



City of Sherwood
PLANNING COMMISSION

Sherwood Police Facility
20495 SW Borchers Drive

August 9, 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 Hearings**
 - A. **Sunset Minor Land Partition Appeal (MP 05-02)**

The Planning Commission continued a hearing from July 12 on an appeal of a staff level decision approving a minor land partition on Sunset Boulevard. The Planning Commission will determine the merits of the appeal based on applicable criteria cited in the appeal petition. (*Heather Austin, Associate Planner, Planning Department*)
 - B. **Oregon – Washington Lumber Co. Site Plan Review (SP 05-07)**

The applicant has submitted a site plan to allow grading of Phase 2 of the subject property located on Tualatin-Sherwood Road. A public hearing is scheduled before the Planning Commission because the site is larger than 40,000 SF. (*Julia Hajduk, Senior Planner, Planning Department*)
6. **Comments from Commission**
7. **Next Meeting:** August 23, 2005 – TBD
8. **Adjournment**

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CITY OF SHERWOOD
Staff Report – Addendum No. 2

Date: August 2, 2005
File No.: MLP 05-02 Sunset
APPEAL

To:	Planning Commission	App. Submitted:	02/15/05
		App. Complete:	03/17/05
From:	Heather Austin, Associate Planner	Report Date:	05/17/05
		120-Day Deadline:	08/14/05
			(30-day extension granted by applicant)

Heather M Austin

The Planning Commission held an appeal hearing on July 12, 2005 regarding MLP 05-02 Sunset Partition. After public testimony, the Planning Commission decided to continue the hearing to allow staff time to respond to issues raised. Below is a summary and response to the issues that were raised at the appeal hearing.

Background

The original staff report and notice of decision for MLP 05-02 Sunset Partition was issued on May 17, 2005. The administrative decision was approval with conditions. This decision was appealed by George Bechtold, Tony Honer and Spencer Krueger, all of whom provided written testimony during the 14-day public notice period associated with this land use review. This appeal was heard by the Planning Commission on July 12, 2005 and was subsequently continued to the August 9, 2005 Planning Commission meeting. While this timeframe does not meet the original 120-day deadline, Ryan Dowdle, the applicant in MLP 05-02, agreed to extend the 120-day deadline by 30 days. The new deadline for a decision to be made on this land use application is August 14, 2005.

Issue #1- Appeal

The appeal was based on the assertion that the decision to approve MLP 05-02 Sunset Partition did not comply with the following sections of the Sherwood Zoning and Community Development Code (SZCDC):

§7.201.03.F “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 this code.”

§7.501.03.E “Minor partitions shall not be approved unless adjoining land can be developed, or is provided access that will allow future development, in accordance with this Code.”

The appellants are specifically concerned with the application of the above sections of the SZCDC to two properties adjacent to the Sunset Partition site, Tax Lots 1700 and 1800. Tax Lots 1700 and 1800 are 0.48 and 0.34 acres, respectively. Both lots are developed with one single-family home on each. Both Section 7.201.03.F and Section 7.501.03.E listed above state that approval shall not be granted unless adjoining land can be “developed”. Section 1.202.01.36 defines “development” as “any man-made change to improved or unimproved real property or structures, including but not limited to construction, installation, or alteration of a building or other structure; change in use of a building or structure; land division; establishment or termination of rights of access; storage on the land; tree cutting; drilling; and any site alteration such as land surface mining, dredging, grading, construction of earthen berms, paving, parking improvements, excavation or clearing.” Each of the lots in question (1700 and 1800) contains a “man-made change to improved or unimproved real property” (a house, driveway, etc.). In addition, the City of Sherwood Building Department records show that the home on Tax Lot 1700 had a new furnace installed in

1999 and that an addition was approved and constructed on the home on Tax Lot 1800 in 1989. These would both constitute “man-made changes to structures”. For the reasons described above, both lots in question are considered “developed”, and therefore the conditions stipulated in Sections 7.201.03.F and 7.501.03.E do not require the proposed minor land partition project to assure access to allow development of Tax Lots 1700 and 1800.

Because both Tax Lots 1700 and 1800 are greater than 14,000 square feet in area, and the minimum lot size in the Low Density Residential (LDR) zone (in which these properties are located) is 7,000 square feet, it is presumed that these properties may be able to be partitioned, or re-developed, in the future. Sections 7.201.03.F and 7.501.03.E of the SZCDC refer specifically to development, and not re-development, of adjoining properties; however even if Sections 7.201.03.F and 7.501.03.E of the SZCDC are interpreted to include development *and re-development* of adjoining properties, these sections are still satisfied as both Tax Lots 1700 and 1800 have access from SW Pine Street and could re-develop using current or future access from that publicly-owned right-of-way.

Staff Recommendation: Deny the appeal of the MLP 05-02 Sunset partition decision based on the findings discussed above that both Tax Lots 1700 and 1800 are developed and both currently have access to SW Pine Street, thereby satisfying Section 7.201.03.F and Section 7.501.03.E of the Sherwood Zoning and Community Development Code.

Issue #2- Procedure

Janet Mickelson, owner of Tax Lot 2200, the southernmost property adjacent to the Sunset Partition site on the west side, provided oral testimony at the July 12, 2005 appeal hearing. While Mrs. Mickelson did not provide written comments during the 14-day public notice period for this land use action, she has met with Planning Staff several times regarding this proposal and was permitted to testify by the Planning Commission. The issue raised by Mrs. Mickelson concerns Section 7.501.03.A. of the SZCDC which states: “Minor 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.”

In the original Staff Report/Notice of Decision, the findings addressed this section of the Code by stating: “The application was submitted with access being provided via a private access easement on the western boundary of the property. Due to the need for legal frontage for all parcels, and providing access to adjacent properties as identified in the Sherwood Zoning and Community Development Code, the City is requiring that the access not be via an easement but rather right-of-way dedication. Per Section 7.201.01, subdivisions and major partitions (which this may be considered following the City’s requirement for new right-of-way) are subject to preliminary plat approval through the Type II or Type III review processes. Since a major partition is not as substantial of a development proposal when compared to a subdivision, it is appropriate for the partition to proceed through the Type II process versus the Type III process.”

Other than Section 7.201.01 listed above, the only other section of the Sherwood Zoning and Community Development Code that discusses “major partitions” is Section 4.100, which sets forth the application contents generally required for the review of proposed land use activities. Therefore, direction is given as to what materials are required to review a major partition, but no direction is provided by the Code as to how these land use actions shall be processed. However, based on Section 7.201.01 stating that “All subdivisions and major partitions are subject to preliminary plat approval through the Type II or Type III review processes”, and Section 3.201.01 listing subdivisions less than 50 lots as a Type III review process and subdivisions more than 50 lots a Type IV review process, staff made the interpretation that the land use action referred to in Section 7.201.01 as requiring a Type II review process would have to be a major partition. Staff further interpreted a major partition to be a partition of property into three or less lots but including the creation of right-of-way, and thus approved this partition with publicly-dedicated right-of-way through the Type II review process. It is clear that the Code is silent in regards to the process for a Major Land Partition, therefore, the Planning Commission must make a determination as to whether the interpretations made by staff are correct.

The applicant's original submittal included a private drive as access to the three proposed lots. The proposed configuration did not address Section 2.102.04.A of the SZCDC, requiring each lot in the Low Density Residential (LDR) zone have at least 25 feet of lot width at the front property line. The front property line is defined in Section 1.202.01.94 as, "The line separating a lot from any street, provided that for corner lots, there shall be as many front lines as there are street frontages." At the point the applicant submitted the land use application, there were two options: provide access to the proposed lots via a public or private street, or create two flag lots with 25 feet of frontage each. While the latter option would not provide any future transportation connections in the area, it would meet all of the requirements of the Sherwood Zoning and Community Development Code for a minor partition in the LDR zone without need of staff interpretation. However, given the ambiguity in process for a major land partition and the fact that the proposal did not include a public street, the interpretation was made to require a public street and review the proposal as a Major Land Partition standard through the Type II process identified in the Subdivision standards.

Options for the Planning Commission:

1. Uphold the original Notice of Decision by affirming the interpretations of staff that this land use action is a Major Land Partition and that as such, Section 7.201.01 of the SZCDC permits a Type II review.
2. Revise the conditions of approval and findings to allow a partition of three lots, two of which would be flag lots with twenty-five (25) feet of frontage on SW Sunset Blvd. In this case, staff would recommend the requirement of a shared access for the three lots to reduce separate access points onto an Arterial.

Staff Recommendation: Affirm the interpretation that the Type II review process is the appropriate process for a major partition, thus upholding the original decision.

