



City of Sherwood
PLANNING COMMISSION
Stewart Senior/Community Center
855 N. Sherwood Boulevard
August 21, 2001
Regular Meeting -7:00 PM

A G E N D A

1. **Call to Order/Roll Call**
2. **Consent Agenda – August 7, 2001 PC Minutes available for 9-4-01 PC Mtg**
3. **Agenda Review**
4. **Community Comments** *are limited to items NOT on the printed Agenda.*
5. **Public Hearings:** (Commissioners declare conflict of interest, ex-parte contact, or personal bias) **Public Hearings** before the City Council and other Boards and Commissions shall follow the procedure identified in Resolution 98-743, adopted June 9, 1998 (copies available on table):
 - A. **(Continued from 08-07-01 PC Mtg) SP 00-22 Langer Marketplace Large Retail Site Plan:** request for approval of a 125,000 square foot Target & 3,200 square foot Wendy's. The site is located southeast of the intersection of Langer Drive & Tualatin-Sherwood Rd, Tax Lot 1700, Map 2S 1 29C. (*Gary Pierce, Associate Planner*)
 - B. **(Continued from 07-17-01 PC Mtg) PA 01-02 Townhome Design Standards Plan Text Amendment:** adding a new Section 2.204 Townhomes to establish specific dimensional standards and design criteria for townhomes. (*Dave Wechner, Planning Director*)
6. **New Business**
 - A. **Report from Council Liaison** (*Ken Shannon*)
7. **Adjourn to Work Session re: PA 01-04 Old Town Design Guidelines (if time allows)**

**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
August 21, 2001

1. Call to Order/Roll Call

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

Commission Members present:

Patrick Allen
Adrian Emery
Kevin Henry
Jean Lafayette
Lee Weislogel
Bill Whiteman

Staff:

Dave Wechner, Planning Director
Shannon Johnson, Legal Counsel
Gary Pierce, Associate Planner
Terry Keyes, City Engineer
Roxanne Gibbons, Recording Secretary

Commission members absent:

Ken Shannon

2. Consent Agenda – August 7, 2001 Minutes

Bill Whiteman moved the Planning Commission defer acceptance of the August 7, 2001 Planning Commission minutes to the September 4, 2001 Regular Commission meeting. Seconded by Lee Weislogel.

Vote for Passage of Motion: 6-Yes, 0-No, 0-Abstain

3. Agenda Review

There were no comments.

4. Community Comments

There were no comments.

5. Public Hearings

Shannon Johnson 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 prior to each specific public hearing.

5A. SP 00-22 Langer Marketplace Large Retail Site Plan (continued from 08-07-01 PC Mtg)

Chair Emery opened the public hearing and noted the following documents had been received for the record:

- August 21, 2001 memo from Shannon Johnson regarding vesting of the Langer PUD relative to Metro Title 4 and the CAP and CIF Ordinance.

- August 21, 2001 letter from Mark Whitlow (applicant's counsel) regarding Title 4 and the length of time it has taken to review the application.

Gary Pierce reviewed the status of the application. He noted:

- The application was continued from the August 7, 2001 Commission meeting.
- The applicant, City Staff and Metro representatives provided testimony at this meeting.
- The recommended conditions of approval contained in the July 10, 2001 Staff Report are acceptable with the exception of the transportation issues.
- The Commission had concerns with the blank walls on the proposed Target building and directed the applicant to respond to these concerns.
- He distributed a copy of the Langer HDR Site Plan conditions of approval that identified the meandering sidewalk condition. The Commission wanted to add a similar condition regarding the sidewalk along Adams Avenue to the Target application.

Dave Wechner discussed mitigation of the traffic impacts for this development. He noted:

- City Staff reviewed the original conditions of approval for PUD 95-1 Langer PUD that was approved on August 3, 1995. He read Condition #8 from this decision into the record:
 - “8. At each phase of development, and with each site plan submitted to the City, the applicant shall provide a traffic impact analysis for City, County and ODOT review and approval. Recommended traffic safety and road improvements shall be considered by the City and may be required with each phase.”
- As each phase of the PUD is developed, a traffic study is submitted to identify the traffic impacts for the particular phase. This is essential concurrence language. Condition #8 requires a traffic study.
- The applicant submitted a traffic study for the Target application. The study did not specifically identify the impacts of the development to Highway 99W and how the impacts would be mitigated. The study centered its analysis on Tualatin-Sherwood Road, Adams Avenue and Langer Drive.
- The Staff recommendation is that satisfying Condition #8 will essentially satisfy Metro Title 4.
- The application is not subject to the CAP Ordinance because it was submitted prior to adoption of the ordinance.
- The CIF Ordinance is written so that it applies at the building permit stage. It requires mitigation of the impacts of development and its use. Terry Keyes, City Engineer, will address this issue in more detail.

Shannon Johnson referred the Commission to his memo dated August 21, 2001. He noted:

- The vesting issue could arguably be a close question.
- The applicant's argument with regard to vesting is that Title 4 does not apply and whether the CAP and CIF Ordinances are applied directly or indirectly should not matter because Title 4 does not matter. He said there is an argument in the other direction for this particular PUD because of the unique nature in which it was approved.

- With regard to this PUD, the notice of decision outlined a specific phasing and no specificity with regard to uses. It is clear this was very preliminary and the majority of decisions for the PUD would be made as each phase is developed. In this case, the project does not vest and it is necessary and appropriate to find compliance with Title 4.
- If vesting was applicable to this application you would still have to meet Condition #8.
- The City's position is that the 1995 PUD application is not vested with regard to Title 4. Title 4 compliance can be shown through Condition #8. The appropriate way to analyze Condition #8 it is through the CIF Ordinance, either directly or indirectly.
- He discussed how a zone change would not vest a project when it is developed at a later date.
- There is some case law that a PUD is locked into the rules in place at the time of application submittal. This PUD is unique because it was not specific to particular uses. It is appropriate in this case to say the application is not vested for purposes of Title 4, particularly because there was no specificity of uses related to the PUD.
- Staff's feels the appropriate way to analyze this is that the application is not vested for purposes of Title 4, but compliance can be shown at the same time Condition #8 is analyzed through the CIF Ordinance.

