveways.

Jean Lafayette asked to clarify if access currently exists onto Pine St. or Sunset Blvd.

Patrick Allen stated the access is onto Sunset.

Jean Lafayette asked if the applicant did not do a minor land partition with a 26-foot right-of-way, what would prohibit the applicant from just building a driveway and not providing further access?

Kevin Cronin said that throughout the project Staff’s reasoning has been to be proactive and create a public street in order to service all of the lots that would redevelop over time instead of having all of them be flag lots.

Jean Lafayette asked to confirm that if there isn’t another access then flag lots would be the result.

Patrick Allen said that he understands this scenario, but believes the Code says this process should be done as a subdivision, which also requires more extensive notice and a public hearing.

Dan Balza asked for clarification for how right-of-way is used. Dan asked if for argument’s sake the right-of-way for the road was dedicated today, at what point does that right-of-way go into effect? How would it affect the Mickelsons?

Kevin Cronin said that right-of-way is usually dedicated at the final plat stage. When we look at the final plat we look at all the conditions of approval and one of the primary factors is to confirm dedicated right-of-way. The final plat is sent to Washington County to be recorded.

Dan Balza asked if it is possible that a year from now the right-of-way could be exercised whether the Mickelsons wanted it exercised or not and the road goes through?

Jean Lafayette stated the right-of-way and the road would not go onto the Mickelson’s property. The right-of-way and road would be on the applicant’s property.

Kevin Cronin said that if the Mickelsons were to sell their property at some point, the new property owner could continue the road if they desired.

Dan Balza asked if the 26-feet of right-of-way could be exercised against the Mickelson's will?

Kevin Cronin said the only way that could happen, would be if the City went through a condemnation process, and that is not something the City is interested in doing.

Jean Lafayette reiterated that the Mickelsons are not giving up 26 feet. If the area was redeveloped, the developer of Tax Lot 2200 would have to dedicate their own 26-feet for a total 52-foot wide street. Right now the 26 feet is being dedicated from Tax Lot 2300.

Patrick Allen asked if there were any further comments for Staff.

Matt Nolan asked if Tax Lots 1700 and 1800 be developed without the dedication of the additional 26 feet on the Mickelson's property?

Heather Austin confirmed, and said the half-street improvement that is 26-feet on the southern portion of Tax Lot 2300 is adequate. Twenty feet is Tualatin Valley Fire and Rescue standard. The Fire Marshall has signed off that the half-street improvement will serve the lots that are there at this time without requiring the 2nd half-street improvement on the Mickelson's lot.

Kevin Cronin stated the process has been complicated in order to please all parties concerned and that this is a difficult project.

Matt Nolan asked how presently one gets to Tax Lots 1700 and 1800.

Heather Austin said it is by Pine St.

Matt Nolan asked for clarification on the dedications shown in the Staff Report.

Heather Austin stated the dedications shown are for the development of Tax Lot 2300 and service access to those lots. Tax Lots have current access on Pine St. and would continue to be served by access from Pine St.

Matt Nolan asked about the reservation of right-of-way past Tax Lot 2000, and asked how goes from the 12-foot location to the 25-foot location in a vehicle.

Heather Austin stated that it would not be possible at this point. There is a house sitting in the way of where the right-of-way would occur. In the future the house would need to be demolished in order for the street to continue straight through to the northern portion of the property and connect.

Jean Lafayette asked to clarify if the City is asking the applicant to dedicate an additional reserved right-of-way at the northern end of the property just in case in the future Tax Lot

2000 redevelops and the street can be connected straight through, to serve property that already has access off Pine St.

Heather Austin confirmed.

Patrick Allen asked, for the sake of discussion, if Tax Lot 2300 could be developed in accordance with the Code by a private use driveway that does not include any dedication of right-of-way.

Heather Austin stated that it could not because the Code requires 25-feet of frontage on a public right-of-way, and Parcels 2 & 3 would not have this, unless they were flag lots.

Patrick Allen reiterated that it could be done if they were flag lots.

Heather Austin confirmed.

Jean Lafayette said that flag lots would defeat the purpose.

