



City of Sherwood PLANNING COMMISSION

Stewart Senior/Community Center
855 N. Sherwood Boulevard

January 16, 2001 - 7:00 PM

A G E N D A

Note: Prior to convening the meeting there will be a brief reception for newly elected Council members Angela Weeks (Planning Commission Chair) and Keith Mays (Planning Commission Vice-Chair) and to welcome newly appointed Commission members.

1. **Call to Order/Roll Call**
2. **Nominate and Elect Planning Commission Chair and Vice-Chair**
3. **Consent Agenda - Approval of Minutes 11-07-00, 12-05-00, 12-05-00 Joint PC CC**
4. **Agenda Review**
5. **Community Comments** *are limited to items NOT on the printed Agenda.*
6. **Public Hearings:** (Commissioners declare conflict of interest, ex-parte contact, or personal bias)
 - A. **PA 00-06 Groom Plan Map Amendment:** request to rezone a 2.83 acre parcel from Very Low Density Residential (VLDR) to Low Density Residential (LDR), located at 23750 SW Baker Rd, Tax Lot 8100, Map 2S 1 33CC. *(Dave Wechner, Planning Director)*
 - B. **SP 00-16/CUP 00-07 Sherwood Crossroads Service Station Site Plan & Conditional Use:** request to construct an attendant kiosk and 8 (eight) fueling islands to be operated by Safeway, located at 16330 SW Borchers Drive, Tax Lot 300, Map 2S 1 29B. *(Keith Jones, Associate Planner)*
 - C. **SP 00-17 Sherwood Crossroads Bank Site Plan:** request to construct a 4,500 sq ft bank building with drive-thru located at 16330 SW Borchers Dr, Tax Lot 300, Map 2S 1 29B. *(Keith Jones, Associate Planner)*
7. **New Business**
 - A. **Report from Council Liaison** *(Ken Shannon)*
 - B. **Schedule Items for Work Program** *(Dave Wechner)*
8. **Adjourn**

**ITEMS NOT COMPLETED BY 11:00 PM WILL BE CONTINUED
TO THE NEXT REGULARLY SCHEDULED MEETING**

APPROVED MINUTES

City of Sherwood, Oregon
Planning Commission Minutes
January 16, 2001

1. Call to Order/Roll Call

Adrian Emery called the meeting to order at 7:00 PM.

Commission Members present:

Adrian Emery
Jeff Schroeder
Patrick Allen (7:35 PM)
Jean Lafayette
Ken Shannon
Lee Weislogel

Staff:

Dave Wechner, Planning Director
Keith Jones, Associate Planner
Terry Keyes, City Engineer
Roxanne Gibbons, Recording Secretary

Commission Members absent:

Jeff Fletcher

2. Nominate and Elect Planning Commission Chair and Vice-Chair

Mr. Emery stated that Chair Angela Weeks and Vice-Chair Keith Mays have been elected to the City Council. Therefore, it is necessary to elect a new Commission Chair and Vice-Chair. He opened the nominations. The Commission nominated Adrian Emery as Chair and Jeff Schroeder as Vice-Chair. There were no further nominations. It was moved, seconded and carried to close the nominations. It was moved and seconded to elect Adrian Emery as Planning Commission Chair and Jeff Schroeder as Vice-Chair.

Vote for Passage of Motion: Unanimous - Yes

3. Approval of Minutes

Chair Emery asked if there were any additions or corrections to the minutes. There were no comments.

Adrian Emery moved the Planning Commission approve the November 7, 2000 and December 5, 2000 Planning Commission minutes and December 5, 2000 Joint Council and Commission minutes as presented. Seconded by Jean Lafayette.

Vote for Passage of Motion: 5-Yes, 0-No, 0-Abstain

4. Agenda Review

Dave Wechner reported that a program forecast for the 2001 Work Program would be distributed to the Commission. The Commission will be reviewing several plan text amendments to the Development Code.

5. Community Comments

There were no comments.

6. Public Hearings

Chair Emery read the hearings disclosure statement and requested that Commission members reveal any conflicts of interest, ex-parte contact or bias regarding any issues on the agenda. There were no Commissioner disclosures.

6A. PA 00-06 Groom Plan Map Amendment

Chair Emery opened the public hearing and called for the Staff Report. Dave Wechner referred the Commission to the Staff Report dated January 9, 2001, a complete copy of which is contained in the Planning Department File PA 00-06. He noted:

- The applicant is requesting to rezone 2.83 acres of property from Very Low Density Residential (VLDR) to Low Density Residential (LDR).
- The site is located at 23750 SW Baker Road, Tax Lot 8100, Map 2S 1 33CC.
- This property was annexed into the City in 1998 (Annexation No. 3879). The applicant thought that the annexation vote included the provision of rezoning from VLDR to LDR. This is not the case. The procedure for annexation and Plan Map designation are two separate processes and are approved by different bodies.
- Most of the site has either wetland area or steep slopes that are restrictive to development (eastern portion of the site).
- Sewer and water is available from Baker Road.
- He reviewed the criteria for a Plan Map Amendment. The proposal is consistent with policies a, f and g, and Staff endorses the applicant's findings.
- With regard to policy b, the applicant states the parcel has the potential for an 18-lot subdivision. Because a good portion of the site is steeply sloped or within a wetland, this density is not practical for development of the site.
- With regard to policy e, the applicant states that preservation of natural features is "not applicable" at this stage. Staff disagrees. The presence of natural features on the site should be considered.
- He confirmed that information from Washington County's database identifies the site as 2.83 acres. The applicant could address why she makes reference to 3.09 acres.
- The site was brought into the Urban Growth Boundary with a VLDR zoning designation.
- The proposed LDR zone is found on approximately 61 vacant acres in Sherwood. There are 4 more acres zoned LDR that are proposed for annexation. These four acres have been approved by Council to be considered by voters in a March 2001 election.
- The applicant has not demonstrated a method of providing sewer to more density than the physical limitations of the site allow. The sewer line is at an elevation that severely limits the development potential and would allow only one or two more homes than current zoning allows.
- The proposed rezone could be consistent with the policies of the Comprehensive Plan, but not as proposed.
- The most compelling argument to deny proposal is the projected density of the development identified by the applicant. There are also limitations to sewer service due to elevation of sewer lines and steep slopes that will not meet the grade specified for City roads to developing at the density proposed.