Terry Keyes discussed the CAP and CIF Ordinances. He noted:

- The City has Traffic Impacts Fees (TIFs) that apply to Washington County and impacts to most of the arterials and collectors in Sherwood and other jurisdictions in Washington County with the exception of 99W. The TIFs do not include any costs for improvements to 99W or mitigation for it.
- The CAP and CIF Ordinances are designed to correct this problem. Unless ODOT requires improvements to 99W to deal with an application's specific impact; such as GI Joes extending the left-turn lane, or the Safeway 99W/Roy Rogers intersection improvements; nothing else gets required.
- The City typically sits in the background while ODOT dictates requirements for 99W and Washington County dictates requirements for Tualatin-Sherwood Rd.
- After the Home Depot application when ODOT required a stop light and the City did not anticipate working on the transportation plan, the City began working with ODOT to jointly determine what needs to be done on 99W. This is why ODOT funded the CAP and CIF Ordinances. These ordinances are designed to manage the capacity for 99W.
- The CAP and CIF Ordinances are designed to address 99W because the TIF program does not deal with it. This will allow the City a more uniform way to deal with the impacts.
- One thing these ordinances did is change the way the traffic impacts are looked at. Typically a traffic study looks at the current traffic situation; is it passing or failing. If it is failing, the applicant would need to make some improvements. These improvements may not be satisfactory for the next 10-20 years and the roads may begin to fail. The CAP and CIF Ordinances are designed to make sure 99W continues to work.
- The CAP Ordinance establishes capacity and any additional impacts would be mitigated through the CIF Ordinance.
- Requiring these improvements from Target and Wendy's is a way to make sure the traffic generated on 99W from these projects is mitigated.
- The mitigation measures have not been exactly been defined.

- There are some things that will need to occur such as extending the dual left turn lanes on Tualatin-Sherwood Road from 99W south. Essentially more traffic will need to be moved through the Tualatin-Sherwood Road/99W intersection in the future to keep the facility functioning at an acceptable level.
- He discussed other potential improvements such as extending the through lanes from Roy Rogers west across 99W to Tualatin-Sherwood Road.
- The applicant states their project is not on 99W and the impacts to 99W of the proposed Target and Wendy's will not be that great. He does not agree. This development will probably have more impact on 99W than any other development, past or future. People are going to come from throughout the region to this development. This is why mitigation is required.
- The City Transportation Plan was adopted in 1991. However, it does not meet current needs.

Ms. Lafayette asked if the two improvements to 99W discussed by Mr. Keyes (two left turn lanes and through lanes across 99W) are specifically meant to be built by the applicant. Are these the only two improvements the City is proposing?

Mr. Keyes said he could not provide a firm answer at this time. He previously discussed the costs per trip would be approximately \$767.00. This is applied to the number of trips generated and would equal \$461,000 for the project. The CIF Ordinance requires this amount in improvements and the City's position is that it would only be fair for the applicant to pay for those improvements. When all the commercial development is built-out, 99W will be built-out. The cost estimate for all of the 99W improvements is \$3.6 million that includes \$1.5 million for the Tualatin-Sherwood Road/99W intersection. It is not broken down by each specific improvement at this time.

Mr. Allen asked Mr. Johnson to respond to Mr. Whitlow's letter dated August 21, 2001 regarding timelines and providing a written proportionality analysis to the applicant regarding the CAP Ordinance fee.

Mr. Johnson said his understanding from the letter is that the applicant and their representatives are displeased in terms of the pace of events and he would certainly sympathize with them. This is what the letter addresses. There have been some very difficult issues to deal with, but on the other hand it has taken a fair amount of time. He understands the reason for the frustration and the reason for the letter. With regard to the transportation issues, he could address questions regarding legal issues, but would defer to the City Engineer regarding the analysis.

Mr. Allen asked for clarification regarding the letter stating the City not providing the information necessary to meet what Mr. Whitlow asserts as the City's evidentiary burden under *Dolan*.

Mr. Johnson responded that at some point with regard to conditions of approval or the term *exactions*, the burden shifts to the government to make the findings. Mr. Whitlow's point is that this is that type of case. The *Dolan* case states if you "take someone's property" with regard to an easement, dedication, bikeway or greenway, the burden does shift to the government. He was not certain the burden shifts to the government in this case. The point is that the information Mr.

Whitlow is looking for from City consultants is not sufficient enough for his team to do the analysis.

Mr. Keyes said the applicant avoided the CAP Ordinance by submitting the application prior to its adoption. He thought this would take it out of the land use process. The CIF Ordinance is designed to be used as mitigation at the building permit stage. He did not think it would be an issue during the land use process. The issue seems to be whether Target is going to proceed because of the costs. Now there is another issue whether Condition #8 applies because it requires a transportation study and mitigation. The applicant's transportation study did not cover Highway 99W so the City was not provided sufficient information to review it in this regard. The City is using the best information available to come up with some requirements.

Chair Emery asked if the process was designed to happen at the time of building permit issuance, why was the Commission dealing with this issue? Mr. Keyes said he has the same question.

Ms. Lafayette asked if GI Joes' was required to submit a traffic impact analysis that included 99W? Mr. Keyes said the application was submitted prior to these two ordinances being passed. However, their traffic analysis addressed 99W and the impacts of their development.

Mr. Whiteman asked if the improvements to the intersection of Meinecke Road and 99W are planned for the 20-year use pattern? Mr. Keyes said it is designed for 20 years, but as developments are built in the Meinecke Road area, they will have to add more lanes such as double left-turn lanes. These are not being built with the funds from the State at this time. It will need to be funded by the developers as those properties are built-out. The right-of-way is being acquired at this time.

Chair Emery asked if the applicant wished to provide testimony.

Mark Whitlow, 1211 SW Fifth Avenue, Suite 1500, Portland, Oregon (representing the applicant/owner) and Clarence Langer, 15585 SW Tualatin-Sherwood Road, Sherwood, Oregon 97140, addressed the Commission.

Mr. Whitlow referred the Commission to his letter dated August 21, 2001. He suggested the design issues be heard first, followed by the traffic engineer and his testimony.