Russell Griffin asked to clarify and understand the scenario to be; if Mr. Dowdle put in a driveway he would end up with flag lots, but the City recommended that Mr. Dowdle build a street and dedicate part of it for a future public street, which requires the 25 feet of frontage for a normal lot. Russell also asked to clarify that this would not necessarily ever affect the Mickelsons, unless they sell their land and it is redeveloped, in which case the developer would need to put in the other 25 feet for the public road, then Tax Lots 1700 and 1800 under Option 1 could redevelop with the road connection.

Consensus was that Mr. Griffin understood the scenario.

Russell also stated that he understands the City did not want flag lots and probably made recommendations to facilitate future growth in an area next to Sunset Park, but wanted to clarify and state that it did not have to happen for development to occur.

Patrick Allen asked Pam Beery asked about appeals and the range of decisions available to the Planning Commission, if they are limited to accept or deny the appeal is the Planning Commission able to determine alternatives?

Pam Beery referenced criteria on appeals in the Code and said that she has concerns about the process currently being followed, which is a Type II process and not a Type III process for a public road. Pam also stated that a full proceeding occurred this evening and that anyone who asked to testify was allowed to testify.

Vice Chair Allen stated that anyone who asked to testify had established that they provided testimony to the decision making authority. Patrick Allen suggested an adjournment for another 10 minute break, which began at 8:35 PM.

>> 10 min. break <<

Patrick Allen reconvened the hearing at 8:45 PM and stated that a number of complicated issues have been raised this evening and in an effort to get them resolved satisfactorily, and to assure the Planning Commission's decision has adequately developed findings, we need to address the 120-day limit on this application. Staff has discussed the 120-day limit with the applicant, who has agreed to extend the application limit an additional 30 days. Patrick asked the applicant to confirm the 30-day extension for the record.

Ryan Dowdle stated that he is extending his application for an additional 30-days.

Patrick Allen asked if there was a motion to continue the appeal to a date to be determined momentarily.

Pam Beery asked the Planning Commission to provide direction to City Staff during the 30-day period, for what Staff can plan to provide when the hearing continues. Ms. Beery supports the request for additional findings due to new arguments that have been submitted as part of the appeal, to which the City would like to respond.

Vice Chair Allen stated he had three primary issues to address: 1) if we start providing, reserving, or dedicating right-of-way then we are in the wrong process, as providing right-of-way is not allowed under a minor land partition. 2) it is unclear whether the project can be done with just a driveway, which he would like City Staff to explore. 3) agrees with the City Attorney's assertion that Tax Lots 1700 and 1800 have adequate access on Pine St. to be developed without needing access from this project application, and would look to City Staff for findings. Patrick asked commissioners if there were any other ideas.

Dan Balza referred to the Transportation System Plan and stated that the 183 feet between Pine St. and the proposed street could also be an issue.

Jean Lafayette is concerned about forcing an issue based on the future possible removal of houses.

Patrick Allen said that the next Planning Commission meeting on August 9th would need to be the continuation for the hearing.

Kevin Cronin confirmed that Staff will be able to deliver a staff report to the Planning Commission one week prior to the continuation of the hearing.

Patrick Allen asked if there was a motion to continue the appeal hearing on MLP 05-02, Sunset Minor Land Partition until the Planning Commission meeting on August 9, 2005.

Jean Lafayette so moved.

Dan Balza seconded.

Patrick Allen asked if there was any further discussion. There was none. A vote was taken to adjourn:

Yes- 6 No- 0

Motion carried.

Appeal hearing adjourned at 8:50 PM.

Patrick Allen asked if there were any other comments.

Jean Lafayette referred to G.I. Joe's application and stated there is no outside storage or sales, and expressed concern over G.I. Joes consistently and repeatedly having outside sales and storage. Jean asked if this is allowed through their application or if they are getting temporary permits.

Kevin Cronin said that he would research the issue.

Jean Lafayette said that Safari Sam's has a practically permanent sign at the corner of their driveway, next to Papa Murphy's. Jean said that one side of the sign says For Lease and the other side says Safari Sam's and have been there over a year.

6. **Next Meeting:** July 26, 2005 – Area 59 Charrette Report & Presentation. The Sunset Minor Land Partition Appeal is continued to the August 9, 2005 Planning Commission.

7. **Adjournment -**

Vice Chair Allen asked if there were any further comments. There were none. A vote to adjourn was taken:

Yes- 6 No- 0

Meeting adjourned at 9 PM.

End of Minutes