End of Report



Site Plan Review
NOTICE OF DECISION

TAX LOT: 100, 101 and 102
MAP NO: 2S 1 29 D
CASE NO: SP 00-01
DATE OF DECISION: 6-25-02

Revised DECISION DATE: July 10, 2002

DECISION TYPE: IV

Applicant:

John Brooks
VLMK Consulting Engineers
3933 SW Kelly Avenue
Portland, OR 97201

Owner:

Jack Steiger, Property Administrator
Oregon Washington Lumber Co., Inc.
301 NW Murray Boulevard
Portland, OR 97229

Based on the findings contained in the attached staff report dated June 25, 2002, and findings of fact determined in public hearing, the City Council **APPROVES** your request for Site Plan Review approval to establish a 90,216 sf industrial flex-building for warehousing, manufacturing and supporting office uses, and 165 parking spaces. Applicant also requested to fill approximately 5.65 acres of wetland and wetland buffer. This approval is based on the following conditions:

V. CONDITIONS OF APPROVAL

Based on a review of the applicable code provisions, agency comments, and staff review, staff recommends **APPROVAL** of SP 00-01/Sherwood Industrial Park Site Plan with the following conditions:

A. General Conditions:

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

1. Compliance with the Conditions of Approval and Engineering Compliance Agreement is the responsibility of the developer.
2. This land use approval shall be limited to the submitted preliminary plans from VLMK Engineering labeled: A2B Resubmit, May 20, 2002. and buildings

3. approved for that portion of the site noted as "phase 1", except as indicated in the following conditions.
 - a. A 15-foot landscaping corridor along Tualatin-Sherwood Road shall be indicated on the plans. The landscaping corridor shall be consistent with SZCDC Section 8.304.04
 - b. Four (4) bicycle parking spaces shall be installed. These racks shall be installed to minimize conflict with the sidewalk and must be in close proximity to the entrances of the building.
 - c. The applicant shall execute and record prior to occupancy a deed restriction on the wetland and buffer areas portion of the property as shown on the revised site plan, A2B Resubmit, May 20, 2002, in a form acceptable to the Division of State Lands, assuring uses of the wetland mitigation area consistent with the permit issued by DSL.
 - d. By accepting the permits issued by the City in connection with this application, the applicant acknowledges and agrees that it will provide the City with a pedestrian path easement over the lands subject to the deed restriction described in the condition above in a form and at the time requested by the City, subject to the review and approval of the Division of State Lands and the Corps of Engineers, for consistency with the permits issued by those agencies and their applicable rules and regulations.
 4. Additional development or change of use may require a new development application and approval.
 5. The developer is responsible for all costs associated with public facility improvements.
 6. Unless specifically exempted in writing by the final decision, the development shall comply with all applicable City of Sherwood and other agency codes and standards, except as modified below.
 7. **This approval is valid for a period of one (1) year from the date of the decision notice.** Extensions may be granted by the City as afforded by the Sherwood Zoning and Community Development Code.
 8. **This Site Plan review approval shall be limited to Phase I of the proposed development.** Development of the remaining phases shall require a new development application and approval.
- B. Prior to Grading the site or the demolition of structures:
1. Obtain City of Sherwood Engineering Division approval, and that of the

Department of Environmental Quality (if required), of grading plans and erosion control.

2. Any existing wells, septic systems and underground storage tanks shall be abandoned in accordance with Oregon state law.
3. A demo permit shall be obtained from the Sherwood Building Department prior to demolishing any structures.
4. Obtain a Service Provider letter from Clean Water Services, if required, demonstrating compliance with R&O 00-7 in regards to the project's impact to sensitive areas.

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

1. Receive approval of engineering plans for all public improvements, including those in Washington County right-of-way from Sherwood Engineering Division. The plans shall conform with the Sherwood Public Works requirements and other applicable standards. The plans shall be in substantial conformance with the preliminary plans dated January 31, 2000 except as modified below:
 - a. The applicant shall dedicate any ROW required to provide a half-width ROW of 45 feet on the T-S Road frontage.
 - b. If the applicant proposes on-street parking, the City Engineer shall approve the final street cross sections with the approval based on the applicant demonstrating sufficient pavement and ROW width for large trucks to pass with parking.
 - c. The applicant shall demonstrate, to the satisfaction of the City Engineer, that the 90-degree curve proposed for the internal public street has a sufficient radius to allow trucks to turn safely within the travel lane of the street.
 - d. The centerline for the east-west leg of the internal street shall align with the existing centerline for Century Drive to the west of the site.
 - e. The applicant shall identify how stormwater from upstream properties will reach Rock Creek. If necessary, the final construction plans shall include the necessary conveyance system for this upstream stormwater.
 - f. The delineated wetland boundary and existing trees in the buffer area shall be shown on the utility construction plans and the proposed utilities shall be designed to minimize impacts to the buffer area

g. Applicant shall provide an access stub to the adjacent property owner to the west (tax lot #800), at grade of their existing development. This access stub shall provide adequate turn radius for large trucks, and adequate queuing distance for traffic entering or exiting tax lot #800. Alternatively, the applicant can provide access at another location if approved by both the neighboring property owner and the Planning Director.

2. Comply with Recommended Condition I, parts A, B and C as stated in the Transportation Review Letter from Anne LaMountain of Washington County dated January 19, 2000, and supplement dated February 18, 2000.
3. The developer shall obtain any necessary approval and permits from the Unified Sewerage Agency to complete sanitary sewer, storm sewer, water quality improvements and sensitive area regulations.

D. Prior to building permit approval:

1. The building plans shall substantially conform to the preliminary site plan dated A2B Resubmit, May 20, 2002, except as modified by this decision.
2. Building plans shall comply with the letter from Eric T. McMullen, Deputy Fire Marshal Tualatin Valley Fire and Rescue dated February 15, 2000.
3. An approval letter from the Engineering Division accepting all public improvements must be issued.
4. A geotech report demonstrating that the slope is stable and recommendations for construction shall be provided if required by the Building Official or City Engineer.
5. A compaction test shall be completed as required by the Building Official.
6. Comply with Recommended Condition I, parts D and E as stated in the Transportation Review letter from Anne LaMountain of Washington County dated January 19, 2000 and supplement dated February 18, 2000.
7. The developer shall obtain any necessary approval and permits from the Division of State Lands to complete the wetland area enhancement.

E. Prior to receiving an occupancy permit

1. The City Engineering Division must confirm all needed easements, right-of-way dedications, or access agreements have been recorded. In addition, the vacation process must be completed for any easements to be vacated.

2. All site improvements, including: landscaping; parking; and, site lighting shall be installed per approved plans.
3. Comply with Recommended Condition II as stated in the Transportation -Review letter from Anne LaMountain of Washington County dated January 19, 2000 and supplement dated February 18, 2000.
4. The developer shall extend or install sanitary sewer, water and storm drainage facilities to serve the development. The improvements shall comply with the approved engineering plans from the respective agencies and the applicable requirements identified in item "C" of this Decision.
5. Traffic facility improvements required by Washington County shall be installed consistent with approved engineering plans.
6. Landscaping and screening improvements shall be installed consistent with the submitted landscaping plan.
7. All vehicle and bicycle parking improvements, including paving, stripping, driveways and other requirements, shall be installed consistent with the submitted parking plan.

F. On-going Conditions

1. Establishment of individual uses within the building and continual operation of the property shall comply with Section 2.111 and other the applicable requirements of the Sherwood Zoning and Community Development Code.
2. Decks, fences, sheds, building additions and other site improvements shall not be located within any easement.
3. This Site Plan review approval shall be limited to Phase I on the proposed site plan. Development of the remaining phases shall require a new development application and approval.
4. Permanent connection to public services will not be allowed until all public improvements are completed, and all on-site improvements are completed and approved by the City or a performance security satisfactory to the City Engineer is submitted to guarantee all improvements will be completed in accordance with the approved drawings, City standards and specifications.
5. Approval from Washington County is required prior to discharging any storm water generated on-site into the county system on Tualatin-Sherwood Road.

ATTACHMENTS

A. Staff Report Dated June 25, 2002


Signed: 
Dave Wechner, Planning Director

APPEAL

Per Section 3.404 of the Sherwood Zoning and Community Development Code (SZCDC), the decision of Council shall be final, except insofar as further appeal to the State Land Use Board of Appeals (LUBA) is filed in accordance with ORS 197.830.

STATE OF OREGON)
)
Washington County)

I, Roxanne Gibbons, Administrative Assistant for the Planning Department of the City of Sherwood, State of Oregon, in Washington County, do hereby certify that the Notice of Decision on Case No. SP 00-01 was placed in a U.S. Postal receptacle on July 10, 2002.



Planning Department
City of Sherwood

**CITY OF SHERWOOD
Staff Report**

Date: June 25, 2002

File No: SP 00-01 Sherwood Industrial Park (OR-WA Lumber)

TO: CITY COUNCIL

App. Submitted: 1-31-00

120-day timeline began: 3-02-00

FROM: PLANNING DEPARTMENT

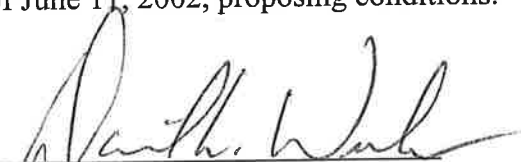
(orig.)120 Day Deadline: 06-30-00

Amended Deadline: open date

Note: Original 120 day deadline per ORS 227.178 was June 30th, 2000. While the applicant was sent a letter requesting additional information on March 3rd, 2000, but chose not to provide such information, so the deadline began on the 31st day after application. This deadline was extended at the request of the applicant by 49 days so that the requested July 18th hearing could take place within the statutory timeframe. This additional time extended the deadline to August 18th, 2000. The applicant requested further extension of the deadline during the August 15th hearing, for 60 days to allow processing the application (to October 18th); then upon learning of the Council's schedule, the applicant requested another 60-day extension, the result being a new deadline of December 18, 2000 for final decision on the land use application.