In conclusion, Staff recommends denial of PA 00-06 Groom Plan Map Amendment.

Chair Emery asked if the applicant wished to provide testimony.

Shirley Groom, 23750 SW Baker Road, Sherwood, Oregon 97140, addressed the Commission. She realizes now that she needs to present two additional pieces to the City. One item is a conceptual plan that will demonstrate how the lots will fit on the site without sacrificing the natural features and wetlands on the site. She is also aware that the site will not allow an 18-lot subdivision. She asked that her application be continued to the first Commission meeting in March to allow her time to provide the additional information.

It was the consensus of the Commission to continue PA 00-06 Groom Map Amendment to the March 6, 2001 Regular Planning Commission meeting, as requested by the applicant.

Chair Emery recessed the meeting at 7:20 PM and reconvened the meeting at 7:25 PM for a brief presentation and thank you to outgoing Planning Commission Chair Angela Weeks and Vice-Chair Keith Mays for their public service.

Chair Emery continued with the public hearings.

6B. SP 00-16/CUP 00-07 Sherwood Crossroads Service Station Site Plan and Conditional Use

Chair Emery opened the public hearing and called for the Staff Report. Keith Jones referred the Commission to the Staff Report dated January 8, 2001, a complete copy of which is contained in the City Planning Department File SP 00-16/CUP 00-07. He reviewed the Staff Report and noted:

- He entered two additional items into the record:
 - January 16, 2001 letter from Rob Nashif, 16864 Reghetto St, Sherwood, Oregon 97140.
 - January 15, 2001 letter from Laura Delaney, Safeway, Inc, PO Box 85001, Bellevue, Washington 98015-8501.
- The applicant is proposing two separate site plan applications; a service station and bank to be located in the Sherwood Crossroads development where the new Safeway is being built.
- The site address is 16330 SW Scholls-Sherwood Road (renamed to Roy Rogers Road effective 01-02-01), Tax Lot 100, Map 2S 1 29BC.
- This is a Type III application that would normally be heard by the Hearings Officer. However, during the initial review of the Safeway site, the Commission conditioned that Building 3 and Building 4 of the original site plan come back before them for review.
- The plans dated October 2000, identified six islands with 12-fueling stations. In December 2000, the application was changed to eight islands with 16-fueling stations.
- The site is zoned Retail Commercial (RC) and service stations are a conditional use in this zone.
- There are currently three operating gas stations in Sherwood – Chevron at the corner of 99W and North Sherwood Blvd; Texaco adjacent to the subject site bordering the west bound lanes of 99W; and a Union 76 located within the Albertson's shopping center.

- The Retail Commercial (RC) zone is the only district in the City where a gas station can locate and this must be done through a conditional use permit.
- Three previous gas station proposals have been denied within the City limits. The most recent is SP 00-13/CUP 00-07 Space Age Fuels Site Plan proposed to be located at the current Peddler Site. This application was denied by the Hearings Officer and is currently under appeal to the City Council. This decision was based in part on the applicant not demonstrating that a “public need” exists and that there must be some difference between “*public need*” and “*market demand*”.
- He reviewed the five criteria for approval of a Conditional Use Permit, in particular Criterion D and E.
- The Wildflower Subdivision is located across Borchers Drive from this site. Two letters have been received from the public. Some of the citizens concerns relative to locating the service station near a residential area are additional traffic, lighting, noise, odors and safety
- Possible ways to mitigate the impacts of this proposal have been proposed as follows:
 - Not having an illuminated sign on the building elevation that would shine directly across into the residential neighborhood.
 - The applicant has submitted a lighting plan that shows that the foot-candle power would be 0.1 foot-candle around the perimeter. The City Code requires 0.5 foot-candle.
 - The applicant has proposed to recess the lighting underneath the canopy of the station.
 - A condition has been recommended that there be either a rockery wall or landscaping berm along Borchers Drive to help mitigate noise.

In conclusion, Staff recommends approval of SP 00-16/CUP 00-07 Safeway Service Station Site Plan and Conditional Use with the conditions as stated in the Staff Report.

Chair Emery asked if the applicant wished to provide testimony.

Michael Robinson, 900 SW 5th Avenue, Suite 2600, Portland, Oregon 97204-1268, representing Regency Realty, the applicant, Laura Delaney, 211 Third Street, South, Kirkland, Washington, representing Safeway, Inc.; and Tom Cody, Project Manager, 8100 Balboa Blvd, Van Nuys, California 91406, representing Safeway Gasoline, addressed the Commission.