Mimi Doukas, WRG Design, 10450 SW Nimbus, Suite RA, Portland, Oregon 97223, Jay Richardson, Target, 1000 Nicollet Mall, Minneapolis, Minnesota, and L. Owen Chrisman, Architect, 2083 Sunray Circle, West Linn, Oregon 97068, addressed the Commission.

Ms. Doukas noted:

- Copies of revised elevations were distributed to the Commission.
- The Commission was concerned about blank walls, building mass and also made some comments about canopies and rooflines. These were taken back to Target and the elevations were revised. This is the second set of revisions they have made based on the Commission's comments.

- She referenced the Front Porch Society document and PUD Design Guidelines that have been an underlying theme for design. They have tried to adhere to the intention of the guidelines as far as pedestrian orientation, front porch and high quality design articulation. With regard to using predominantly wood materials, due to the size and nature of the Target store, wood is not a practical material to use for a building this size.

Jay Richardson referred to the revised building elevations and addressed the Commission. He worked with Mr. Chrisman on the design of the store. He reviewed some of the things they have done with the design of the Target Store.

- To break up the mass of the building they used a variety of architectural elements and natural materials and landscaping.
- The front entry will be clad in stone with a wood truss that identifies with the agricultural architecture of the area. The use of stone has been repeated on the vertical towers.
- They have added covered walkways on the south side of the building.
- They have shown landscaping as it would be seen from the street. The elevations show what the landscaping would look like in 5-10 years. The landscaping will obscure the whole building on the east elevation (back side).
- The landscaping will be trimmed down in the area of the Target sign so that it is visible.

L. Owen Chrisman addressed the Commission. He noted:

- He presented a materials board for the canopy elements and brick materials.
- The materials and colors will allow the building to have more a natural appearance.
- He discussed the other elements of the canopies using wood materials to give it a warmth and richness.
- He placed an overlay on the elevations that showed some of the architectural elements.

Ms. Doukas said a lot of the variation the Commission has seen tonight is really created by trying to dress up the building. For the entranceway to the north, they have wrapped the façade around to the north to allow a two-sided architecture design. They have also wrapped it around the south to address some of the concerns to the adjacent residential property. They now have a 3-sided architectural building. The facades to the east are adjacent to light industrial property. They felt it was more important to dress up the facades along the transit streets and residential area. They did focus on the landscaping for tonight's presentation.

Chair Emery and the other Commissioners thanked them for the improvements and changes to the elevations. They agreed the revisions were positive.

Mr. Wechner said the landscaping on the east elevation will be lower to allow visibility of the Target sign.

The Commission asked several questions about the variations in color and type of street trees proposed. The colors will be more muted tones with only the Target sign being "Target red" and the trees will be Red Maple.

In response to Ms. Lafayette's question regarding Wendy's, Ms. Doukas said she did not think the elevations had been modified. The exterior material would be wood, in lieu of typical materials used, to comply with the Front Porch Society Guidelines.

Mark Whitlow, Attorney, Marc Butorac, Kittelson & Associates, 610 SW Alder, Suite 700, Portland, Oregon 97205, and Tom Pessemier, WRG Design, addressed the Commission.

Mr. Whitlow said they would be discussing the legal issues as they relate to transportation elements. He noted:

- This is the first time they have heard from Staff that Condition #8 of the original PUD 95-1 passed in 1995 is now somehow fast tracked to the point the City can read whatever they like to come up with any conditions of approval imposed for the exactions they would like in a concurrent fashion or not. They submit that this is simply not the case.
- They were aware of Condition #8 and felt they were being charged with other improvements under this condition. They did a traffic impact analysis (TIA) to meet Condition #8 and submitted it to the City. The City submitted the TIA to Washington County and the County provided comments. If the City didn't submit the TIA to ODOT, then ODOT would not make comments. It appears the City did not submit it to ODOT. It is the City's responsibility to submit the TIA's to the appropriate outside agencies for comments.
- If this was a plan amendment, such as a TPR case, it would not be unusual for the State to make comments, provide testimony, become a party to the case and take the matter to LUBA. This is not one of those instances.
- At this stage, it is a low-level application for the build-out of a PUD that was first applied for and approved in 1995.
- The applicant has complied with Condition #8 by providing the TIA and submitting it to the City. The Staff Report does not really comment on the TIA. The City has been reserving comment until the public hearing.
- Under City standards there really is no review standard for level of service (LOS) or adequate capacity. The Code does not address this issue.
- When you have an application in an incorporated City within a County if the City does not have the standards, then the default is to the County standards.
- Washington County replied and required certain things be done under their standards (Resolution & Order 86-95). He provided a copy of this Resolution for the record.
- The City has to measure adequate capacity against something that is in place or adopted legislatively, not something that is made up on a case-by-case basis.
- The word "concurrency" is getting kicked around a little bit more. Concurrency in the State of Oregon is still pretty much something that does not exist. It exists in Washington State and Florida, but not in Oregon. It comes to the Commission under Title 4 of Metro Functional Plan, but only as it relates to buildings over 60,000 square feet. So it has a very limited application.
- Reading Condition #8 against the standards in place at the time means that conditions can be imposed to mitigate impacts based upon the standards in place which are those set forth in Resolution & Order 86-95 of Washington County. The applicant has already done this. Under this Resolution, the applicant will have to add a right-turn deceleration lane on Tualatin-Sherwood Road at the new intersection of Adams Avenue and Tualatin-Sherwood

Road. The applicant will also signalize this intersection. These are new conditions that were not a part of the 1995 Conditions of Approval for the PUD that required extension of Adams Avenue at the completion of Phase 6 to a point just short of the tracks along Oregon Street.