At the Council public hearing on September 26, 2000, the applicant's attorney proposed that the hearing be continued to allow a response from DSL and the Corps of Engineers. The City and applicant agreed to continue the application with an open-ended date (applicant agreed to an open extension to the 120-day rule) which required re-noticing the hearing. The legal notice was published on April 22, 2002, and a new 120-day deadline has not been established.

The applicant submitted a new site plan on May 20, 2002 to respond to some of the issues raised in the Council meeting May 14, 2002. The owner of 'Triple S' submitted comments through his attorney, Jeff H. Bachrach, dated May 28, 2002. The applicant's attorney apparently responded via facsimile on June 4, 2002, but the staff did not receive his letter until June 6, 2002. Additional correspondence was received from applicant and opponent, as of June 11, 2002, proposing conditions.


Dave Wechner, Planning Director

I. BACKGROUND

A. Applicant:
John Brooks
VLMK Consulting Engineers
3933 SW Kelly Avenue

Owner:
Jack Steiger, Property Administrator
Oregon Washington Lumber Co., Inc.
301 NW Murray Boulevard

Portland, OR 97201

Portland, OR 97229

- B. Location: The property is located between Tualatin-Sherwood Road and the Southern Pacific Railroad tracks. The site address is 14890 Tualatin-Sherwood Road and the County Assessor places the property within Township 2 South; Range 1 West; Section 29D; Tax Lots 100, 101 and 102.
- C. Parcel Size: 51.12 acres.
- D. Existing Development: The property contains a single family home, fronts a public street and is served by public facilities. A 250-foot BPA power line easement is located on the northern third of the property.
- E. Zoning: Light Industrial (LI).
- F. Adjacent Zoning and Land Use: Adjacent land is also zoned LI and contains a mixture of vacant land and industrial uses (including manufacturing facilities and warehouses) and the DEQ test station.
- G. Request: The applicant is requesting Site Plan review to establish a site to create industrial flex-buildings for warehousing, manufacturing and supporting office uses. There is one (1) building proposed at this time, approximately 90,216 sf for warehousing, manufacturing and supporting office uses, and 165 parking spaces. Applicant also requests filling approximately 5.65 acres of wetland and wetland buffer.
- H. Criteria: Approval or denial of this application shall be based on Section 5.102 (and other applicable code provisions by reference), of the Sherwood Zoning and Community Development Code.

II. ISSUES

1. Adequate access for property, and adjacent owners (Section 6.304.01; Section 5.401.02).

The applicant intends to construct a large industrial park on approximately two-thirds of the site. At build-out, the site will contain seven buildings with a total area of 390,466 square feet. Access to the site is proposed to be off of Tualatin-Sherwood Road with the entrance located at the northwest corner. The road proposed is to be designed and dedicated as a public street, and each building is to have a separate parking area. As this property is likely to be built out in stages, the future extension of the road is germane to consider, so that the first portion of its development does not hamper future connectivity.

Washington County indicated the entrance does not comply with County's spacing standards. County authorization through the facility permit process is required before this particular

access location may be approved. Evidence of adequate site distance at this intersection will also be required. Their comment letter states: "To reduce the number of driveways, the applicant will be required to record reciprocal easements for tax lots #100, 101 and 102 thereby ensuring a single access for the entire project."

An access report must be submitted to the County Traffic Analyst for review and approval prior to construction. The Traffic Analyst's review of this report may generate the need for additional improvements beyond the recommendations of the conditions of approval. Since the applicant must obtain *County* permits to access Tualatin-Sherwood Road, *and has not done so*, the owner of 'Triple S' claims the applicant has not sustained his burden of proof that adequate access is provided, under the *Sherwood* code. This raises an interesting question, as the applicant's road proposal does meet the *Sherwood* code, but opponent 'Triple S' points out that the actual development of a roadway that must exist to meet the County's access requirement has yet to be approved. There are questions as to whether the roadway that would connect the two properties can be built, due to the difference in grade between the two properties.

The County seeks to impose a condition whereas the adjacent land owner, 'Triple S Sales' on tax lot 800, will take access from the proposed access road for OR-WA Lumber. In the scope of this land use decision, the County and City may require that the applicant allow other property owners to access the new public street, but cannot require 'Triple S' to use it. The development of the access road proposed by the applicant will create restrictions to turn movements for 'Triple S', in conflict with the requirements of Sec. 6.304.01. The applicant proposes to provide the legal means of access to their proposed road, but does not provide the physical means to build it. Staff concludes that to satisfy Sec. 6.304.01, an applicant must not create a situation that prevents safe access for another property, and proposes a condition to resolve the conflict.

Right-of-way dedication is required on Tualatin-Sherwood Road as necessary to provide a half-width ROW of 45 feet. Washington County indicated further street improvements may be required along the road. The applicant will be required to satisfy the County street requirements before the building can be occupied.

Finding: Staff finds the applicant has not provided adequate demonstration that access to the adjacent parcel, tax lot #800, will not be hindered by this development as proposed. In response to this issue, staff proposes the following condition as a remedy:

Proposed Condition: C.1.g. Applicant shall provide an access stub to the adjacent property owner to the west (tax lot #800), at grade of their existing development. This access stub shall provide adequate turn radius for large trucks, and adequate queuing distance for traffic entering or exiting tax lot #800. Alternatively, the applicant can provide access at another location if approved by both the neighboring property owner and the Planning Director.

2. Conservation / trail easement:

The applicant proposes to provide a trail easement within the wetlands and wetland buffer,

subject to completion of their monitoring period after construction, and subject to the review and approval of the Division of State Lands and the Corps of Engineers, for consistency with the permits issued by those agencies and their applicable rules and regulations. The applicant proposed the language below, which staff finds satisfies the intent of the code, and the purpose of the wetland buffer and trail as desired by Council..

Proposed Condition: 2.c. and d.

c. The applicant shall execute and record prior to occupancy a deed restriction on the wetland and buffer areas portion of the property as shown on the revised site plan, A2B Resubmit, May 20, 2002, in a form acceptable to the Division of State Lands, assuring uses of the wetland mitigation area consistent with the permit issued by DSL.

d. By accepting the permits issued by the City in connection with this application, the applicant acknowledges and agrees that it will provide the City with a pedestrian path easement over the lands subject to the deed restriction described in the condition above in a form and at the time requested by the City, subject to the review and approval of the Division of State Lands and the Corps of Engineers, for consistency with the permits issued by those agencies and their applicable rules and regulations.

3. Wetland buffer:

The Council concluded that the applicant's wetland buffer as proposed on the plans, near the flood plain of Rock Creek, is adequate.

Proposed Condition: None other than construction in substantial compliance with the approved site plan, provided in Conditions A.2., B.1, B.4. and C.1..

III. RECOMMENDATION

The City Council heard the application in public hearing on May 14, 2002 and engaged in discussion in the continued hearing on June 11, 2002. Based on the testimony provided by agencies, applicant and the public, held the written record open for 14 days for opponents to raise issues, and 7 days for the applicant's response. The attorney for 'Triple S' submitted information on May 28, 2002, and the applicant responded June 4, 2002; both are attached to this report. The applicant had also responded on May 28, 2002 via e-mail, with proposed conditions of approval regarding the wetlands and buffer area, proposing a deed restriction document, and trail easement.

City Council directed staff to return with a **Notice of Decision** on the application, with conditions of approval modified to reflect their findings of the June 11 hearing. Subsequent to the close of the written record, but prior to the hearing, both opponent and applicant submitted documents proposing conditions of approval. Those conditions have been considered by staff in constructing language of the Notice of Decision.

ATTACHMENTS

1. Revised site plan, VLMK engineering, labeled A2B Resubmit, May 20, 2002.
2. Ramis, Crew, Corrigan & Bachrach, LLP: Letter from Jeff H. Bachrach, Attorney for 'Triple-S Sales', adjacent property owner – May 28, 2002.
3. Josselson, Potter & Roberts: Letter from Larry Derr, Attorney for applicant, OR-WA Lumber – June 4, 2002.

Availability of materials: Application materials are available for review or can be copied for a reasonable cost at the Sherwood City Hall, located at 22566 SW Washington Street. The staff report will be available for review at City Hall at least seven (7) days in advance of the hearing, can be copied or faxed for a reasonable cost, or may be made available via email. Copies of the Sherwood Zoning and Community Development Code can be found at Sherwood City Hall or on the Sherwood web site at www.ci.sherwood.or.us. If you have questions on this matter, or would like to obtain additional information, please contact Julia Hajduk, Senior Planner in the Planning Department at (503) 625-4204 or via email at hajdukj@ci.sherwood.or.us.