Mr. Robinson introduced Ms. Delaney, Mr. Cody and other individuals in attendance; Craig Ramey and Josh Spooner, Regency Realty; Kevin Godwin, Benner Stange Architects; and Chris Hammond, Kittelson & Associates. Kittelson provided an updated traffic study that looked at how many additional trips might be generated by the service station and bank applications. This report is included in the Commission packets. He noted:

- He referred the Commission to elevations of the proposed gas station.
- The first application for this shopping center came before the Commission in September 1999. The Commission granted approval with several conditions of approval for the proposed Safeway store. One of the conditions was that the site plans for Buildings 3 and 4 come back before the Commission.

- One of the other buildings was proposed to be a daycare center. The Commission had several questions about how the daycare center would operate and asked for more detail. Since that time, the daycare center dropped out.
- Safeway has a program of installing gas stations with its grocery stores. Regency Realty proposes a gas station for this site.
- The proposed bank site plan application will also be heard tonight. The applicant wanted both applications to be heard concurrently.
- The applicant met with Staff in September 2000 and held a pre-application meeting with Staff in October 2000 to discuss the application.
- The applicant supports the Staff recommendation for approval and all of the conditions of approval, except Condition D1 regarding the berm or rockery wall. Given the distance for the setback, the applicant would like to provide a 3-foot berm and plantings to make-up the height.
- The criteria in the Code for a conditional use must be read as capable of being met. The City would not impose criteria that is not capable of being met. The Hearings Officer decision found there was a difference between “market need” and “public need” as it related to the Space Age Fuel Site Plan and Conditional Use application. The applicant feels that market need is a part of public need.
- He distributed a copy of ORS 197.522, 1999 Edition, that reads in part, “A local government shall approve an application for a permit, authorization or other approval necessary for the subdivision or other approval necessary.....or construction on, any land that is consistent with the comprehensive plan and applicable land use regulations or shall impose reasonable conditions on the application to make the proposed activity consistent with the plan and applicable regulations. A local government may deny an application that is inconsistent with the comprehensive plan and applicable land use regulations and that cannot be made consistent through the imposition of reasonable conditions of approval.” If issues arise with this application that Staff or the applicant has not addressed, he would encourage the Commission to address these issues through conditions.
- He discussed the differences between the Space Age Fuel application and the Safeway gas station proposal. The Space Age proposal is a free-standing gas station with a convenience store that is not attached to a larger shopping center. The Safeway gas station would complete the last piece of the shopping center. It is part of Safeway’s business plan and a part of the shopping center. There is no convenience store element to it. It does not have the same convenience component to it or same type of operation as the Chevron, Union 76 or Texaco gas stations.
- The Retail Commercial zone is the only district that allows gas stations. You can have a free-standing gas station or have one that is a part of the shopping center, such as the Union 76.
- The public need is met in two ways. First, there is demand for this type of convenience by the public. It captures trips that are already on the road system. You can do your shopping at Safeway and buy fuel in the same shopping center. The Kittelson study shows that this gas station would add only 25 net new trips in the PM peak hour of operation.
- With regard to this being the best location in terms of available RC zones, this site is really in the center of the commercial center of Sherwood, exclusive of the Old Town Area. It would be located at a major crossroads of the City. This is the best available site as well as being a

part of an integrated shopping center. It fulfills Safeway's business plan and places the same number of gas stations on the west and east side of Highway 99W.

- Sherwood has far fewer gas stations than other comparable communities. There has been a dramatic increase in population in the City. An additional gas station is not out of line with what the community would expect or need.
- This site has been zoned for Retail Commercial for a long period of time. The RC zone allows for a 50-foot maximum building height, be it a daycare center or gas station. The applicant is proposing that the canopy of the gas station be an open canopy about 19 feet in height.
- With regard to any impact on the residential area, the applicant has agreed to mitigation that includes some additional berming to minimize the impact of any lights. They have also agreed not to place an illuminated sign on the residential side of the canopy.
- Most of the homes in the Wildflower Subdivision have a 6-foot fence and are two-story homes. The only view of the gas station would be from the second story. He referred the Commission to the gas station site plan that proposes an extensive area of landscaping. There will be Maple trees lining Borchers Drive. The landscaping plan will provide a pretty dense landscaping screen in addition to the berm with shrubbery on the top. An example of how landscaping provides mitigation is the PGE Substation that is near the site. Its landscaping does an effective job of screening out the lighting.
- The applicant is proposing a lighting plan that will keep glare and light from being directed at the surrounding property. The recessed lights in the canopy will be directed downward.
- He referenced Chapter 8, Section 8.306.01. It states any use is required to comply with DEQ standards. Typically, the background noise from a gas station falls within the range of 65 to 85 decibels. The tank trucks will not have their motors idling when they are making their deliveries and will not generate any unusual noise. Any noise from the site will not exceed DEQ limits and City standards.
- There will not be any attendant bells, cars will not be driving over hoses to ring a bell, and there will not be any loudspeaker system for this gas station. The noise from this gas station will be the type of noise that is not out of character with the type of use you would expect from a Retail Commercial zone.
- The applicant will be required to meet the standards of Chapter 8, Section 8.309.01 with regard to any odors. The gas station will have a vapor recovery system.
- The gas station will also meet fire and life standards of the Fire District.

In conclusion, the Commission will find that the application meets the demonstrable public need standards. Safeway has determined it is desired by the public to have the gas station as part of the grocery store. This is the best location and the RC zone is the only zone that allows gas stations. It makes sense to have a gas station as a part of a shopping center where there is integrated lighting, signage and landscaping. Safeway is a company that has a good track record of managing shopping centers.

Mr. Shannon asked for clarification on Condition D1 regarding the berm or rockery wall. Ms. Lafayette asked for further clarification on how the applicant proposes to meet Code Section 5.203.02C regarding landscaping and minimum 6-foot high plantings.