- The applicant has satisfied the standards in place that are applied to this application. The whole notion of having to do something else because Metro sent a letter at the last minute saying we may have beat the implementation of the ordinance, but are still measured against Title 4 is preposterous.
- Their first idea was to use the CAP Ordinance in a very simple way because it had numbers. They could comply numerically with the 43 trips per acre. They have shown they can do this.
- They would ask the Commission to forget all the nonsense the Staff is now suggesting. Let's just look at Title 4 directly if you find it applies.
- Even though they say Title 4 does not apply, they are vested for several reasons. If the Commission decides otherwise, then it is a pretty easy thing to show under Title 4 that the applicant has adequate transportation facilities capacity to serve the use at the time it begins to operate.
- The second part is that the Comp Plan covers some methodology of providing concurrent traffic capacity for the employment areas in the City. Metro testified two weeks ago that the CAP Ordinance implements and satisfies Title 4 to that effect.
- The applicant has shown they have concurrent capacity to service the use pursuant to the evidence submitted by Kittelson & Associates Traffic Impact Analysis.
- Title 4 compliance is satisfied by the TIA prepared and submitted in conjunction with the Target application as required by Washington County.
- The applicant would ask the Commission to make this finding and allow the applicant go to the next level of public hearings.
- In previous testimony he detailed what they perceived to be the defects in the CAP Ordinance. It is disproportionate on its face because a lot of things are built-in that left residential use off totally, it discounts industrial use and loads everything onto commercial use. It is disproportionate as approved, but the City is applying it and charging for new trips totally without netting out the past trips, internal trips and non-highway trips.
- There are two Constitutional problems with the ordinance on its face and as it is applied.
- This is nothing compared to the problems the CIF Ordinance presents. This ordinance was adopted after the applicant submitted their application.
- The applicant is not bound by the CIF Ordinance. The fact it is somehow being crafted to sit in the weeds on the side of a land use application and then used to blind-side an applicant when he comes in for a building permit, they find illegal in a variety of ways. It is an application for a permit as defined in the statutes. The CIF Ordinance creates nothing but another land use regulated activity. It relates to regulated activities that are, in fact, the proposed land use developments. The CIF is not tied to the building permit, it is tied to the land use development permit application.
- The CIF Ordinance requires the exercise of discretion and legal judgment in making the determination. It is not based on clear and objective standards.
- The CIF Ordinance states it is to be applied to the building permit and it is supposed to be applied to site plan approval.

- Mr. Keyes said the City was going to wait until they applied for a building permit and that is why the applicant was not made aware of the additional fees. This is not fair and it is a lot of money to require at the time of building permit application.
- It is a simple case that the application is vested. They applied before both the CAP and CIF Ordinances were adopted.
- If the City is going to apply both of the ordinances to this application, the applicant will challenge them because it is wrong to apply them and they are written in a way that is unenforceable. The applicant does not want to go there.
- The Commission can determine which case they want to base their findings on. One is based on state statute and one is based on past common law. The older case (*Clackamas County v. Holmes*) deals with finishing a development under the rules in place at the time the project was started. This is a de facto determination. Prior to Title 4 being adopted, the applicant spent over \$1 million for public improvement development costs for the Langer PUD. He referred the Commission to a large board listing these costs.

The Commission asked the applicant to define the asterisks.

Chair Emery recessed the meeting at 8:15 PM for a 5-minutes break to allow the Commission to view the large exhibits provided by the applicant. The meeting reconvened at 8:20 PM with the continuation of the public hearing for SP 00-22.

Tom Pessemier, WRG, addressed the Commission. He noted:

- The single asterisk (*) references actual construction costs and double asterisks (**) reference estimates for construction costs prepared by WRG Design. The total estimated public development costs prior to Title 4 are \$1,000,739.
- The sanitary and water lines for Adams Avenue are being constructed to service this portion of the PUD and Phases 6, 7 and 8 as they are developed.
- In response to Mr. Whiteman's question, it is possible there may be some SDC credits for the two lines because they are a part of the City's Master Plan.

Mark Butorac, Kittelson & Associates, addressed the Commission. He noted:

- He would discuss three (3) areas:
 - Costs for transportation and infrastructure for this project and remaining phases.
 - Traffic Impact Study and Traffic Impact Analysis
 - Improvements to Highway 99W, Roy Rogers Blvd and Tualatin-Sherwood Road as mentioned by Mr. Keyes
- He referred the Commission to the exhibit identifying infrastructure costs for the Langer PUD; the Target, Wendy's and other retail on Langer Drive as follows:
 - Tualatin-Sherwood Road - \$462,402
 - Adams Road - \$516,994
 - Road "A" - \$450,668
- The Tualatin-Sherwood Road transportation costs are conditioned by Washington County as part of their review.

- The Adams Road Extension going south to the railroads tracks will include a shared bikelane and sidewalks on one side with landscaping.
- Road “A” is the road that will connect Langer Drive and bi-sects between the proposed Target and multi-family site.
- The total for these roadway improvements is \$1,430,064. There are some credits that will be allowed for this construction.
- He referred the Commission to the Traffic Mitigation Cost and Transportation Fees Exhibit that included:
 - Existing improvements - \$171,002
 - Proposed transportation costs \$1,430,064
 - Washington County TIF - \$497,468
 - City Traffic Impact Fee - \$175,423
 - Capacity Allocation Program - \$461,734
- The traffic signal and some of the Adams Avenue elements will be eligible for credits. These elements would include the extra width on Adams. An estimate of the credits could be one-half to three-quarters of the amount.
- The total of these costs is \$2,735,691 and potential credits would make it \$2.2 million.

Mr. Allen asked what is the total cost estimate for the whole project.

Mr. Richardson said the Target building with the upgrades is estimated to cost \$6 million. The site work would be about \$1 million for both the Wendy’s and Target and about \$7 million for on-site building and \$2 million off-site costs.

Mr. Butorac continued with his testimony:

- He discussed the Traffic Impact Study (TIS) process, in particular for Sherwood. Kittelson has been involved in most of the traffic impact studies for all of the major developments in Sherwood over the last 8 years.
- There are four (4) ordinances to look at when preparing a TIS:
 - Transportation Planning Rule (TPR) – only if there is some type of plan amendment or zone change. This application does not apply.
 - Division 51 (ODOT) that was adopted in 2000. Division 51 is only applicable if ODOT has to grant direct access or change access to one of their facilities. This application does not apply.
 - City ordinances. City ordinances, prior to adoption of the CIF Ordinance, really do not address what needs to be studied. They allow some flexibility that at the time of pre-application the City Engineer can request to review the project.
 - Washington County Resolution & Order 86-95. Historically this Resolution has been the rule that traffic engineers have used when evaluating the studies. Everything on Tualatin-Sherwood Road would be applied to this Resolution.
- R&O 86-95 states that from the applicant’s property line you need to go the distance equal to the access spacing on that facility. Most of the facilities in this area on Tualatin-Sherwood Road, which is a minor arterial, have a 600 foot spacing. You are required to go 600 feet from the property line in all directions and study any intersection within this distance.