Comments on Oregon Washington Lumber Co. Site Plan (SP 05-07)

Use this form to indicate your comments or submit additional written comments if desired.

- No comment.
- We encourage approval of this request.
- Please address the following concerns should this application be approved:

We encourage denial of this request because it does not meet the following standards:

Inadequate "Ingress & Egress" - A project this size requires 2 access points - At this time there's only one "Functional" access! As in all projects 2 access points are required - A future plan doesn't guarantee there ever will be a "Functional" traffic flow!

Comments by: CLARENCE LANGER Date: 8-1-05
Address: 15585 SW T-S Rd Tel.: 503-625-7070 (optional)
Sherwood Ore Email: _____ (optional)
97140

Attachments: *As shown on the "Site Plan" provided, "Century Drive" extension Site Plan is a "Dead End" - As I have experienced with other projects - "Functional Traffic" plans are a requirement!*

Notice to mortgagee, lien holder, vendor or seller: The City of Sherwood requests that you promptly forward this notice to the purchaser if this notice is received.

Feel free to call!

RECEIVED

AUG 01 2005

BY JPH
PLANNING DEPT

City of Sherwood
20 N.W. Washington Street
Sherwood, Oregon 97140

D.L.D. L.L.C.
P.O. Box 926
Sherwood, Oregon 97140
BY CPH
PLANNING DEPT

August 1, 2005

Re: Notice of Public Hearing and Request for Comments

Case File Name/No.: Oregon Washington Lumber Co./SP-05-07
Tax Map/Lots: 2S1-29D/100, 101 and 102
Site Address: No Address-Tualatin-Sherwood Road, Sherwood, Or. 97140
Property Owner: Oregon Washington Lumber Company

Our lot is located at: 14450 S. W. Tualatin-Sherwood Rd.
(Assessor's Map Tax Lot Map 2S1 29D Tax Lot 103)

In response to your request for comments I would like to make the following comments just for the record.

D.L.D. L.L.C. has two areas of concern with regards to the development of the adjacent property being developed.

1. We do not want any development or creation of wetlands as a part of any mitigation process for wetlands to take place within a 50' buffer zone of our property line, or to compromise the existing setbacks of our property in any way so as to have any negative restrictions to, or negative financial impact of our adjacent property and any future development that may occur there.
2. We do not want to see any grading or slope of any kind within 12' of our property line or in any manner so that it may compromise or restrict our property set-backs with regards to the lateral loading requirements of the foundation of any future structure.
3. It is our understanding that at this point in time nothing can or will take place on the east side of the 52 acre site adjacent to our property with regards to any further mitigation of wetlands since it is our understanding that the required permit by the Army Corp. of Engineers has since expired and cannot be extended. (Is this Correct?) Our understanding is that it Oregon Washington Lumber Co. would have to file for a new permit and go through the process of Public Review for the new permit.

Thank you for your time and consideration. Cell: 971-570-4418

Daniel F. Dodson, President
D.L.D.L.L.C.
P.O. Box 926
Sherwood, Oregon 97140





TUALATIN VALLEY FIRE & RESCUE
COMMUNITY SERVICES • OPERATIONS

Exhibit 5

July 13, 2005

Julia Hajduk, Senior Planner
City of Sherwood
20 NW Washington
Sherwood, OR 97140

Re: Oregon Washington Lumber Co

Dear Julia,

Thank you for the opportunity to review the proposed site plan surrounding the above named development project. Tualatin Valley Fire & Rescue endorses this proposal predicated on the following criteria and conditions of approval:

- 1) **FIRE APPARATUS ACCESS ROAD DISTANCE FROM BUILDING AND TURNAROUNDS:** Access roads shall be within 150 feet of all portions of the exterior wall of the first story of the building as measured by an approved route around the exterior of the building. An approved turnaround is required if the remaining distance to an approved intersecting roadway, as measured along the fire apparatus access road, is greater than 150 feet.
- 2) **DEAD END ROADS:** Dead end fire apparatus access roads in excess of 150 feet in length shall be provided with an approved turnaround.
- 3) **FIRE APPARATUS ACCESS ROAD EXCEPTION FOR AUTOMATIC SPRINKLER PROTECTION:** When buildings are completely protected with an approved automatic fire sprinkler system, the requirements for fire apparatus access may be modified as approved by the fire code official.
- 4) **ADDITIONAL ACCESS ROADS – COMMERCIAL:** Where buildings exceed 30 feet in height or three stories in height shall have at least three separate means of fire apparatus access. Buildings or facilities having a gross area of more than 62,000 square feet shall be provided with at least two separate means of fire apparatus access. Buildings up to 124,000 square feet provided with fire sprinklers may have a single access.
- 5) **AERIAL FIRE APPARATUS ACCESS:** Buildings or portions of buildings or facilities exceeding 30 feet in height above the lowest level of fire department vehicle access shall be provided with approved fire apparatus access roads capable of accommodating fire department aerial apparatus. Overhead utility and power lines shall not be located within the aerial fire apparatus access roadway. Fire apparatus access roads shall have a minimum unobstructed width of 26 feet in the immediate vicinity of any building or portion of building more than 30 feet in height. At least one of the required access routes meeting this condition shall be located within a minimum of 15 feet and a maximum of 30 feet from the building, and shall be positioned parallel to one entire side of the building.
- 6) **REMOTENESS:** Where two access roads are required, they shall be placed a distance apart equal to not less than one half of the length of the maximum overall diagonal dimension of the property or area to be served, measured in a straight line between accesses.
- 7) **FIRE APPARATUS ACCESS ROAD WIDTH AND VERTICAL CLEARANCE:** Fire apparatus access roads shall have an unobstructed width of not less than 20 feet (12 feet for up to two dwelling units and accessory buildings), and an unobstructed vertical clearance of not less than 13 feet 6 inches. Where fire apparatus roadways are less than 26 feet wide, "NO PARKING" signs shall be installed on both sides of the roadway and in turnarounds as needed. Where fire apparatus roadways are more than 28 feet wide but less than 32 feet wide, "NO PARKING" signs shall be installed on one side of the roadway and in turnarounds as needed. Where fire apparatus roadways are 32 feet wide or more, parking is not restricted.

- 8) **FIRE APPARATUS ACCESS ROADS WITH FIRE HYDRANTS:** Where a fire hydrant is located on a fire apparatus access road, the minimum road width shall be 26 feet.
- 9) **NO PARKING SIGNS:** Where fire apparatus roadways are not of sufficient width to accommodate parked vehicles and 20 feet of unobstructed driving surface, "No Parking" signs shall be installed on one or both sides of the roadway and in turnarounds as needed. Roads 26 feet wide or less shall be posted on both sides as a fire lane. Roads more than 26 feet wide to 32 feet wide shall be posted on one side as a fire lane. Signs shall read "NO PARKING - FIRE LANE" and shall be installed with a clear space above grade level of 7 feet. Signs shall be 12 inches wide by 18 inches high and shall have red letters on a white reflective background.
- 10) **SURFACE AND LOAD CAPACITIES:** Fire apparatus access roads shall be of an all-weather surface that is easily distinguishable from the surrounding area and is capable of supporting not less than 12,500 pounds point load (wheel load) and 75,000 pounds live load (gross vehicle weight). You may need to provide documentation from a registered engineer that the design will be capable of supporting such loading.
- 11) **TURNING RADIUS:** The inside turning radius and outside turning radius shall be not less than 28 feet and 48 feet respectively, measured from the same center point.
- 12) **PAINTED CURBS:** Where required, fire apparatus access roadway curbs shall be painted red and marked "NO PARKING FIRE LANE" at approved intervals. Lettering shall have a stroke of not less than one inch wide by six inches high. Lettering shall be white on red background.
- 13) **GATES:** Gates securing fire apparatus roads shall comply with all of the following:
Minimum unobstructed width shall be 16 feet, or two 10 foot sections with a center post or island.
Gates serving one- or two-family dwellings shall be a minimum of 12 feet in width.
Gates shall be set back at minimum of 30 feet from the intersecting roadway.
Gates shall be of the swinging or sliding type
Manual operation shall be capable by one person
Electric gates shall be equipped with a means for operation by fire department personnel
Locking devices shall be approved.
- 14) **COMMERCIAL BUILDINGS - REQUIRED FIRE FLOW:** The required fire flow for the building shall not exceed 3,000 gallons per minute (GPM) or the available GPM in the water delivery system at 20 psi, whichever is less as calculated using IFC, Appendix B. A worksheet for calculating the required fire flow is available from the Fire Marshal's Office.
- 15) **FIRE HYDRANTS – COMMERCIAL BUILDINGS:** Where a portion of the building is more than 400 feet from a hydrant on a fire apparatus access road, as measured in an approved route around the exterior of the building, on-site fire hydrants and mains shall be provided. This distance may be increased to 600 feet for buildings equipped throughout with an approved automatic sprinkler system.
- 16) **FIRE HYDRANT NUMBER AND DISTRIBUTION:** The minimum number and distribution of fire hydrants available to a building shall not be less than that listed in Appendix C, Table C 105.1.