Kevin Godwin, Benner Stange Associates, Architects, 5000 SW Meadows Rd, Suite 430, Lake Oswego, Oregon 97035, discussed the plans for the berm with plantings on top and the surrounding landscaping. He referred the Commission to the site plan that showed the proposed landscaping. The berm will be about 3 feet in height and the plantings on top will be an additional 2 feet high. The conifers will be about 8-10 feet high and placed behind the berm. The Sunset Maples will be on top of the berm.

Mr. Allen asked Staff what purpose of the berm would serve. Mr. Jones said the berm would mitigate sound and light and be a visual barrier that would be more attractive. Mr. Allen said that plants do not provide any sound field as opposed to a solid wall. Mr. Wechner said plants do not actually screen sound, but they do break up sound which would drop the decibel level.

Mr. Robinson said any noise generated from the gas station would not be anything that is out of character with other retail commercial uses.

Mr. Schroeder thought that sound would bounce off of a rockery wall whereas, landscaping would absorb more of the sound. He asked how many homes were located across from the site in the Wildflower Subdivision.

Mr. Godwin thought there were about four homes. Mr. Shannon said there were more than four homes. He thought there were about nine homes, some of which are duplexes that house two families. Mr. Robinson agreed.

Laura Delaney, representing Safeway, Inc., 211 Third Street South, Kirkland, Washington, addressed the Commission. She noted:

- The supermarket industry is returning to the true meaning of “one stop shopping”.
- Safeway started to provide fuel through their gas stations in 1998. They saw how convenient it was for shoppers to have a fuel station in conjunction with their grocery stores.
- Safeway has about 20 gas stations operating in their Seattle Division that includes Alaska, Washington and Montana. They plan about 50 more in the Portland Division that includes Oregon and Southern Washington. Currently, they have one operating in Cottage Grove.
- They advertise a competitive price and holders of the Safeway Club Card can receive a discount of 5 to 25 cents per gallon. This has proven to be another way to provide their customers with another convenience.
- Other companies that are getting into the fuel market industry include Fred Meyer, Albertsons, Wal-Mart and Costco.
- Safeway uses state-of-the-art equipment in all of their gas stations. They adhere to local design codes and are architecturally compatible with the shopping center while still being identified as Safeway.

Tom Cody, Project Manager Design Development Group, Safeway, 8100 Balboa Boulevard, Van Nuys, California 91406, addressed the Commission. Ed Collins, Director of the Design Development Group was also in attendance. He noted:

- The Safeway gas station is designed to be a fast and convenient method for customers. The station has eight fuel islands with two pumps each. There are no service bays. Attendants will be available to assist customers as well as accept payment.
- The station will only be open during the hours that a trained and qualified Safeway employee will be present to monitor the system.
- The canopy has been designed to coordinate with the main Safeway building as well as the architecture of the shopping center. He referred the Commission to the elevation of the gas station.
- They will be using a softer light for the canopy. The canopy height is less than 20 feet and they have agreed not to illuminate the sign on the Borchers side of the site.
- The kiosk will sell small snack items. A bathroom is available in the back of the kiosk. Customers will be able to access the bathroom with a key from the attendant.
- They have taken steps to decrease the canopy lighting impact outside the gasoline station area. A photometric study has been submitted to the City.
- He referred the Commission to the landscaping plan and building elevations.
- There is a similar gas station in operation in the West Linn area. They had a noise consultant conduct a preliminary noise study for this operation. It is completely surrounded by residential areas. The preliminary report is available for review. The conclusion of the study was that the noise level generated from the gas station does not increase any appreciable level than what already exists from the shopping center.
- The truck turn analysis shows they are able to maneuver the trucks in and out of the station in a safe fashion.
- The Design Development Group has been in business for 5-1/2 years designing gas stations. They have built over 150 gas stations to-date. The latest technology in the gasoline industry will be used, including Stage 1 and Stage 2 vapor recovery systems.
- The gas station will be monitored continuously for any outages. If a problem is detected, an alarm would go off and the system would shut down.
- The gas station will also be video-monitored inside the kiosk. An air line and telephone will also be available.
- The gas station is designed for “one stop shopping”.
- In response to Ms. Lafayette’s question about surface water not going into the water detention pond, the gas station will use an oil-water separator system. There will be an on-going maintenance program for this system.

Ms. Lafayette asked about outdoor sales and displays. Ms. Delaney said there would not be any outdoor display racks for oil and fluids. These will be located within the kiosk.

Ms. Lafayette asked for clarification about the bike path that ends right at the beginning of this site on Scholls-Sherwood Road.

Terry Keyes said Scholls-Sherwood Road (Roy Rogers Road) is a Washington County facility. This eight-foot wide sidewalk was negotiated between the City and the County. The County set the standards for the developer when the Safeway project was proposed.

Mr. Schroeder asked if Safeway had policies about radio or people hanging around the gas station. Ms. Delaney said radios are not allowed to be played and there will not be any propane

sold from the gas station. This would be provided from the Safeway grocery store. The gas station will only sell gasoline, not any diesel.

Mr. Weislogel asked how products would be sold from the kiosk. Ms. Delaney said there would be an attendant inside the kiosk as well as outside attendants pumping the gasoline. There would be a limited amount of candy and gum as well as oil products available in the kiosk.

Chair Emery asked if there was any proponent testimony. There being none, Chair Emery called for opponent testimony.