- In addition, the County says any intersection that is impacted by 10% or more trips entering an intersection that has been identified as a safety hazard can be required to do traffic signal improvements or illumination improvements.
- During their pre-application meeting with the City, they asked what the scope of the traffic study should be. There was no indication, outside of R&O 86-95, provided by the City to include in the traffic impact study. The TIS was presented to the City in November 2000.
- The TIS complies with R&O 86-95. The County provided a letter dated March 15, 2001 stating they had reviewed the impact study and recommended several conditions of approval.
- The application was submitted prior to adoption of the CIF Ordinance. The only thing you have to revert back to is R&O 86-95.
- The application was deemed technically complete and there was no indication from the City that the TIS was not acceptable.
- All of the businesses near the intersection of Oregon Street and Tualatin-Sherwood Road impact Highway 99W. The traffic studies for these businesses did not include an analysis for 99W. The reason they did not study 99W is because there is no ordinance or inter-governmental agreement requiring 99W be made a part of the study. It is out of the sphere of impact. The traffic impact fees and gas taxes are used for impacts outside of this sphere.
- If you say everything has to be studied, Newberg could say the proposed Sherwood Target would have an impact on their City intersections. Without an ordinance or inter-governmental agreement, Newberg cannot condition an applicant.
- Regarding CIF Ordinance, it would go forward if there was an inter-governmental agreement between the City and State of Oregon. Then you would have an avenue where you could condition for improvements on 99W. The City of Sherwood cannot condition onto a state facility that they do not own.

Mr. Allen asked if he was saying that the method by which the City has tried to adequately provide for the future capacity to 99W is an inappropriate activity?

Mr. Butorac said providing for future capacity can and has been done. Locally you can have an inter-governmental agreement which the CIF is working towards, but the problem is there was a rush to get it adopted. Not all of the linkages have been put in place. The CIF does not define how things need to be studied or appropriated. The linkages were not in place at the time the application was submitted.

- With regard to the improvements discussed earlier that this development should be responsible for, either the \$461,000 or specific improvements such as dual left-turn lanes and an additional through lane, on Tualatin-Sherwood Road, these improvements at the time of application cannot be built per City Comprehensive Plan, City TSP or Washington County TSP or County Comprehensive Plan.
- All four of these documents state that Tualatin-Sherwood Road is a 3-lane facility. Three lanes means one lane each direction and a center turn lane. You can add auxiliary turn lanes such as two right turn or left turn lanes. Physically to go from 3 to 5 lanes requires comprehensive plan amendments both at the City and County levels and changes to the TSP.
- The City TSP was adopted in 1991. The County TSP has not been updated since 1987 and their comprehensive plan clearly states that Tualatin-Sherwood Road shall be 3 lanes.

- An improvement cannot be conditioned that does not meet the City and County comprehensive plans. They have discussed this with Washington County.
- This is a summary of the transportation improvement process.

In response to Ms. Lafayette's question, Mr. Pessemier stated they submit an application to the City and the City distributes the appropriate information to outside agencies such as Washington County and ODOT. He did not know if this application was submitted to ODOT. Even if ODOT received a copy of the application, ODOT would not have any ordinance to apply because the Oregon Highway Plan does not allow them to do anything off-road. Division 51 which is their ordinance for improvements does not apply because the applicant is not applying for state access. R&O 86-95 required the Regal Cinemas, Safeway, and Home Depot to study the intersections on 99W because they were within 600 feet of the facility or Division 51 if they were applying for direction access to 99W.

Mr. Whiteman thanked Mr. Butorac for his testimony. However, the Commission is not the policy maker and they do not have the authority to change ordinances or enter into inter-governmental agreements. He said Mr. Butorac's presentation was very educational. He asked the applicant and Staff what they were asking the Commission to do with all of the information.

Chair Emery asked Mr. Johnson based on the testimony how the program was going to be applied.

Mr. Johnson responded that he did not think there was any disagreement with regard to the CAP program. The applicant submitted the application prior to adoption of the CAP Ordinance. There is a question regarding the CIF Ordinance. As pointed out by the City, direct application of the CIF Ordinance, if it is applicable to this project, would not be a land use regulation. The only issue that Staff is raising is what is necessary under Condition #8 to mitigate for the impact of this project. The difficulty is that when the PUD was established, although there was a condition for Adams Avenue, it was clearly anticipated because of the existence of Condition #8, that there would be an analysis of what is appropriate. He did not think the applicant was suggesting that those are all purely on-site. This is a major, big box store. This project is going to have a lot of trips and it is going to affect the Highway 99W intersection. The question really is what is necessary to mitigate for those trips. What kind of impacts are they going to cause and what traffic improvements would mitigate this.

Mr. Johnson said the applicant is saying the City cannot condition the applicant to do something that they are not able to do. He understands this argument, but there are other ways to get at this such as bonding or fees in lieu of. This is the question that is unclear at this time and moves away from the legal analysis into the traffic analysis. Staff's position is that the applicant's traffic analysis should have included impacts on 99W.

Mr. Allen asked how this lack of information in the applicant's traffic analysis was communicated to them?

Mr. Keyes said Kittelson & Associates prepared what they thought was appropriate for the traffic study. They followed all of the rules at the time. Unfortunately, the rules changed after the

application was submitted. The City knows what mitigation is required on 99W for build-out. This is \$3.6 million in improvements. This project would have the most mitigation potential for trips generated at Tualatin-Sherwood Road and 99W. If Kittelson prepared an expanded traffic study and looked at 99W, they may provide more information, but it would not change what the City has determined for mitigation. The City looked at 20 years to the future and build-out.

Mr. Allen asked Staff what should have triggered the applicant to look at 99W?

