



**City of Sherwood  
PLANNING COMMISSION  
Stewart Senior/Community Center  
855 N. Sherwood Boulevard  
March 7, 2000 - 7:00 PM**

**A G E N D A**

- 1. Call to Order/Roll Call**
- 2. Approval of Minutes – February 15, 2000**
- 3. Agenda Review**
- 4. PUD 98-2 Millers Landing Phases 1 and 2 Final Development Plan & Subdivision Plat (continued from 2-15-00):** a 109-lot single family housing development on SW Edy Road and adjoining Wyndham Ridge PUD.
- 5. Public Hearings:** (Hearing Disclosure Statement. Also, declare conflict of interest, ex-parte contact, or personal bias) **Public Hearings** before the City Council and other Boards and Commissions shall follow the following procedure (Resolution 98-743, adopted June 9, 1998):
  - Staff Report--15 minutes
  - Applicant--30 minutes(to be split, at the discretion of the applicant, between presentation and rebuttal.)
  - Proponents—5 minutes each (applicants may not also speak as proponents.)
  - Opponents—5 minutes each
  - Rebuttal—Balance of applicant time (see above)
  - Close Public Hearing
  - Staff Final Comments—15 minutes
  - Questions of Staff/Discussion by Body—no limit
  - Decision (Note: Written comments are encouraged, and may be submitted prior to the hearing, at the hearing, or when the record is left open, after the hearing for a limited time. There is no limit to the length of written comment that may be submitted)
- A. SP 99-12/CUP 99-6/VAR 99-4 Home Depot Site Plan:** a request for site plan approval to construct an approximate 114,246 sf Home Depot retail center with an attached 14,820 sf Garden Center. The request also includes conditional use approval to allow a building and materials store, to allow seasonal outdoor sales of gardening merchandise, and a variance for the outdoor signage which exceeds the square footage permitted by the Code. The site is located east of Highway 99W, Tax Lot 800, Map 2S 1 29A.
- 6. New Business**
- 7. Community Comments** *are limited to items NOT on the printed Agenda.*
- 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**  
**March 7, 2000**

**1. Call to Order/Roll Call**

Chair Angela Weeks called the meeting to order at 7:05 PM.

Commission Members present:

Adrian Emery  
Jeff Fletcher  
Sterling Fox  
Keith Mays  
Jeff Schroeder  
Ken Shannon  
Angela Weeks

Staff:

Carole W. Connell, Planning Consultant  
Terry Keyes, City Engineer  
Roxanne Gibbons, Recording Secretary

**2. Minutes of February 15, 2000**

Chair Weeks asked if there were any additions or corrections to the minutes of February 15, 2000. There were no comments.

**Sterling Fox moved the Planning Commission accept the February 15, 2000 minutes as presented. Seconded by Keith Mays.**

**Vote for Passage of Motion: 6-Yes, 0-No, 1-Abstain (Emery)**

**3. Agenda Review**

Carole Connell announced the Home Depot application would not be heard at this meeting. The Planning Commission will not have a meeting on March 21, 2000. The next scheduled Commission meeting will be April 4, 2000.

**4. PUD 98-2 Millers Landing Phases 1 and 2 Final Development Plan and Subdivision Plat (continued from 2-15-2000)**

Chair Weeks announced this item was continued from the February 15, 2000 Planning Commission meeting. Additional information was received by the Commission as follows:

- February 28, 2000 letter from the applicant's attorney, Michael Robinson, Stoel Rives LLP regarding the application.
- March 7, 2000 letter from Michael Robinson requesting further revisions to the conditions of approval.
- An Exhibit Packet from Michael Robinson that included:
  - ORS 92.040(1), Tentative Plat approval is binding upon City for final plat approval.
  - *Bienz v. City of Dayton* case law.

- Land Use (1994) Oregon State Bar Continuing Legal Education Section 8.9.
- *Claus v. City of Sherwood*, LUBA No. 98-096, January 21, 1999.
- February 17, 2000 memorandum from the Division of State Lands regarding the permit renewals for Washington County. This renewal has been approved.

Chair Weeks reminded the Commission that this application is a request for final plat approval. The review by the Commission is to assure the applicant meets the conditions of approval and Code criteria.

Carole Connell reported that the property line dispute had been addressed and this information was included in the Commission packets. The applicant has agreed to quitclaim this property to the adjoining property owner.

Ms. Connell reviewed each of the recommended conditions. The Commission made the following changes:

- Modify Condition #1, “Modify Section 5.5 of the CC&R’s to include homeowner maintenance of the landscape corridors in the Edy Road right-of-way.”
- Delete Condition #3.
- Modify Condition #10, “A stained fence shall be constructed along the western boundary of the subject property prior to issuance of any building permits, with the exception of a model home permit.
- Modify Condition #11 by adding, “The City received USF&W Department acceptance of the trail in its current established location over the telephone on March 1, 2000. This condition has been satisfied.”

Ms. Connell said that with these minor changes the application for final plat seems to be in order and Staff is recommending approval of the application.

**Michael Robinson, representing the applicant, Stoel Rives, 900 SW 5<sup>th</sup> Avenue, Suite 2600, Portland, Oregon 97204, addressed the Commission. Mr. Ryan O’Brien from LDC Design Group was also in attendance. Mr. Robinson noted:**

- An acknowledgement from R. James Claus was provided for the record. This acknowledgement states that in exchange for a quitclaim deed from D.R. Horton Custom Homes to Mr. Claus of that certain tract of land which lies within (Claus) fence line as described in the Exhibits A and B, Claus agrees to withdraw his objections to Horton’s development known as Miller’s Landing. Claus further agrees to refrain from any further action, directly or indirectly, to appeal or otherwise object to the Miller’s Landing Subdivision, or to assist anyone else in doing so. The acknowledgement and declaration was made to facilitate compromise and settlement of a boundary line dispute and in no way is to be construed as an admission of liability by any party of interest.
- The applicant is in agreement with the conditions as amended tonight.