Elizabeth Pietzke, 20632 SW Windflower Avenue, Sherwood, Oregon 97140, addressed the Commission. If she had testified after Jay Johns, she would have stated she agreed with his testimony. They bought their home knowing that Safeway would be located behind them. However, they did not know about the service station. If they had known, they probably would not have purchased this home. The gas station is going to be directly behind their house. Their master bedroom receives enough light from the Safeway shopping center that they do not need to turn on the bedroom lights at night. They bought their home with the idea of starting a day care center in it. No one will bring kids to their home if there is a noisy gas station directly behind their house.

Mr. Shannon asked if she asked anyone at the City what the surrounding zoning allowed, prior to purchasing their home. Ms. Pietzke said they were told it would be a Safeway and other retail buildings. They did not ask for a list of permitted or conditional uses in the Retail Commercial zone. They would much rather have the daycare center that was originally proposed than a gas station.

Jay Johns, 20600 SW Windflower Avenue, Sherwood, Oregon 97140, addressed the Commission. He distributed a letter with attachments dated January 16, 2001 to the Commission. The attachments included a "Stop the Safeway Service Station" Petition, and some articles on gas station fires and explosions. He reviewed this letter and made the following comments:

- In the past two weeks he has spent a considerable amount of time working on his presentation. They received the mailed public notice and found it to be probably the most objectionable use for this site right next door to him.
- He had several issues and concerns. The petition was signed by many of the homeowners in the Wildflower Subdivision.
- He has not had to wait in line at any of the existing gas stations in Sherwood to buy gas. He did not believe there is a demonstrable need for another gas station.
- He outlined a number of reasons why the proposed gas station should not be built, as follows:
 - Increased noise created by the fuel delivery truck, patrons of the gas station, car stereos, loud exhaust systems and diesel pickup trucks. The Staff Report does not address noise created by the patrons.
 - Traffic would increase on Borchers Road. The rockery wall and shrubbery will not mitigate the noise from 16 additional cars at any given time.

- The proposed gas station will only be 120 feet from some of the homes in Wildflower Subdivision.
- View – the height of the canopy will block the view of Mt. Hood. He referred the Commission to photographs taken from his master bedroom window and his back door.
- Light Pollution – the Staff Report does not address the display for gasoline pricing. These signs are very bright and would only worsen the light pollution created by the large Safeway sign. There is a connection between sleeping in a room that is not dark and cataracts and nearsightedness.
- Transient Traffic and Crime – with the additional traffic being drawn this close to a residential area, the sheer number would likely dictate an increase in crime. There is fear of harm to the large number of children residing in the nearby neighborhood.
- Risk of Fire or Explosion – He referred to the articles attached to his letter. Approximately 10,000 to 15,000 gallons of explosive materials would be within 120 feet of the back doors of many homes.
- Increased Health Risk – health studies published at WebMD.com have concluded that consistent exposure to gasoline fumes increased the rate of cancer. Even with state-of-the-art vapor capture equipment, would no fumes or vapors escape into the air?

Mr. Allen asked him how looking out his window at a gas station would be any different than looking at any other commercial development? Is he opposed to the commercial development itself or the gas station specifically?

Mr. Johns said he is not anti-development. In fact, he was looking forward to a Safeway being in that location. They were going to put a gate in their fence for easier access to the store. It is all of the things that go with a gas station such as noise and the look of the gas station in general. He agreed with Mr. Shannon that he could have researched what uses are allowed in the Retail Commercial zone prior to purchasing his home. Both Mr. Wechner and Mr. Jones have been very helpful to him in his research. He and his neighbors thought there was going to be a daycare center and restaurants. No one expected this to be a gas station that would be so close to their homes. This is really the objection, that the gas station is so close. A couple of people have said if the bank building and gas station locations were switched, they would not have that much of an objection and probably none of the citizens would be at the hearing tonight. The only thing that could be more objectionable than a gas station would be a sewerage treatment plant. He continued with his testimony.

- There are legal issues that need to be considered. He could not find any statistical backing to show the public need for this or any other gas stations to be built at this time in Sherwood.
- Most of the people he has talked to say, “Why do we need another gas station?”
- The denial for Space Age Fuel was based on the applicant not demonstrating that a public need exists for a fourth gas station in Sherwood. He could not find anything different with this application.
- He reviewed Section 4.302.3 C, D and E of the Development Code, conditional use criteria and how it is applied to the proposed gas station application.
- He reviewed Section 1.101.02 Purpose of the Development Code and the reasons the code is enacted.

In conclusion, he outlined a number of legal and livability issues that he would hope result in the denial of the proposed gas station. He and his neighbors feel that the application is in direct opposition to how they understood the site would be developed.

Mr. Shannon said he recalled when the Safeway site application was heard the other pads were going to be a restaurant and a daycare center. He asked Staff if it was ever discussed that one of the pads would be a gas station.

Chair Emery said he recalled former Commissioner Keith Mays asking if there was going to be any fast food or gas station and the applicant responded “no”. This may not be in the record.

Mr. Wechner said the reason the application is before the Planning Commission and not the Hearings Officer is because the Commission specifically conditioned the approval of the Safeway application on the proposed site plans for Building #3 and Building #4 come back for review. However, with regard what Chair Emery recalled about Mr. Mays request, this was not reflected in any previous conditions of approval.

Mr. Shannon reiterated that a list of permitted uses for any zone are available from the City and are contained in the Zoning and Development Code.