Considerations for placing fire hydrants may be as follows:

- Existing hydrants in the area may be used to meet the required number of hydrants as approved. Hydrants that are up to 600 feet away from the nearest point of a subject building that is protected with fire sprinklers may contribute to the required number of hydrants.
 - Hydrants that are separated from the subject building by railroad tracks shall not contribute to the required number of hydrants unless approved by the fire code official.
 - Hydrants that are separated from the subject building by divided highways or freeways shall not contribute to the required number of hydrants. Heavily traveled collector streets only as approved by the fire code official.
 - Hydrants that are accessible only by a bridge shall be acceptable to contribute to the required number of hydrants only if approved by the fire code official.
- 17) **FIRE HYDRANT DISTANCE FROM AN ACCESS ROAD:** Fire hydrants shall be located not more than 15 feet from an approved fire apparatus access roadway.

- 18) **REFLECTIVE HYDRANT MARKERS:** Fire hydrant locations shall be identified by the installation of reflective markers. The markers shall be blue. They shall be located adjacent and to the side of the centerline of the access road way that the fire hydrant is located on. In case that there is no center line, then assume a centerline, and place the reflectors accordingly
- 19) **FIRE HYDRANT/FIRE DEPARTMENT CONNECTION:** A fire hydrant shall be located within 100 feet of a fire department connection (FDC). Fire hydrants and FDC's shall be located on the same side of the fire apparatus access roadway. FDCs shall normally be remote except when approved by the fire code official.
- 20) **ACCESS AND FIRE FIGHTING WATER SUPPLY DURING CONSTRUCTION:** Approved fire apparatus access roadways and fire fighting water supplies shall be installed and operational prior to any combustible construction or storage of combustible materials on the site.
- 21) **KNOX BOX:** A Knox Box for building access is required for this building. Please contact the Fire Marshal's Office for an order form and instructions regarding installation and placement.

Please contact me at (503) 612-7010 with any additional questions.

Sincerely,

Eric T. McMullen

Eric T. McMullen
Deputy Fire Marshal

Public Works
Land Use Application
Comments



Project: **Sherwood Industrial Park, Phase 2, (SUB 05-07)**

Date: July 25, 2005

Engineering Contact: Lee Harrington, Senior Project Manager

The Engineering Department reviewed the land use application cited above and provides the following ten comments:

1. The final development and construction plans shall be in substantial compliance with the plans dated 5/16/05, except as modified herein.
2. Final development and construction plans shall meet the standards of the City of Sherwood and the Clean Water Services (CWS).
3. The applicant has chosen to submit grading plans only at this time. Comments below will address the submitted plans and offer recommendations for future public improvements. In the absence of a preliminary design for such improvements, the comments offered are general in nature.
4. The application submitted contains phase lines that appear to conflict with earlier submittals. This issue should be clarified at the applicant's earliest convenience.
5. **Streets and Transportation:**
Plans submitted include grading for a portion of an extension of Century Drive as approved in the land use decision for phase 1, (SP00-01). Since the approval of phase 1 the City of Sherwood has adopted a new Transportation System Plan, (TSP). In this plan Century Drive is classified as a *collector* street. The new design standards for collector streets are specified in figure 8-4 of the TSP. The City Engineer may consider modifications to these standards providing such meet the requirements of section 6.303.05 in the Development Code. The applicant shall dedicate right-of-way and construct street improvements in accordance with all City requirements.

In addition, the project shall meet the following conditions related to transportation:

- a. Street design shall include driveway spacing and alignment that matches requirements for a collector street.
- b. Condition C.1.g of the Notice of Decision for phase 1, (SP 00-01), requiring access to tax lot 800, should apply to phase 2 as well.

6. Water:

The applicant has not proposed an extension of the water system at this time. The plans for phase 1 show a water main stubbing out at the beginning of phase 2. The logical extension of this water line is to the west end of the proposed street for phase 2.

Following are general conditions that relate to the water system:

- a. The city contracts with Tualatin Valley Water District (TVWD) for review and approval of engineering plans related to the water system, thus any proposed water plans will to be reviewed and approved by Tualatin Valley Water District and the City.
- b. Any wells on site are to be properly abandoned in accordance with state rules, prior to grading.
- c. All public mains to be ductile iron.
- d. City standards generally follow those of Tualatin Valley Water District.
- e. Easements required on all public water mains not located in the public right-of-way.

7. Sanitary Sewer:

The applicant has not proposed a sanitary sewer design at this time. The plans for phase 1 of this project show a sewer main stubbing out at the beginning of this project. The logical extension of this line is to the west end of the proposed street for phase 2.

A letter from CWS dated December 19, 2002, notes that the District will review the proposal for phase 1 under R&O 96-44. It is my understanding that the Planning Department has requested clarification from CWS as to which R&O will be used in the review of phase 2.

Following are general conditions that relate to the sanitary system:

- a. City follows CWS sanitary sewer standards.
- b. Easements are required on all public sanitary sewers located outside public right-of-ways.
- c. Any septic tanks on site are to be properly abandoned in accordance with state and local rules, prior to grading.

8. Stormwater:

The applicant has not proposed an extension of the storm system at this time. The plans for phase 1 show a storm line stubbing out at the beginning of phase 2. The logical extension of this line is to the west end of the proposed street for phase 2. If not previously anticipated, the water quality facility for phase 1 should be designed to include storm water from phase 2.

A condition of phase 1 was "The applicant shall identify how stormwater from upstream properties will reach Rock Creek. If necessary, the final construction plans shall include the necessary conveyance system for this upstream stormwater", (C.1.e). This should be a condition of phase 2 as well.

Under no circumstances should storm runoff from this project be allowed to enter the railroad right-of-way.

The situation noted above, (see sanitary section), regarding clarification of which CWS R&O will be used for this review applies to storm water as well.

Following are general conditions that relate to the storm system:

- a. City follows CWS storm sewer standards.
- b. Easements are required on all public storm sewers and stormwater facilities not located in the public right-of-way.

9. Grading and Erosion Control:

The preliminary grading and erosion plans submitted appear acceptable, although the design of a utility access road for the stream conveyance system was omitted, (see item 10d). Current City policy requires that prior to grading, a permit is obtained from the Building Department for all grading on the private portion of the site. Additionally the Engineering Department requires a grading permit for all areas graded as part of the public improvements.

Following are some general conditions that relate to grading and erosion control:

- a. City follows CWS erosion control standards.
- b. Retaining walls within public easements or the public right-of-way, with a height of 4 feet or higher shall require engineering approval. Retaining walls with a height of 4 feet or higher located on private property will require a permit from the building department.
- c. Detailed landscape plans shall be included in the final engineering plans showing, in a manner acceptable to the City Engineer, how long-term stabilization of cut and fill slopes in excess of 3:1 will be accomplished.

10. Other Engineering Issues:

- a. Public easements are required over all public utilities outside the public right-of-way. Easements dedicated to the City of Sherwood are exclusive easements unless otherwise authorized by the City Engineer.
- b. The City Engineer may require a geotech report if questions arise regarding the constructability of the proposed public improvements.
- c. All existing overhead utilities must be placed underground. No new overhead utilities shall be allowed. Exceptions will be considered for the existing main transmission lines owned by Portland General Electric and the Bonneville Power Administration.
- d. Initial construction has begun for a stream conveyance system permitted through the Engineering Department as part of the phase 1 improvements. These improvements are not yet complete and it appears that little if any progress has recently occurred. The approved engineering plans for the stream conveyance system call for a utility access road that impacts both phases. Thus a condition of phase 2 should be that the improvements to the storm conveyance system be completed along with the grading for phase 2.



SHERWOOD SCHOOLS

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Office of the Superintendent

23295 S.W. Sherwood Blvd. * Sherwood, Oregon 97140

July 19, 2005

City of Sherwood Planning Commission
20 NW Washington St.
Sherwood, OR 97140

Subject: Study Area 59 Concept Development Planning Process

Dear Commissioners:

The purpose of this letter is to express our strong support for the City of Sherwood and its efforts to prepare a concept development plan for Study Area 59. As representatives of the Sherwood School District, we want to affirm the leadership of the City and their willingness to make this endeavor a priority. We believe this is a time of growing urgency to accommodate and plan for the basic needs of school-aged children in our community.

As you are aware, the Sherwood School District has experienced an incredible growth rate in the last decade. Since 1995, our enrollment has risen from 1,782 students to 3,596 or more than doubled. This growth ratio is acknowledged as one of the highest rates for public school districts in Oregon. As we examine our current status, this factor has precipitated serious needs. Our three elementary schools exceed enrollment capacity, the middle and high schools are at capacity this year. Our district has purchased and will install nine modular buildings this summer, a temporary solution to a growing problem.

Even more compelling is consideration of future growth needs. The Sherwood School District has used the services of Dr. Judith Barmack, a well-known demographer from Portland State University. Her key findings are not surprising: The District's enrollment will increase from 3,596 to 4,525, an increase of 26%, by the beginning of the 2009-10 school year. Our conclusion is simple and clear. Failure to planfully provide new school facilities for the children of this community will result in disastrous consequences.