Mr. Keyes responded that according to the rules Mr. Butorac recited, nothing in the rules. Applicants do not look for extra things to provide. If the applicant wished to dispute the City's mitigation costs, then probably a traffic study is needed. The City has provided the applicant with an amount of \$461,000 for improvements and the list of improvements.

Mr. Whiteman asked if there needs to be an inter-governmental agreement between ODOT and the City before the City asks for improvements on 99W?

Mr. Keyes said this would be nice, but whether an IGA was critical, he could not be sure. Mr. Johnson said an IGA was not necessary in order to look at what is required to mitigate the impacts. The question is whether the Planning Commission feels the outside impacts regarding 99W need to be mitigated.

Mr. Allen said City is asking the Commission to find whether mitigation for 99W is necessary and the applicant is raising the point that it is not legal to do it.

Mr. Johnson said the Commission is okay legally depending on what improvements are recommended. The question is what part of the improvements would be pro-rata a part of this application.

Mr. Keyes said he disagreed that a Washington County comprehensive plan amendment was necessary for adding lanes to Tualatin-Sherwood Road or Roy Rogers Road. He has talked to Washington County. If the City was talking about widening Tualatin-Sherwood Road to five lanes in front of the Target Store this would require a change to the County and City transportation plans. The City is talking about intersection improvements and all of these relate to intersections on 99W. His impression from the County is that this would be allowed without changes to the transportation plan.

Ms. Lafayette asked if Staff agreed that 600 feet is what the applicant was supposed to be complying with when they prepared their traffic impact study? The DMV facility also impacts 99W. Did the DMV have to mitigate for 99W?

Mr. Keyes said the DMV was following the rules that were applicable at the time. Their study would not have identified what the impact would be in 20 years. This is what the CAP and CIF program does. He was not sure that the applicant expanding on their traffic study would tell the City anything at this time. A condition of \$461,000 worth of improvements on 99W is what Staff is recommending.

Chair Emery said the condition does not include a specific amount. It just states the applicant will pay fees. Does the Commission want to change this? The Commission did not feel a specific amount would be appropriate. The Commission agreed to continue with the testimony prior to entering into deliberations.

Mr. Whitlow noted:

- The HDR Site Plan approved by the Commission and Council recently one could argue is going to have impacts on 99W. All developments that are adjacent to roads feeding onto 99W are going to have impacts on it. There was no requirement for the HDR Site Plan to do a 99W impact analysis or to pay any further mitigation fees for improvements to 99W.
- The City does not have a mechanism in place to apply the CIF Ordinance.
- The applicant is asking the Commission to approve the application under the Staff Report being made and removing Condition #B3 on page 27 of the Staff Report regarding payment of fees relating to the CIF program. [Note: This reference to page 27 is from the 5/8/01 Staff Report. It should have referred to page 32 of the 7/10/01 Staff Report, which was the document presented at this hearing.]
- State statute says that an application is measured by the standards in place at the time of application submittal. The application is vested to the rules in place when the application was approved in 1995.
- This phase is still designated as GC and Title 4 does not apply. He distributed a copy that states Title 4 does not apply.
- The applicant has provided \$1.4 million in improvements that seems to be fairly sufficient traffic mitigation based on the TIA.
- The applicant would agree to the other recommended conditions of approval.
- He marked and identified each of the applicant's exhibits for the record.

Mr. Butorac said the Condition #B1 should be corrected to state the permits would be from Washington County, not ODOT.

Mr. Wechner asked for a clarification from the applicant. By removing Condition #B3, is the applicant affirming that the project would not impact 99W and therefore there is no reason to mitigate?

Mr. Whitlow said the applicant is saying they pre-date the ordinance and it does not apply. There is nothing in Condition #8 that would lead you back to the ability to impose highway improvements for that purpose.

Mr. Butorac said they are not disagreeing there are impacts, but all development along Tualatin-Sherwood Road have impacts on the intersection of Tualatin-Sherwood Road and 99W, but it was not tested, nor were there conditions placed on any of the past applications for anything that was outside of the 600 foot realm. If this case goes to LUBA, LUBA is going to ask how the finding was made and what ordinance drives this.

Chair Emery asked if there was any further testimony from proponents or opponents. There being none, Chair Emery dispensed with rebuttal testimony and closed the public

hearing on SP 00-22 Langer Marketplace Large Retail Site Plan for deliberation by the Commission.

Mr. Keyes said Condition #B3 should be restated by striking “Payment of fees relating to...” and replaced with, “Construct mitigation in accordance with the 99W Capacity Improvement Funding (CIF) program.”

Mr. Johnson read from the CIF Ordinance.

Mr. Whiteman moved Condition #B3 be amended to read, “Payment of fees relating to Highway 99W Capacity Improvement Funding (CIF) Program are not applicable because the application was made prior to adoption of Ordinance #2000-1105.” Seconded by Jean Lafayette

Mr. Allen said he was uncomfortable with a motion that appears to go against legal counsel advice. Chair Emery agreed.

Mr. Whiteman said the Commission is making a recommendation to the City Council, who will make the final decision. This motion carries his intent to the City Council that the CIF Ordinance application to this project really needs to be reviewed.

Ms. Lafayette said her second of the motion has to do with timing. According to the record, this application was submitted prior to adoption of the CAP and CIF Ordinances. Staff has agreed that this is correct. It is important for the Commission to relate their concerns about the application of the CIF Ordinance and mitigation issue on to City Council.

Mr. Allen said he has concerns with this being the mechanism by going into the conditions and identifying a rule that does not apply. There are a chain of questions. Is there an impact to 99W? Yes. Should it be mitigated? Yes, in a perfect world. Has the City established a legal mechanism to do this? They are being told by legal counsel there is a legal mechanism. Does it apply to this application in the way it has been discussed? They are being told that it does apply. These things all being the case, seems that the Commission’s position is to look at the standards and make a determination if the development meet these standards and rules. The Commission is being told that it does. He shares Mr. Whiteman’s frustrations with all of the CIF issues, this forum does appear to be the place to deal with this.

Ms. Lafayette said based on what Mr. Allen said, the Commission should leave the terminology as presented and send it to the Council and then it will probably be appealed to LUBA. She asked what vehicle the Commission could use to apply the CIF Ordinance to this application.