Cynthia Rozcicha, 23418 SW William Avenue, Sherwood, Oregon 97140, addressed the Commission. She cited several reasons why Sherwood is a wonderful place to live and noted:

- They bought their home in 1995.
- When the trees on surrounding property were removed the noise increased. Now they keep a fan on their nightstand set to high to drown out the noise from traffic on Sunset Boulevard. The mini-blinds in their bedroom have to be turned a certain way to keep out the light from the street light. Her once quiet back yard is now almost unbearable to sit in when trucks travel on Sunset. She cannot hear her phone ring if a car is driving by. At night her back yard is illuminated by six street lights.
- She does not blame the City of Sherwood for the changes on Sunset and Murdock Road, she blames herself. She holds the City accountable for traffic concerns of the residents. The improvements to Sunset and Murdock are great and the roads are much easier to drive, but what about the homes that are affected by these changes.
- There are four families in her cul-de-sac that deal with the light and sound pollution on a daily basis.
- The City of Sherwood is so busy improving itself for new home buyers and businesses, that it directly and greatly imposes on the families who have a vested interest in the community.
- The proposed gas station by Safeway is a fine example of this. Did the City ask the citizens of Sherwood if another gas station is really needed. She never buys gas in Sherwood. She drives to Tualatin instead on her way to work for convenience. A gas station could make a fortune if they were located on Tualatin-Sherwood Road.
- As Sherwood prospers, why should the citizens suffer.

Marvin Taylor, PO Box 605, Aurora, Oregon 97002, addressed the Commission. Mr. Taylor said he is not testifying on behalf of Albertson's and noted:

- His testimony is his personal view. He has been very involved in the community for the few years, specifically as President of the Chamber of Commerce.
- It does not appear that there is a need for another gas station. Other applications have been turned down for lack of public need.
- He drove by all three gas stations tonight and none of them had lines.
- The need for another gas station should be clarified. If this is not done, the City could end up with what people refer to as another "Wal-Mart" factor. You have another big chain coming to town that are bringing gas with them. When Wal-Mart comes to town, what happens to small businesses?
- The other gas stations have been a part of the community and have helped it grow and supported many of the City programs.
- He did not necessarily agree that it is good idea that Regency Realty owns the shopping centers on both sides of Highway 99W. Some of the tenants agree. It is going to be hard to keep lease rates down when Regency controls both sides of the road.
- With regard to the competitiveness nature of having another gas station, if it is not needed, what is going to happen to the existing gas stations? Who is going to survive, probably Safeway.
- What is going to happen if Safeway decides to close the proposed gas station in five years. We have all seen what a closed gas station with pumps looks like.
- If there is no need for the gas station and the majority of people don't want it, it should be denied.
- He said the application refers to the Albertson's Shopping Center. The bottom line is it is Regency's shopping center and Albertson's is a tenant.
- If the Safeway gas station is not approved, sooner or later someone else will want to use this building pad.
- He asked the Commission to consider these concerns.

Mr. Allen asked Mr. Taylor if he was opposed to the gas station entirely or just its placement on the site. Mr. Taylor responded there is no need for the gas station at this time. When he (the Albertson's grocery store), came to town, he put someone else out of business and he does not want to see this happen with the existing gas station businesses.

Steve Vancauteran, 20624 SW Windflower Avenue, Sherwood, Oregon 97140, addressed the Commission. He lives in one of the homes that will be 120-feet from the proposed gas station. They have three children and are concerned about the smell from the gas station. They are also concerned about light pollution from the site.

Jerry A. Zemmer, 20640 SW Windflower Avenue, Sherwood, Oregon 97140, addressed the Commission. He lives directly behind where the proposed gas station will be located. He is opposed to having a gas station.

Chair Emery recessed the meeting at 9:25 PM for a break and reconvened the Regular Commission meeting public hearing at 9:35 PM.

Roger Harris, representing Alto's Chevron and Enserv, Inc (Texaco), 12725 SW 66th Avenue, Suit 104, Portland, Oregon 97223, addressed the Commission. He distributed a copy of his presentation to the Commission and noted:

- His clients oppose the proposed gas station (SP 99-17) based on the criteria set forth on page 1 of their presentation.
- The applicant has failed to show there is a “demonstrable public need”. This seems to be the critical issue.
- The Code does not define “demonstrable need”, however, the Codes does provide that the terms which are not defined will have their ordinary accepted meanings and references.
- Municipalities are free to adopt their own interpretation of “public need” as that term is used in its ordinances.
- He discussed the definition as taken from the dictionary and within the context of published Oregon land use and zoning cases.
- The applicant has the burden of proof and their failure to carry the burden of proof is basis alone to deny the application.
- A list of Oregon land use cases in which other entities tried to define “public need” are listed in his written presentation.
- The Staff Report fails to adequately and appropriately details the history of gasoline stations in the City of Sherwood. The history includes the following:
 - Chevron expansion (8-12 fueling stations)
 - Texaco renovation and upgrading (8 fueling stations)
 - Unocal (BP) opening (10 fueling stations)
 - Presently four vacant gasoline station locations
 - Prior disapproval based on the law – still available
- He discussed the history of these stations.
- The other gas station application denials were made as a matter of law. They were either wrong or inappropriate.
- The existing three service stations are in prime locations to serve all consumers living in Sherwood and passing through. (See Appendix A in the presentation)
- Based on the Lundberg Survey, three existing stations sell approximately 20,000 gallons/day. The Sherwood stations operate at about 27% of capacity. This may be a little low. He thought they operate at about 50% of capacity. There is plenty of capacity in existing stations to adequately serve the public.
- About 80% of Sherwood residents live on the west side of Highway 99W. They would have to cross Highway 99W to get gas from the proposed Safeway station. This appears to undercut the very rule passed by Council last month, that they would like to eliminate vehicle trips and ingress and egress off of Highway 99W.
- The health, safety and welfare of the public is at issue. It should be the City's policy to minimize (except where only truly necessary) the installation of UST's with flammable liquids.
- Pricing is a volatile and passing whimsy over which local retailers have little or no control. It was suggested by the Safeway representative that competitive, cheap gas or low pricing would be a piece of their overall marketing scheme. History books are littered with examples of failed, so-called “cheap” gasoline companies. Examples were listed in his presentation.