We believe Metro was thoughtful and practical when it decided in December of 2002 to bring Study Area 59 into the Urban Growth Boundary. Metro clearly understood that, without additional land, the District would soon find itself facing a crisis situation. Indeed, Metro's thinking was made clear by placing a specific conditional requirement on the development of this area:

djamison@sherwood.k12.or.us
(503)625-8105 * FAX (503)625-8101
www.sherwood.k12.or.us

"The county or the city, in coordination with the Sherwood School District, shall, in the Title 11 plan, determinate a location and size for one or more sites for public school facilities in Study Area 59, and shall adopt provisions in its comprehensive plan and zoning regulations to provide the opportunity to site one or more public school facilities consistent with the Title 11 plan." (Metro Ord. No. 04-1046, amendment Metro Ord. No. 02-969B.)

The Sherwood School District is committed to working with the City to ensure this condition is met. Meeting the condition is fundamental to our ability to provide for the current and future educational needs of children in our community.

Our District has worked hard to set high standards for student achievement. We have been very successful in meeting these high standards. The Sherwood School District must continue to set high marks for all students and our success depends on our ability to work to create the best learning environment for students.

These are exciting times in our community. While we face many challenges associated with growth, simultaneously we are encouraged by the collaborative spirit that characterizes the relationship between the City of Sherwood, the Sherwood School District, and our citizens. The planned charrette on July 23rd is a fine reflection of this collaborative tone. We thank you for your leadership and efforts to make this event a reality.

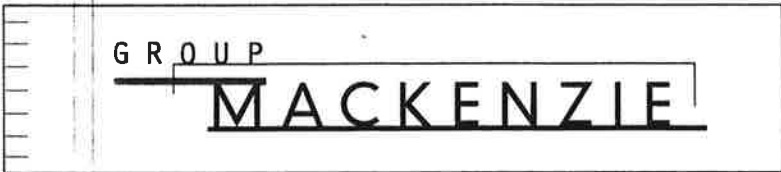
Sincerely,



Mark R. Christie
Board Chair



Dan C. Jamison
Superintendent



August 9, 2005

City of Sherwood
Planning Department
Attention: Julia Hajduk
20 NW Washington Street
Sherwood, OR 97140

Re: **Staff Report SP 05-07**
Conditions of Approval
Project Number 2040263.01

Dear Julia:

I would like to thank you for your assistance during this land use review. We have read the Staff Report, dated August 2, 2005 regarding the Type IV Site Plan Review for grading activity at the Sherwood Industrial Park. We concur with the conditions of approval. However, we would like to make a minor modification to two of the conditions to allow for some flexibility in the type of soil stabilization techniques used following grading. Conditions 5 and 6 under Section B specify re-seeding on the site as part of grading activities. After discussing the conditions with our Civil Engineer, we believe it would be more appropriate to require soil stabilization techniques, which can include re-seeding, so that we are not limited to re-seeding as our only option. Specifically, we would like to modify the conditions to the following:

EXISTING B5 CONDITION:

“Submit a proposal for re-seeding the site with native grass seed after the site grading is complete. The proposal shall include cost estimate for labor materials and equipment.”

PROPOSED MODIFICATION TO CONDITION B5:

“Submit a proposal for soil stabilization after grading. The proposal shall include a cost estimate for labor materials and equipment.”

EXISTING B6 CONDITION:

“Submit a bond or another approved form of assurance for 110% of the estimated cost to re-seed the site in the event that the development does not comply with the condition to re-seed the site after grading has been complete or at any time that grading halts for more than 30 days.”

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Planning Department
Staff Report SP 05-07
Project Number 2040263.01
August 9, 2005
Page 2

PROPOSED MODIFICATION TO CONDITION B6:

“Submit a bond or another approved form of assurance for 110% of the estimated cost to provide soil stabilization in the event that the development does not comply with the condition to stabilize the soil at the site after grading has been complete or at any time that grading halts for more than 30 days.”

We believe the proposed modifications to these conditions will provide more flexibility in performing grading and soil stabilization activities on the site.

Thank your again for your assistance during this review. If you have any questions, please contact me.

Sincerely,



Preston Beck
Planner

c: Jack Steiger – Oregon Washington Lumber
Bob Fentress – Group Mackenzie

August 9th Planning Commission – Public hearing
Oregon-Washington Lumber findings:

Patrick Allen moved to approve with amended conditions, the SP 05-07 Oregon-Washington Lumber Company site plan review incorporating the Staff Report's findings of fact, public and agency comments and testimony, and incorporate in the Conditions in the Staff Report the following changes:

1. Conditions B-5 be changed to add a new sentence after the existing conditions and at the end after "labor materials & equipment" to say, "applicant may also submit a proposal for temporary soil stabilization for a period not to exceed two years from the date of approval".
2. Conditions B-6 be amended to include additional language at the end of the sentence, "for more than 30 days" to say, "including any time allowed for temporary soil stabilization needs".

APPROVED MINUTES

City of Sherwood, Oregon
Planning Commission Minutes
August 9, 2005

1. Call to Order/Roll Call

Chair Emery called the meeting to order at 7PM

Commission Members Present:

Adrian Emery
Patrick Allen
Russell Griffin
Dan Balza
Matt Nolan
Todd Skelton

Staff Present:

Kevin Cronin, Planning Supervisor
Julia Hajduk, Senior Planner
Heather Austin, Associate Planner
Cynthia Butler, Administrative Assistant

Commission Members Absent:

Jean Lafayette

2. Agenda Review

3. Brief Announcements – Kevin Cronin said the Hearings Officer will review two applications on August 15, 2005; SP 05-10 Galbreath LLC (aka NW Earthmovers), and SUB 05-02 Copper Ridge. Kevin said the City was unsuccessful in receiving TGM grants for Area 48 and Area 54. Kevin stated that the next step is to see if developers are interested in paying for the master planning process. Kevin also said that the Sherwood Oaks project, PA 05-03, SP 05-09, & LLA 05-02, zone change application for the tannery site, will be on the September 13, 2005 Planning Commission agenda. Kevin asked commissioners if August 23rd was available for the rescheduled land use training session with City Attorney, Pam Beery. Commissioners came to a consensus that this date was good. Metro sent a notice regarding Goal 5 announcing a public hearing in September. Kevin has completed a quarterly report for the work program that is in commissioner packets, and stated that projects are on track.

4. Community Comments – None.

5. Public Hearings:

Chair Emery excused himself on the Sunset Minor Land Partition Appeal (MLP 05-02) hearing, as he was not present at the first session on this project.

A. Sunset Minor Land Partition Appeal (MLP 05-02) – Vice Chair Allen read the Public Hearings Disclosure Statement. Vice Chair Allen asked commissioners if there was any exparté contact, conflict of interest, or bias. Vice Chair Allen acknowledged for the record that Chair Adrian Emery excused himself from this proceeding, as he was not present at the first session on this project.

Vice Chair Allen opened the public hearing on the Sunset Minor Land Partition Appeal (MLP 05-02).

Heather Austin presented the revised Staff Report that included addressing the appeal issue of access to property owners to the north of the property, and a procedural issue regarding Section 7.501.03-A, which states that “minor partitions shall not be approved unless no new rights-of-way or roads are created, except for widening of existing right-of-way.” Heather stated that this project was originally approved as a minor land partition with a right-of-way included. Heather further stated that the options that have been provided in the Staff Reports are to uphold the original Notice of Decision based on interpretation of the Code, or to revise the conditions of approval and approve the project as a three-lot, flag configuration.

Russell Griffin said that it appears ultimately the decision comes down to whether or not the project is a major or minor partition, and asked City Staff to clarify if the right-of-way versus a private easement is the factor that brings in the major partition element.

Heather Austin confirmed it is three or fewer lots if for a minor land partition and that because of the right-of-way the major partition element was added.

Russell Griffin reiterated that if the project is approved as a minor land partition the lots could be flag lots.

Heather Austin confirmed that one lot would have frontage on Sunset Blvd. and the other two lots would not have frontage, but would wrap behind the first lot and be flag lots.

Vice Chair Allen asked if there were any other questions by Commissioners for City Staff. There were none. Vice Chair Allen asked if applicants wanted to provide any additional testimony based on the revised Staff Report.

Ryan Dowdle, applicant, resides at 24655 SW Grandvista Dr., Sherwood, OR 97140 - Ryan stated that it is his preference that the project returns to the flag lot configuration.

Vice Chair Allen asked if any appellants or appellant representatives wanted to testify based on the revised Staff Report.

Tony Honer, appellant, resides at 1090 S. Pine St., Sherwood, OR 97140 – Mr. Honer said he wanted to clarify the definition of development, and stated that he wanted to develop the back of their lot and that he has already obtained a permit for a furnace. Tony said that without access they cannot develop the lot and they wanted the access to go through.

Russell Griffin clarified with Mr. Honer that if the project becomes a private driveway instead of a road that Mr. Honer’s plans would not be possible.

Mr. Honer confirmed.

Russell Griffin further clarified with Mr. Honer that if the public road were approved, Mr. Honer is saying that they would be interested in continuing the road all the way through to the north of the property.

Mr. Honer confirmed.