Mr. Johnson discussed the intent of the CIF Ordinance. It is to apply it to applications that are not just land use applications, but at the building permit stage. Mr. Whitlow’s position is that the CIF should not be applied to their application, that it is a land use regulation and their application was submitted prior to its adoption. The intent of the Council was to make sure that those applications that were vested still had to pay their fair share of capacity allocation on 99W. Otherwise, only the CAP Ordinance would have been adopted.

Vote for Passage of Motion: 3-Yes (Whiteman, Weislogel, Lafayette)
3-No (Allen, Henry, Emery)
0-Abstain

MOTION FAILED

Mr. Allen asked if the City has established a legal mechanism to apply the CIF Ordinance for mitigation of traffic impacts to 99W.

Mr. Johnson said the CIF Ordinance was designed to do this at building permit stage. It does not apply to this application with regard to site plan approval because this application was submitted prior to the effective date of the CIF Ordinance. The CIF was not designed as a land use regulation. Mitigation for improvements on a highway is not a land use regulation. Therefore, it applies to the building permit. If the condition was deleted it would appear to mean that the CIF Ordinance does not apply to this application. SDCs and TIFs are not referenced in the conditions of approval. These are fees. The Commission recommendation can include whatever reference to the Council they want.

Mr. Wechner said if the Commission is exempting someone from a process or ordinance that is in place, they need to be proactive in doing so.

Mr. Whiteman said the CIF Ordinance does not apply to residential properties. It applies to non-residential building permits.

The Commission discussed how Condition #8 should be applied to this application. Mr. Keyes said he agreed that the improvements to Tualatin-Sherwood Road would be creditable as mitigation, but with a PUD of this size there has to be some mitigation for traffic impacts to 99W. The \$461,000 is just for the Tualatin-Sherwood Road/99W intersection improvements.

Chair Emery recessed the meeting at 9:40 PM for a 5-minute break and reconvened the meeting at 9:45 PM to continue deliberations on SP 00-22.

Jean Lafayette moved the Planning Commission modify Condition #G3 to reference the January 8, 2001 letter from Washington County required conditions of approval. Seconded by Bill Whiteman.

Ms. Lafayette summarized this letter for the Commission. The Commission asked that the condition be similar to the style used in previous Staff Reports.

Vote for Passage of Motion: 6-Yes, 0-No, 0-Abstain

Jean Lafayette moved the Planning Commission add a Condition #A2N regarding the sidewalk on Adams Avenue to be constructed in the same meandering design as approved for Century Drive revising the plans as necessary and for the west side of Adams Avenue increase the meandering sidewalk from 8-feet to 10-feet in width. Seconded by Patrick Allen.

Vote for Passage of Motion: 6-Yes, 0-No, 0-Abstain

Patrick Allen moved the Planning Commission amend Condition #B3 to read construction of traffic impact mitigation on Highway 99W calculated using the methodology of the CIF Ordinance for purposes of complying with Condition #8 of the original conditions of approval for PUD 95-1 Langer PUD. Seconded by Kevin Henry.

Mr. Allen said this motion was based on Staff recommendation and advice of City Attorney Johnson.

Mr. Whiteman said he understood the motion. However, the application was submitted prior to the effective date of the CAP and CIF Ordinances. He did not feel the motion would call the Council's attention to the concerns of some of the Commissioners.

Vote for Passage of Motion: 3-Yes (Allen, Emery, Henry), 3-No (Whiteman, Lafayette, Weislogel) MOTION FAILED

Bill Whiteman moved the Planning Commission remove Condition #B3. Motion failed due to lack of a second.

Chair Emery said that all of the same arguments will be presented at the Council public hearing. Mr. Whiteman said he would be willing to leave Condition #B3 as written with the expectation that Chair Emery reiterate to the Council the Commission discussion and concerns. Chair Emery said he would be willing to address the Council at the public hearing for Target.

Adrian Emery moved the Planning Commission recommend approval of SP 00-22 Langer Marketplace Large Retail Site Plan based on the findings of fact, public testimony, Staff recommendation, agency recommendations, applicant comments and conditions as revised. Seconded by Patrick Allen.

A member of the audience asked if Mr. Keyes' comments regarding Condition #B3 were incorporated into the motion. Mr. Johnson said his comments regarding changing Condition #B3 were not a part of this motion.

Mr. Whiteman reiterated that Chair Emery would attend the Council meeting on behalf of the Commission to address the Commission's inability to come to a consensus regarding the CAP and CIF Ordinances and its application to SP 00-22.

Mr. Johnson advised the Commission that they had some latitude to include with the recommendation that the Commission has concerns regarding the amount of impact or mitigation for impacts and applicability of the CIF Ordinance. The Commission could ask the Council to concentrate on this issue.

Mr. Whiteman encouraged Chair Emery to coordinate with Mr. Johnson on the testimony he provides to the Council. Chair Emery and the other Commissioners concurred.

Mr. Allen was concerned about the mechanism and applicability of the CIF Ordinance. His personal feeling is -- if the underlying issue is -- whether impacts of development in the general zones they are talking about on 99W be dealt with. If it is \$460,000, this is the number. This is a separate issue from whether the application of this calculation to this site plan is appropriate.

Vote for Passage of Motion: 6-Yes, 0-No, 0-Abstain

Mr. Whiteman said at the last Council meeting a Council member asked the Mayor if the Council would be interested in a joint work session with the Planning Commission to discuss the CIF Ordinance and its impact. The Commission said they would be interested in holding a work session.

Chair Emery said he previously discussed with Staff holding a joint work session. The tentative date for this meeting would be the 5th Tuesday in October 2001 (10-30-01). The Commission concurred.

Mr. Pierce advised the Commission that the public hearing for SP 00-22 is scheduled for next Tuesday, August 28, 2001 at 7:00 PM.

The applicant concurred that they would like to have the public hearing on August 28, 2001.