- He discussed rack prices versus DTW (see Exhibit B). There is a great disparity between these two prices. Most retail dealers buy gasoline at the dealer tank weight. Usually the rack price is less expensive. Safeway, as a large corporation, can negotiate with various gas companies to get a rack price.
- He referenced an affidavit of Norris J. Wanaka, retail manager for Associated Petroleum Products in Tacoma, Washington, that was included in his presentation.
- Mr. Wanaka discussed two Safeway gasoline stations that opened in the Cities of Yelm and Cle Elum, Washington about 2 months ago. Since the opening, some of the stations in Yelm have lost 50% or more of their volume. In Cle Elum, during the first month of the Safeway operation, the existing Chevron lost 20% of its volume and 50% in the second month. It was reasonable to believe that the other existing gas stations lost the same amount. He said it was unlikely that all of the other stations would remain economically viable. His observation was that Safeway's pricing practice is to sell gasoline only slightly above cost in order to bring traffic to their grocery store where sales therein can compensate for and in part, subsidize the very small margins in gasoline sales.
- This is not the most appropriate use of the land, especially given its proximity to residential neighborhoods.
- It is clear from the testimony of the residential community that the proposed use will destabilize and devalue adjacent residential properties. With regard to adjacent residential properties, rather than being prime residential property, it will probably move towards rental property.
- This type of facility will require additional fire and police protection.
- The applicant has failed to show that public need is best served by allowing the conditional use for the particular piece of property in question as compared to other available property.
- The adverse affects of the proposed use on the neighborhood and City of Sherwood as a whole cannot be "sufficiently ameliorated" as proposed, or with any other conditions. The substantial and critical differences between this type of business in a shopping center include:
 - Lights, fuel transport tankers, increased traffic, environmental degradation, diminution of property values, noise and livability.
- The applicant's proposed use herein undermines, could set a regrettable precedent for, and fails to comply with either the letter or spirit of the general purposes of the Code.
- As the provisions of the Code are evaluated, it is clear that this proposal does not embrace or otherwise support the community goals.

Mr. Allen said Mr. Harris stated that the cities of Yelm and Cle Elum, Washington are similar communities to Sherwood. If this is the case, he asked why each of these cities had six gas stations. Mr. Harris responded that he has not visited either city. Cle Elum is located off of Interstate 90, and is similar to Cottage Grove, Oregon.

Mr. Allen asked how "public need" was determined when the current Chevron, Texaco and BP stations were reviewed. Mr. Harris said his guess would be that there was no opposition at that time.

Mr. Allen asked if the local market and diversity of pricing structure (rack versus DTW) would constitute a "need"? Mr. Harris responded if you look at the Code, you would not find that pricing structure could be used as a basis for need.

Mr. Shannon said he believed in competition and the need is the burden of proof of the applicant. He asked what would happen if he wanted to start an antique shop and the other antique shops said they did not need another antique shop?

Mr. Harris said you don't need a conditional use permit for an antique shop. You need a conditional use permit for a gas station in the Retail Commercial zone. If the Commission says that price and competition alone is "need", then why would you need a conditional use process. All someone would have to say is they would provide competition and price competitively. There would be no screening process for a conditional use permit because all applications would meet the criteria of competition. When you have a relatively static pool of consumers and you have more and more outlets and an abundance of product, eventually some of those that are unable to compete will go out of business.

Paul Moss, 22911 Hosler Way, Sherwood, Oregon 97140, addressed the Commission. The existing service stations serve the community very well. He did not see a need for another gas station.

Justin Chase, 16653 SW Daylily Street, Sherwood, Oregon 97140, addressed the Commission. He asked what would happen to his property value if the gas station is approved. He closed on his house one month ago. Even though his home is not directly affected by the proposed gas station, he was concerned about its effect on the whole subdivision. He asked the Commission to take this into consideration.

Kristin Wochnick, 16669 SW Daylily, Sherwood, Oregon 97140, addressed the Commission. She agreed with the testimony of the other opponents. Public need is a very important consideration. Where are the population studies to determine the need for a gas station? Another concern is safety because the station will be located so close to a residential area. She asked why the public notice was not in the Sherwood Gazette. There were signs on the site, but they are very small and hard to read unless you stop on the sidewalk and walk up to read the sign. She asked why you would have to have some type of club card to get a discount on gas when the other gas stations provide the same price to all customers. She and her family have already suffered with the existing noise and light from the shopping center.

Chair Emery said the City follows the Development Code requirements for publishing public notices. Mr. Wechner said typically the site is posted with two signs as well as being posted in five different locations and notice mailed to property owners within 100 feet of the site. The City will be reviewing the Development Code and part of this review will be to change the posting and notices required in the development review process.

Nick Adamy, 20784 SW Windflower Avenue, Sherwood, Oregon 97140, addressed the Commission. He agrees with the other opponent testimony with one exception. He does not want to see a gas station at any location on the site. It clearly says in the report that on December 7, 2000, it was determined that there was not a need for a gas station on the Sherwood Peddler site (Space Age Fuel application). He was under the impression that a daycare was going to be

located on the site. He knows the site is zoned for commercial, but he would rather see a tavern than a gas station.