- The applicant is willing construct the fence prior to the model home being constructed. However, the applicant thought they could do a better job of installing the fence after the ground gets a little drier.
- The applicant has agreed to stain the fence on the west side.

Mr. Robinson said he would answer any questions. He also mentioned the handout he provided that discussed the legal status of final plats.

Chair Weeks said she appreciated the February 28, 2000 letter from Mr. Robinson. This letter clarified several issues. Mr. Robinson thanked her for her comments.

There being no further questions or discussion,

**Adrian Emery moved the Planning Commission approve PUD 98-2 Millers Landing Phase 1 and 2 Final Development Plan and Subdivision Plat with the conditions as revised. Seconded by Sterling Fox.**

**Vote for Passage of Motion: 5-Yes, 1-No (Mays), 1-Abstain (Emery)**

## **5. Public Hearings**

The Home Depot application was not heard.

## **6. New Business**

Carole Connell distributed copies of the Amended Petition for Writ of Mandamus that was filed on March 6, 2000 by the applicant for Home Depot. The Petition included an Order for Show Cause Hearing on Writ of Mandamus that was signed by the Circuit Court Judge. The hearing is scheduled for March 22, 2000, 9:00 AM in Courtroom 120J of the Washington County Courthouse. The Order states, in part, “.....City of Sherwood shall stay all local proceeding on Petitioner’s application as the date of this Order; and appear and show cause....why the Writ of Mandamus requested in the Petition, commanding Defendant City of Sherwood to finally approve the applications and pay all fees, costs and refunds as provided in the Petition, should not issue, and vacating this Court’s Order allowing issuance of Writ of Mandamus, dated this 6<sup>th</sup> day of March, 2000.”

Ms. Connell briefly discussed how the Petition would affect processing of the Home Depot land use application. The Court will determine if the City failed to process the application within land use statutes. If the Petitioner prevails, the application would be automatically approved. Any appeal would be to the Court of Appeals.

Ms. Connell reviewed the list of pending land use applications. The Hearings Officer will hear two site plans on March 20, 2000 at 4:00 PM at the Senior Center.

Chair Weeks announced the City has hired a Planning Director, David Wechner. He will be starting on March 15, 2000.

## 7. Community Comments

Chair Week asked if there was anyone who wished to provide comments.

**Robert J. Claus, 22211 SW Pacific Highway, Sherwood, Oregon 97140**, addressed the Commission. He noted:

- Home Depot has brought forward an issue that will be important to the whole community with regard to the Tualatin River National Wildlife Refuge.
- Sherwood is listed as one of the 50 most sustainable communities in the United States (number 49).
- ODOT's priority is to put in a signal at the observation center for the Wildlife Refuge. This has to be done because Congress approved a \$50 million grant for this purpose.
- If you want to have a sustainable community, you must have a way to manage your stormwater runoff.
- He talked about the carcinogenic fish that are being found in San Francisco Bay and now the fish are the product of uncontrolled stormwater runoff.
- If you do not manage your stormwater runoff, you will affect the ground water.
- The ground water in Moscow, Russia is so contaminated that bathing in it is more dangerous than drinking it. Our stomachs have linings that a lot of things can pass through, but when you get it on the skin, it won't pass through. Selenium is one of these things and is carcinogenic at a certain level.
- The US Fish & Wildlife Department know how to preserve anadromous fish such as Salmon. They also know how to manage the Wildlife Refuge.
- The City asked the USF&W Department to make a home for the anadromous fish, migratory birds and certain species in the Wildlife Refuge. They agreed to do this.
- He talked to Mr. Lyons at Home Depot about why the City was so upset about them building too close to the Wildlife Refuge. It is because in all likelihood, Home Depot is going to cause "takings".
- In the case of *US Justice Department v. FMC Corporation*, they had a pond near their plant and by accident they spilled chemicals and started killing birds. Unfortunately, for FMC these were migratory birds and the USF&W pressed criminal charges against the CEO of FMC.
- He told Mr. Lyons that if their web page is accurate and the web page, "Home Depot Sucks" is accurate, Home Depot apparently has an active program of poisoning birds in some of their stores because they don't want them fouling the store. The problem is that certain species of black birds are migratory birds.
- If this happens, you have committed a "takings" of migratory birds and this is a very serious criminal act.
- Mr. Lyons assured him that if they win the Writ of Mandamus, they are going to sit down and if they can't make the Refuge compatible, they won't build there.
- He said the Planning Commission needs to start planning to protect us from any incursions on migratory birds homes.

- He suggested the Commission and Staff have a work session with the USF&W, Forrest Cameron, about buildings that encroach into environmentally sensitive zones around the Wildlife Refuge. This should be done as soon as possible.
- The USF&W have some very valid suggestions that the ecological unit can make for the Home Depot building.
- If the City does not take the first step, it will only be a matter of time that the City has endangered the migratory birds because of its carelessness.
- This is not just land use that is being talked about; it is the long range sustainability of the community and its commitment to its children. It has to start with the Commission.

## **8. Adjourn**

There being no further business to discuss, the meeting was adjourned at 8:10 PM.

Respectfully submitted,

Planning Department