5B. PA 01-02 Townhome Design Standards Plan Text Amendments (cont'd from 07-17-01 PC Mtg)

Chair Emery opened the public hearing for PA 01-02 and called for the Staff Report. Dave Wechner referred the Commission to the Staff Report dated August 21, 2001, a complete copy of which is contained in the City Planning File for PA 01-02. He noted:

- Since the July 17, 2001 public hearing, a meeting was held with developers to discuss the townhome design standards draft plan text amendments.
- He referred the Commission to Attachment A – Draft Language – Townhomes. The new language was underlined and deleted language was struck out. He reviewed each of the changes in detail.
- The maximum height of all townhomes shall be that of the underlying zoning district standard, except that 25% of townhomes in MDRH zone may be 3 stories in height if located more than 150 feet from adjacent properties in single-family (detached) residential use.
- Change the infill standard from 30,000 sf ft to 2 acres or less.
- The density and lot size for townhomes in residential zones needs to be addressed. The MDRH zone allows a maximum of 11 units per acre and the HDR allows a minimum of 16.8 units per acre. This issue was not a part of the initial public notice, but the Commission could make a recommendation to Council to consider changing the density for the MDRH zone.
- He made the following changes to the Draft Language:
 - Add the words “street side yard” to Criteria 2.204.02 #3.
 - Section 2.204.05 Design Standards referencing building elevation visible from the street, change a minimum of (30%) to (20%) of side and rear building elevations.

- In the next paragraph after the words after 3 stories in height add, “..or a maximum 35 feet in the MDRH zone if located more than 150 feet.....”. He was not sure he agreed with this recommendation.
- Side yard setbacks are now based on the length of the townhome block.
- Mixed-use development is likely to occur in planned unit developments or a mixed-use overlay. Mixed-use development is also allowed in the Old Town Overlay District.

The Commission discussed side-yard and rear-yard setbacks for townhomes.

Chair Emery asked if there was anyone who wished to provide testimony.

Jerry Offer, OTAK, Inc, 17355 SW Boones Ferry Road, Lake Oswego, Oregon 97035 and Joe Schiewe, J.T. Smith Companies, 22400 Salamo Road, Suite 204, West Linn, Oregon 97068, addressed the Commission.

They distributed for the record a matrix of different townhome sites in the area identifying the density, lot widths, lot depths, front setbacks, side yard, corner lot side yard setbacks, rear setbacks, maximum height in stories, common open space requirement, parking, side-by-side (2 car) garages, street access (% of garages facing street) and street widths. They also distributed color photos of different townhome sites identified by name and site location. Mr. Offer noted:

- They met with City Staff and other representatives from the townhome building community to review the proposed draft language. They made some suggestions to this draft. In general, they are pleased with the draft ordinance as presented tonight.
- The most important issue they would like to stress is the upper density requirement in the MDRH zone. There is a big gap between the two zones (HDR and MDRH). Between the 11 units per acre and 16 units per acre is the preferred range for townhome developments. Making the change to the MDRH density is important to allow townhome development in this zone.
- If the density is not changed, most of the townhome development will be limited to the HDR zone.
- They would urge the Commission to recommend to the Council to increase the upper limits of density in the MDRH zone to 16.8 units per acre.
- They support increasing the maximum building height in the MDRH zone to 3-stories if it is more than 150 feet from a residential development. He showed the Commission a sample development that would use 3-story townhomes.

Mr. Wechner discussed the density criteria in the MDRH, MDRL and HDR zones. The MDRL zone allows a maximum of 8 units per acre and the MDRH zone allows 11 units per acre. The HDR zone allows 16 units per are. This leaves a gap between a maximum between 11 and 16 units per acre.

Mr. Schiewe said the benefit of different building heights would allow some articulation in the townhome development. A 3-story unit would also allow a double-car garage. He referred the Commission to the photos of the Liberty Oaks development in Tualatin.

The Commission asked several questions about the Liberty Oaks development regarding setbacks, number of units per building and building height.

Mr. Schiewe said this particular project abuts a City of Tualatin open space. He discussed the square footage of the units and how much of each lot was covered.

In response to Mr. Whiteman's question, Mr. Schiewe said 11 units per acre does not pencil out. If you have 16.8 units per acre and a 2,000 square foot average lot size, you cannot build townhomes in the HDR zone. It would be an in-fill type of project where the street is already dedicated and you have 70 foot deep lots.

Mr. Wechner said this is why they are proposing a smaller average minimum lot size in the HDR zone of 1800 square feet.

Mr. Schiewe said townhomes are not typically built in the middle of a residential area. They are generally built in transition areas because that is where the price of the land for townhomes comes into compliance with it. It would be between a commercial, apartment building or residential area where the townhomes would make a transition. If you don't like townhomes in that density, then you are going to have apartments next to single-family residential. He discussed the market for townhomes.

Mr. Offer referred the Commission to the photos to identify the architectural features used to provide a variety in the façade. He had calculated the percentages for each of the developments.

Mr. Wechner said an architectural feature could be a gable, cornice, canopy, change in exterior materials, building roof line, or covered porch. A change in colors would not be considered an architectural feature.

Chair Emery asked if there was any further testimony. There being none, Chair Emery closed the public hearing on PA 01-02 Townhome Design Standards Plan Text Amendments for discussion by the Commission.

The Commission made the following changes to the draft code language:

- Section 2.204.02 Criteria, #3, add the words "street side yard" after front yard.
- Section 2.204.04 Infill Standard, change 2 acres to 1 acre.
- Section 2.204.05 Design Standards, change the percentage for all building elevations from a minimum of 30% of side and rear building elevations, to 20%.
- Section 2.204.05 Design Standards, add after 3 stories in height, "or a maximum 35 feet."

Patrick Allen moved the Planning Commission recommend to the City Council approval of PA 01-02 Townhome Design Standards Plan Text Amendments based on the public testimony, Staff report, findings and changes to draft language. Seconded by Lee Weislogel.

Vote for Passage of Motion: 6-Yes, 0-No. 0-Abstain

The Commission asked Staff to add the maximum and minimum density for MDRH, MDRL and HDR zones to their work program.

6. New Business

There were no comments.

7. Adjourn

The Regular Commission meeting was adjourned at 11:30 PM. They did not hold a work session on the Old Town Design Guidelines.

Respectfully submitted,

Planning Department