Amy Johns, 20600 SW Windflower Avenue, Sherwood, Oregon 97140, addressed the Commission. She agreed with the other opponent testimony. She asked who is more important, the people who live in Sherwood or a big corporation who wants to do business in Sherwood. Jay Johns called the Safeway reps as soon as he found out about the proposed gas station. The Safeway reps did not call him back until yesterday.

Mr. Schroeder asked her how long they planned to own their home. Ms. Johns said it really depends. Mr. Schroeder related how he had purchased his home near the tannery. In his neighborhood, the average homeowner stayed about 2 years. Ms. Johns said the homes in the Wildflower Subdivision are typically entry-level so most people would probably stay about 3 to 8 years.

Chair Emery asked if the applicant wished to provide rebuttal testimony.

Mr. Robinson asked if the Commission would allow a 10-minute break for him to confer with his client.

Chair Emery recessed the meeting at 10:20 PM for a break and reconvened the public hearing at 10:30 PM.

Michael Robinson, representing Regency Realty, and Craig Ramey, Regency Realty, addressed the Commission. Mr. Robinson said they have heard almost one hour of public testimony. He asked the Commission to focus on the criteria as they go through their deliberations. It is difficult to define “public need”. Paul Norr, the City’s Hearings Officer, decision on the Space Age Fuel application, stated that public need was not market need as defined by the applicant. If the Commission takes all of the testimony at face value, “public need” is don’t let a competitor in. In effect, this would place a moratorium on gas stations. This cannot be the public need standard.

Mr. Robinson stated the “public need” standards they offered at the outset are two-fold:

- There must be some demonstration that there is a need for it within the market, and
- There must be something that benefits the public and the public convenience.

Sherwood’s population has grown by 8,000 people in the last ten years. This is a 350% increase. If you take Mr. Harris’s facts at face value, you have a 200% increase in capacity in gas stations. If you use this measure, the population is being underserved. The Hearings Officer noted that the evidence presented with the Space Age Fuel application was that the City of Sherwood had fewer gas stations per mile than many sections of major highways in Canby, Newberg, Sandy, and Oregon City. That is fewer service stations relative to population within a 3-mile radius and fewer service stations along Highway 99W per vehicle trip. The Hearings Officer determined there had to be something more.

Mr. Robinson said the “more” is public need in terms of convenience. This proposed service station will be a part of a shopping center and part of a business that is operating the station as part of its service to the public. Mr. Harris’s presentation simply included testimony from competitors because he represents two of the existing gas station owners in Sherwood.

Mr. Robinson said the proposed gas station will offer something to the citizens that is lacking in Sherwood. This is a “public need” of convenience and they believe there is a market for that service.

Mr. Robinson said the one consistency with the testimony was they were concerned about the location. The applicant is willing to move the gas station to the proposed bank location with two conditions:

- The applicant would request the hearing be continued to the next Commission meeting, February 6, 2001. During this time period they will like to have an opportunity to meet with the neighbors and talk about this plan. The 120-day timeline would be continued for this period of time.
- They would like to know if they are on the right track with regard to “public need”. If they are not on the right track, it would not matter where the station is located. It would be helpful to know what additional evidence or argument the Commission would like to see. This information could be presented at the February 6th hearing. He did not believe that public need was keeping other competitors out of Sherwood.

Mr. Robinson said if they were to agree with Mr. Harris’s testimony about three sites being available in downtown Sherwood, he could just imagine the reception they would get if they tried to put a gas station in downtown Sherwood. These are simply not available sites.

Craig Ramey, Regency Realty, addressed the Commission. He heard two categories of comments from the opponents; one is from the neighbors and the other is from competitors. They want to be good neighbors and after hearing the comments, they would welcome a meeting with the homeowners. In response to the neighbor’s comments, they would be willing to consider relocating the gas station to the proposed bank site. He identified the area on the map.

Mr. Ramey said that as one of the largest operators and developers of grocery-ended shopping centers, he has seen Albertsons putting fuel centers into every one of their locations that they can. It makes perfect sense for the Safeway site to have a gas station as a part of Safeway’s business plan. They would ask for the Commission’s approval if they can relocate the proposed gas station to a location that would be acceptable to the neighbors.

The Commission directed the applicant to work with the neighbors prior to the February 6, 2001 public hearing.

The Commission agreed to continue SP 00-16/CUP 00-07 Sherwood Crossroads Service Station Site Plan and Conditional Use, at the applicant’s request, to the February 6, 2001, Regular Commission meeting. This will continue the 120-day deadline by 21 days.

6C. SP 00-17 Sherwood Crossroads Bank Site Plan

Chair Emery opened the public hearing and noted that the applicant had requested this application be continued to the February 6, 2001 Regular Commission meeting.

The Commission agreed to continue SP 00-17 Sherwood Crossroads Bank Site Plan, at the applicant's request, to the February 6, 2001 Regular Commission meeting. This will continue the 120-day deadline by 21 days.

7. New Business

7A. Report from Council Liaison (Ken Shannon)

Mr. Shannon reported that the new Council members were sworn in at the January 9, 2001 Council meeting.

7B. Schedule Items for Work Program

Dave Wechner distributed a copy of the Commission Work Program Forecast for 2001. The list included legislative items the Commission will be looking at in 2001. He reviewed the process they would use for these Code changes that would take the proposals through the public hearing process.

8. Adjourn

There being no further business to discuss, the meeting was adjourned at 11:00 PM.

Respectfully submitted,

Dave Wechner, Planning Director