Vice Chair Allen asked if there were any other appellants of record that wanted to testify.

George Bechtold, appellant, resides at 1185 S. Pine St., Sherwood, OR 97140 – Mr. Bechtold stated that he submitted a pre-application with the City of Sherwood to subdivide the property adjacent to Mr. Dowdle's property. George said that during the pre-application conference City Staff inferred that there would be a road coming through the property that would allow the adjacent lots to subdivide or redevelop. Mr. Bechtold said he just wanted to point out the position of City Staff on the topic had changed.

Spencer Kruger, appellant, resides at 1120 S. Pine St., Sherwood, OR 97140 – Mr. Kruger said it appears to him that the City may be approving an option because it has not other choice. Spencer said that he has the same comments to add as Mr. Honer regarding development about developing the back of his lot and that he has also obtained a permit for a furnace.

Vice Chair Allen asked if there were any other parties to the application that wanted to testify.

Janet Mickelson, property owner, resides at 1190 S. Pine St., Sherwood, OR 97140 – Mrs. Mickelson reiterated that they did not originally make comment on the project because the notice they received indicated that a private driveway would be created in the project. Mrs. Mickelson said that when they discovered the driveway may become a public road, and that some of their neighbors wanted to subdivide, they became concerned that some of their property would be involved and did not want that.

Vice Chair Allen asked if there were any other parties on record that would like to testify on the revised Staff Report. There were none. Vice Chair Allen asked if the applicants wished to rebut any of the testimony. They did not.

Vice Chair Allen closed the public hearing MLP 05-02, Sunset Minor Land Partition Appeal.

Vice Chair Allen asked if City Staff had any comments.

Heather Austin responded to some of the public testimony. Heather referenced Mr. Bechtold's testimony regarding the pre-application conference. Heather stated that City Staff believed at this stage of the process that there would be a road going through the area. In regard to Mr. Honer and Mr. Krueger's testimony on the definition of development, Heather said that she provided examples of development such as a change to a site or structure in the revised Staff Report in response to the discussion on this topic in the initial hearing.

Vice Chair Allen referenced Section 7.201.03 and read, "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." Vice Chair Allen stated that examples given by Mr. Honer and Mr. Krueger's testimony represent development that has occurred. Vice Chair Allen said that it appears the point of interpretation on development for the Planning Commission, is whether the language says if you are developed you do not need any ability to develop further, or if it says that you need to be allowed to develop to the full density allowed in the zone.

Heather Austin confirmed that the interpretation of the language on development was the purpose for the examples cited in the Staff Report, and for Staff's assertion that the land is currently developed.

Matt Nolan referenced Section 7.501.04 regarding future developability, and read the Code, "in addition to findings required by Section 7.501.03...the City Manager or his/her designee must find for any partition creating lots averaging one acre or more, that the lots may be re-partitioned or re-subdivided in the future in full compliance with the standard of the Code." Matt said he reads that the City must provide re-developability for lots that are larger than one acre. Matt asked City Staff for their interpretation of this part of the Code.

Heather Austin said that she believes Section 7.501.04 refers to lots created by the partition, and stated that this has also been the position expressed by the City Attorney.

Kevin Cronin confirmed.

Matt Nolan asked to clarify if Section 7.501.04 then also says that lots less than one acre would then not need to be provided re-developability.

Kevin Cronin said there are other provisions in the Code that address lots less than one acre and that Section 7.501.04 would not be the best one for that particular circumstance.

Vice Chair Allen asked Heather if she had any other comments.

Heather Austin responded to Mr. Krueger's testimony and said that approval of the three-lot partition for flag lots meet the Code. Heather also responded to Mrs. Mickelson's testimony and reiterated that the right-of-way referred to is completely on Mr. Dowdle's property and not on any of the Mickelson's property.

Dan Balza referred to Exhibit A, a map of the project area, and asked Staff to clarify if a road went all the way through that it would not go through to Division St. because it would run across the park, and therefore would be a dead-end road.

Heather Austin said there may be an option for the road to run across the park, as that part of the park has not been developed as part of the Sunset Park Master Plan.

Dan Balza said that part of the park has been graded.

Kevin Cronin said the City would have an option to sell the property to create revenue sources for future park improvements or use in the general fund. The issue is about providing access to the area other than from Pine Street. Kevin said that having an alley-loaded access from a new street would serve a public purpose.

Dan Balza asked Staff to clarify that if the Planning Commission approved the street option, if granting right-of-way means there would be access available for future land development, and that potential future completion of a road through the entire property would require agreement from property owners on the southern and northern portions of the site.

Heather Austin confirmed and said that the property owner at the northern portion of the property would need a property owner in the southern portion of the property to also develop.

Russell Griffin asked Staff if the distance between the new potential road if approved, and Pine Street would be too close.

Kevin Cronin stated that because Sunset Blvd. is an arterial, the potential road would not meet the spacing standards adopted in the new Transportation System Plan that the City Council adopted in May 2005.

Matt Nolan asked Staff to confirm if the easement is solely on Ryan Dowdle's property and not on the Mickelson's property.

Heather Austin confirmed that the easement approved by Staff does not include anything on the Mickelson's property. The ¼ street improvement consisting of 26 feet of right-of-way, includes 20 feet of pavement, curb, sidewalk and street trees, and would be entirely on Mr. Dowdle's property.

Dan Balza addressed Staff and referenced 7.304.03 of the Community Development and Zoning Code regarding easements, "any access which is created to allow partitioning for the purpose of development or transfer of ownership shall be in the form of a dedicated street, provided however that easements may be allowed when; 1) An access to a parcel exceeding five (5) acres in size, and used for agriculture, horticulture, grazing, or timber growing; or, 2) The easement is the only reasonable method by which the rear portion of an unusually deep lot, large enough to warrant partitioning into two (2) or more parcels, may obtain access. Such easement shall conform to all other access provisions of this Code. Dan said the question may be are these unusually deep lots.

Matt Nolan asked if it also conforms to other access provisions of the Code.

Vice Chair Allen asked if Commissioner Nolan's comment was a question or a statement.

Matt Nolan said it was a statement.

Russell Griffin said it comes down to whether this is a major or minor partition. Russell said that at one point it was deemed a major partition, which meant a different review process involving a public road and right-of-way.

Heather Austin confirmed.

Vice Chair Allen stated that the direction Staff took with the project was a positive attempt to take the application and result in what may be good for the area and community, which is for the larger group of owners to work together to come up with the most efficient way to develop the property. The question is whether or not there is a tool in the Code to force everyone to do this. Vice Chair Allen said he does not think that they do, and that we can't at this point of the process, convert a minor land partition to a major land partition. We have before us a minor land partition and that means we can't approve conditions that create right-of-way. Vice Chair Allen further stated that this leaves us with a flag lot, and the actual appeal leaves the question, "does

creating 2 flag lots and a lot fronting Sunset Blvd. cause a requirement to have to provide access to lots 1700 and 1800 based on the current Code requirements? Vice Chair Allen said that if the answer is yes then the answer on the appeal should be to deny to entire project.

Dan Balza said that lots 1700 & 1800 do have access for development or redevelopment, but not in a way that they want.

Russell Griffin said that after reading Mr. Honer's letter, and measuring the width of the lot and the distance of the house to the end of the lot, he can understand a property owner considering development when neighbors are developing. It seems unreasonable to force Mr. Dowdle to provide access to his neighbor's back lots if it turns out to be a private drive and not a public street. Commissioner Griffin further stated that maybe down the road someone on the north side will sell and will have the same issue from the other direction.

Vice Chair Allen referenced 7.201.03, and asked Commissioners to consider the meaning of this part of the Code, "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."

Russell Griffin said ideally property owners could get together, sell, combine and redevelop with a subdivision, but getting into right-of-way and a public street is not the issue. Russell stated that if a property owner wants to put a private drive through the back of their lot, could it just be gravel?

Vice Chair Allen said the difficulty too is the distinction between private drive and public right-of-way in 7.201.03 of the Code.

Matt Nolan said in regard to 7.201.03 he comes back to the question of whether or not the property is developed – can it be developed. Commissioner Nolan said his interpretation is that the property has been developed and that it could be further developed, but asked where you draw the line?

Vice Chair Allen said the definition of 'developed' in the Code is very broad.

Dan Balza agreed the definition of 'developed' was very broad.

Matt Nolan asked if property owners who want to develop their property are required to provide their neighbors access to redevelop their back yards, if at some point their neighbors desire to subdivide further?

Vice Chair Allen followed on Commissioner Nolan's question and said a property owner would need to determine if they could subdivide under the current maximum density of the zone where the property is located. Vice Chair Allen said in this case the answer to that question would be yes.

Vice Chair Allen suggested breaking down the elements of the questions and asked Commissioners, "do we believe that 7.201.03 is satisfied if the property is currently developed?", or "do we believe that it requires providing development up to the maximum density?"

Russell Griffin said there are houses existing on these lots and that they are developed, and that they can be developed independently.

Vice Chair Allen gave a hypothetical example that if an application was presented by one of the neighboring property owners to remove the existing home and build a 3-unit townhome, using the existing access on Pine Street, there would be nothing about this current proposal that would preclude future development for neighboring properties, and that 7.201.03 would be satisfied? Vice Chair Allen asked Commissioners for feedback on developability in this hypothetical example.

Matt Nolan agreed. Commissioner Nolan also stated that Staff gave alternatives for neighboring properties to potentially develop without the easement.

Vice Chair Allen said the Staff alternatives however, gave options that included joint developments of multiple parcels. Vice Chair Allen said that tonight findings need to determine if lot 1700, for example, could be further developed with no more access than it currently has on Pine Street. Vice Chair Allen stated that it might not be a two-lot subdivision, but that there is opportunity for development based on the existing access on Pine Street, and that he believes the answer to the question is Yes.

Matt Nolan agreed.

Vice Chair Allen asked for consensus from Commissioners and acknowledged affirmative responses and head nods in agreement.

Russell Griffin said that this is a long, narrow, large lot that has been developed and could be redeveloped using access on Pine Street.

Vice Chair Allen said it appears the Commission is inclined under a proper motion to deny the appeal, and to find that the proper proposal is a minor land partition – which involves a flag lot with a private drive and does not include the creation of a new right-of-way. Vice Chair Allen asked for feedback and consensus, which he received. Vice Chair Allen stated that Staff attempted to direct the project in a way that was good for the community and neighbors collectively for a more global answer on the project, but that the Planning Commission does not see that they can force that to happen.

Vice Chair Allen determined that a 10-minute break was in order to organize a motion from the Commission.

< 10-minute break 8:45 PM >

Vice Chair Allen reconvened the meeting at 8:55 PM. Vice Chair Allen stated that during the break the applicant, Ryan Dowdle, stated that he would like to voluntarily dedicate the right-of-way. Chair Allen said that the land use decision presented this evening does not allow the Commission to act on Mr. Dowdle's offer as part of this decision, and that it would require its own land use action.

Matt Nolan moved that the Planning Commission denies the MLP 05-02 Sunset Minor Land Partition Appeal based on the finding of facts, including all Staff Reports and attachments. The Planning Commission finds that adjoining land can be developed independently, and that section 7.201.03-F and 7.501.03-E of the Code are satisfied in this proposal. The Planning Commission also finds that this is a Minor Land Partition reviewed as a Type II project and therefore Section 7.501.03-A of the Code, "prohibits approval of partitions with new right-of-way". As such, the Planning Commission denies the appeal and directs Staff to prepare a Notice of Decision based on the findings and conclusions of the law.

Vice Chair Allen also added that the motion is to include approval of MLP 05-02 Sunset Minor Land Partition based on developing three (3) lots on a flag lot, with a private drive. Vice Chair Allen asked if there was anyone that did not understand the motion. There were none.

Russell Griffin seconded.

Vice Chair Allen stated that the motion had been seconded and asked if there was any discussion. There was none. A vote was taken:

Vote: Yes = 5 No = 0 Abstain = 0

Motion carried.

B. Oregon-Washington Lumber Co. (SP 05-07) Chair Adrian Emery opened the public hearing Oregon-Washington Lumber SP 05-07, and asked Vice Chair Allen to read the Public Hearings Disclosure Statement. Vice Chair Allen said that the disclosure statement for this hearing was slightly different than the previously read statement for appeal hearings. Chair Emery asked commissioners if there was any exparté contact, conflict of interest, or bias. There was none.

Julia Hajduk, Senior Planner, stated that the applicant proposes to do mass grading on Phase 2 of a site that received original development approval in 2002 and is still considered active. Julia provided a map in the commissioner packets and one on a board which she referenced. Julia said the southern two-thirds of the property was part of Phase 1, which graded for a building and provided parking. The current proposal for rough grading is for future building pads that will eventually come through for site plan review as Type III or Type IV projects. Julia stated that in Phase 1 there are floodplains and wetlands that received approval to be filled, and that related public testimony received on this issue is addressed in the Staff Report as part of Phase 1. Julia said that a conceptual development plan was required to view the site as a whole and address any access issues. Julia also stated that conditions were required for landscaping to ensure that the site could stand alone if there were no development in the future, in accordance with the Code. Julia added that the applicant is interested in continuing Century Drive from Phase 1 prior to any future site development review, and that staff both in the Planning and Engineering Departments are not opposed to this. Julia further stated that any access points and spacing would not be reviewed or approved as part of the road construction, but that road construction could occur before any individual site plans were reviewed.

Chair Emery acknowledged the applicant who wished to testify.

Preston Beck, Group Mackenzie, 690 SW Bancroft, Portland OR 97239. [Mr. Beck was barely audible on tape] Mr. Beck referred to a letter dated August 9, 2005 he wrote to the City and Julia Hajduk regarding the conditions out lined in the Staff Report, which was presented as *Exhibit A (attached)*. Mr. Beck asked Bob Frentress, Jr., Civil Engineer at Group Mackenzie to speak.

Bob Frentress, Jr., PO Box 0690, Portland OR 97239-0039. Mr. Frentress stated that the options listed in the aforementioned letter allow for more flexibility in the type of soil stabilization techniques used following grading. Mr. Frentress specifically addressed the issue of re-seeding and stated that re-seeding may not be the only soil stabilization option.

Patrick Allen asked Mr. Frentress what the result would be if the condition were modified and the site never becomes further developed, and said that under the suggested modifications that omit re-seeding, straw mats could hypothetically be put in place and never removed. Vice Chair Allen followed by stating the example would not likely be an action the applicant would pursue, but that the modified language suggestion leaves room for such an action.

Bob Frentress stated that if and when there came a time the site would not be developed it could then be re-seeded.

Chair Emery asked Kevin Cronin if Clean Water Services monitored the site for erosion control.

Kevin confirmed. Kevin also said that through a land use compatibility statement Kevin signs a 1200-C Permit that is based on findings of fact and conclusions in the notice of decision.

Patrick Allen suggested retaining the requirement for seeding, but providing for an interim period, possibly 5 years, for other methods to be applied with the vision of future development.

Chair Emery asked Mr. Frentress and Mr. Beck if they had any further testimony, or if commissioners had any further questions for the applicant. There were none.

Patrick Allen referred to the Staff Report and Mr. Dodson's comments regarding Phase 1 of the project, and stated that he would like to hear what information Staff can provide regarding Mr. Dodson's comments.

Julia Hajduk said that she reviewed the plans for Phase 1 and also spoke with the City of Sherwood Building Official, Gene Walker, about the grading that was initially approved for Phase 1. Julia said the grading area was a slightly steep slope that did not show enough distance from the wetlands. The approved grading plans allowed for a 40-foot minimum distance from Mr. Dodson's property line to the wetland buffer, and Julia stated a documented copy of this information could be provided to the commissioners if desired.

Chair Emery asked if there were any other questions. There were none. Chair Emery closed the public hearing and asked if Staff had any questions.

Julia Hajduk stated that she would like discussion regarding the period of time allowable for an interim alternate soil stabilization tool to be used, if the Planning Commission determined that the conditions should be changed to allow this option.

Patrick Allen asked if the suggested five years sounded like a reasonable period of time.

Julia Hajduk said that five years may a long period of time and that a traditional site plan review is valid for 1 ½ years.

Russell Griffin asked if the life expectancy on erosion control filter bags was about 2 years.

Julia Hajduk confirmed.

Russell Griffin asked Staff to clarify if Mr. Dodson's documented concerns are answered by the information Julia provided earlier and if the grading is approved as currently submitted.

Julia Hajduk stated that what is currently being reviewed in the public hearing this evening is not related to the questions raised by Mr. Dodson. Mr. Dodson's concerns were regarding Phase 1 and were included in the Staff Report and addressed as public comments received during the comment period.

Russell Griffin asked Julia to clarify the location on the map of each phase of the project.

Julia confirmed that Phase 2 is located north of Phase 1.

Russell Griffin asked if Phase 1 was completed.

Julia Hajduk said that Phase 1 has been open and active for a long time and that this was one of the reasons that Staff recommended the conditions for re-seeding for Phase 2.

Chair Emery asked if there were any other questions of Staff. There were none.

Patrick Allen moved to approve with amended conditions, the SP 05-07 Oregon-Washington Lumber Company site plan review incorporating the Staff Report's findings of fact, public and agency comments and testimony, and incorporate in the Conditions in the Staff Report the following changes:

1. Conditions B-5 be changed to add a new sentence after the existing conditions and at the end after "labor materials & equipment" to say, "applicant may also submit a proposal for temporary soil stabilization for a period not to exceed two years from the date of approval."
2. Conditions B-6 be amended to include additional language at the end of the sentence, "for more than 30 days" to say, "including any time allowed for temporary soil stabilization needs."

Chair Emery asked if there was a second to the motion.

Dan Balza seconded.

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

Vote: Yes-6 No-0 Abstain-0

Motion carried.

6. **Comments from Commission:** There were none.
7. **Next Meeting:** August 23, 2005 – Land Use Law Training with City Attorney, Pam Beery.
8. **Adjournment** – Meeting was adjourned at 9:20 PM.

End of Minutes