



**City of Sherwood
PLANNING COMMISSION
Stewart Senior/Community Center
855 N. Sherwood Boulevard
July 18, 2000 - 7:00 PM**

A G E N D A

- 1. Call to Order/Roll Call**
- 2. Consent Agenda - Approval of Minutes – June 6, 2000 and June 20, 2000**
- 3. Agenda Review**
- 4. Community Comments are limited to items NOT on the printed Agenda.**

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. Recognize that substance, not length, determines the value of testimony. Endorse rather than repeat testimony of others.)

A. SUB 00-03 Orchard Hill Subdivision Preliminary Plat (cont'd from 06-20-00): a request by Joe Broadhurst for a 56-lot single-family subdivision and 1-lot general commercial site, located west of Hwy 99W and east of Elwert Rd. Tax Lot 1201, Map 2S 1 31B and Tax Lot 5700, Map 2S 1 31BB. *(Carole Connell)*

B. PUD 00-02 Drennan Estates Preliminary Development Plan & Plat (cont'd from 05-30-00): a request by David & Joan Drennan for a 111-lot single-family attached and detached planned unit development located north of Sunset Blvd and east of the railroad tracks. Tax Lots 3000, 3100, 3200, Map 2S 1 31DA. *(Carole Connell)*

C. SP 00-01 Sherwood Industrial Park Site Plan (Oregon-Washington Lumber, owner)(cont'd from 05-30-00): a request for site plan approval to develop a 52-acre site with 390,466 sf of industrial flex buildings for use in warehouse, mfg, & incidental office use, located at 14890 SW Tualatin-Sherwood Rd, west of RR tracks and 1-mile east of Hwy 99W. Tax Lots 100, 101, 102, Map 2S 1 29D. *(Skip Wendolowski)*

- 6. New Business**
- 7. 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
July 18, 2000

1. Call to Order/Roll Call

Vice-Chair Keith Mays called the meeting to order at 7:05 PM.

Commission Members present:

Adrian Emery
Jeff Fletcher
Sterling Fox
Keith Mays
Ken Shannon

Staff:

Dave Wechner, Planning Director
Carole W. Connell, Planning Consultant
Terry Keyes, City Engineer
Shannon Johnson, Legal Counsel
Roxanne Gibbons, Recording Secretary

Commission Members absent:

Jeff Schroeder
Angela Weeks

2. Minutes of June 6 and June 20, 2000

Vice-Chair Mays asked if there were any additions or corrections to the minutes of June 6, 2000 or June 20, 2000. There were none.

Adrian Emery moved the Planning Commission accept the June 6, 2000 minutes as presented. Seconded by Sterling Fox.

Vote for Passage of Motion: 4-Yes, 0-No, 1-Abstain (Emery)

Adrian Emery moved the Planning Commission accept the June 20, 2000 minutes as presented. Seconded by Sterling Fox.

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

3. Agenda Review

Dave Wechner advised the Commission there were no changes to the Agenda. There are no public hearings scheduled for the August 1, 2000 Regular Commission meeting. Staff and the Commission may want to schedule a work session for this date.

4. Community Comments

There were no comments.

5. Public Hearings

Vice-Chair Mays 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.

5A. SUB 00-03 Orchard Hill Subdivision Preliminary Plat (cont'd from 6-20-00)

Mr. Shannon left the Commission table and did not participate in the hearing or vote on this land use application.

Vice-Chair Mays asked if Staff wished to provide additional information on this application.

Carole Connell, Planning Consultant, referred the Commission to the draft conditions dated July 11, 2000 which were in the Commission packets and made a part of the SUB 00-03 Orchard Hill Subdivision Preliminary Plat file. She noted:

- The Commission closed the public hearing on June 20, 2000 and continued the application to this date for Commission deliberations.
- The July 11, 2000 Staff report addressed two main issues. The ownership of the pump station has been resolved. ODOT modified their recommendation regarding access to Lot 57. The City does not support extension of the commercial Lot 57 to Elwert Road. The City finds that a pedestrian path to the commercial lot is important, but understands that the location of the path should not result in the loss of a lot. This is covered under Condition #2J.
- Condition #7 has been included to provide fencing along the property lines adjoining commercial zoned properties. A gate shall be provided at the pedestrian trail, which may be locked until Lot 57 develops, to prevent trespass.
- There were no other changes to the recommended conditions of approval.

The Commission made a few comments regarding access to Highway 99W and the adjoining properties.

Adrian Emery moved the Commission approve with conditions, SUB 00-03 Orchard Hill Subdivision Preliminary Plat, based on the findings contained in the June 13, 2000 and July 11, 2000 Staff Reports, agency comments, and public testimony. Seconded by Sterling Fox.

Vote for Passage of Motion: 4-Yes, 0-No, 0-Abstain

Ken Shannon returned to the Commission table to participate in the other land use hearings.

5B. PUD 00-02 Drennan Estates Preliminary Development Plan and Preliminary Plat (cont'd from 5-30-00)

Vice-Chair Mays called for the Staff Report. Carole Connell referred the Commission to the Revised Staff Report dated July 11, 2000, a complete copy of which is contained in the City Planning File for PUD 00-02 Drennan Estates PUD. She noted:

- The applicant made some changes to the plans for the three-phased planned unit development and preliminary plat. (Updated maps were made available to the Commission)
- Originally there were 111-residential lots and now there are 90-lots.
- Phase 1 (Tax Lots 3100 and 3200) propose 49 attached townhomes. This portion of the project would go through design review at a later date.
- Phase 2 and Phase 3 (Tax Lot 3000) proposes 42 single-family homes.
- The following exceptions or variances to the zone standards are being requested:
 - Lots with less than 50-foot width at the building line; Lot frontage less than 25 feet.
 - A cul-de-sac that is 1,360 feet long, exceeding the 600-foot limit.
 - Reduced right-of-way from 50 feet to 40 feet, but maintain pavement width at 28 feet.
 - Reduced rear yard setback from 20 feet to 10 feet for all lots adjoining the open spaces.
- The Fire District typically does not like long cul-de-sacs. They will require each house to be individually sprinklered with its own system.
- The proposed density is well within the allowed density. The Medium Density Residential Low (MDRL) zone allows 11-unit per acre. This would be 297 dwelling units on this property. The applicant is asking for 90-units which averages out to 3.3 units per acre.
- In exchange for these exceptions, the applicant is proposing to dedicate 14.26 acres to the City for public park and open space.
- She referenced the criteria for PUD approval contained in the revised Staff Report.
- The criteria for preliminary plat approval are also included in the revised Staff Report. These criteria deal with public improvements.
- The Commission decision will be a recommendation to the City Council. The Council will review this application, and if approved, will create a PUD Overlay Zone. The Final Development Plan would come back before the Commission for review.
- The City/County Residential Impact response from the Sherwood School District was made a part of the record.

Mr. Emery asked if there would be a homeowner's association and who would enforce the CC&R's.

Ms. Connell said the townhome site has several tracts which they may want to use for parking. This portion of the PUD would probably need to have a homeowner's association. This could be dealt with during the design review for this site. Prior to submittal of the Final Development Plan, the CC&R's would need to be drafted and these would be reviewed by the Commission.

Vice-Chair Mays asked if the applicant wished to provide testimony.

Dave Drennan, 15365 Hume Drive, Saratoga, California 95070-6416, addressed the Commission. Keith Jehnke, AKS Engineering, 18961 SW 84th Avenue, Tualatin, Oregon 97062 represented the applicant.

Mr. Drennan noted that since the May 30, 2000 public hearing, they have taken the report from the City Engineer and incorporated all of the requirements into the revised plat which the Commission is reviewing tonight. He noted:

- The July 11, 2000, Revised Staff Report included numbers that do not match the revised plat. The total number of units is 104, not 90. This is a reduction from the original 111 units. This reduction relates to a redesign of the center section of the site and removing some lots on the west portion of the site.
- The revised ratio would be 3.9 units per acre, not 3.3 units per acre. The townhome site density is 14 units per acre, not 11 units per acre. The project is proposed to be done in three phases.
- There are a couple of sentences in the Revised Staff Report that are no longer relevant because the design has been modified. On Page 7, first paragraph, remove the sentence, "Further, the roadway accessing Lots 101 to 108 has 25 feet of ROW and no turnaround." This has been designed out and is no longer relevant. On Page 7, second paragraph, remove the sentence, "No improvements are discussed in the application." These are a part of the revised application. On Page 8, under Fire District, remove phrase, "except that the roadway servicing lots 101-108 may have no on-street parking due to the narrow width." This has been designed out on the revised plat and is no longer a relevant factor.
- Other than the reference to the number of lots in the various phases, these are the only changes.
- Mr. Jehnke would provide comments on the proposed conditions of approval.

Mr. Jehnke, AKS Engineering, addressed the Commission. He noted:

- Tract A and Tract B are in the floodplain and will be dedicated to the City. The other Tracts may be used for parking. Tract E will be used for emergency access and the shaded area next to it could be used for parking.
- He referenced the Engineering memo dated May 18, 2000 and how the application addressed these comments.
- The middle entrance has been modified per the City recommendations.
- They are proposing the water connection serving Lots 1-42 be connected to the water system in Woodhaven during the construction of Phase 3.
- He addressed the recommended conditions of approval. On Page 9, Condition #5, the pedestrian trail system. The tract in the center of the site is being dedicated to the City. The trail system would be in this area between the wetlands and the property line. They are concerned about the steep slope of the site, how it drops into the wetlands and doing all this work in the sensitive area to provide a trail system. The City standards show an 8-foot trail which you really could not build in this area. The topography is too steep. They would propose that the 8-foot sidewalk/bike trail along Sunset Boulevard and the sidewalks along the interior roads on both sides be used to meet Condition #5. They do not have any approval from the railroad to continue the recommended trail system anywhere.
- Condition #10 references sight distance at all intersections. The intersection locations have been determined by the City. The recently approved adjacent subdivisions should have

addressed the sight distance issues. The City is partially responsible for any sight distance issues.

Mr. Drennan asked if they could get copies of the traffic reports for these adjacent subdivisions.

Mr. Jehnke continued with his testimony. He noted the additional changes to the conditions:

- Condition #12, the wording should be changed to match the findings of the Staff report. The right-of-way along Sunset Boulevard is narrower near the bridge location. The improvements should be constructed to match those on the opposite of Sunset Boulevard.
- Condition #15, the water main serving Lots 1-42 shall be connected during Phase 3 of the project.
- Condition #22, Lots 21-42 will have individual home sprinkler systems. Lots 1-20 are within the first 600-feet of the cul-de-sac.

Shannon Johnson asked the applicant what specific change they were recommending on Condition #5. Mr. Jehnke responded they would like to open this for discussion on how to meet the pedestrian trail system without doing a lot of work in the sensitive area and have the sidewalks be a part of the trail system.

Mr. Drennan discussed the steep slope of the site. It would appear that the asphalt path would need to be maintained in the wetland area on an on-going basis during the wet season. On-going maintenance will be required. There is the potential liability for any type of slides in this sensitive area. Ms. Connell said after the trail system is built, it would become the City's responsibility to maintain as a part of the City Parks Plan. This Plan identifies a trail system through this open space. They have an open space that they are trying to make usable.

Jeff Fletcher asked for clarification regarding the emergency access on Tract E to the townhome site and how parking could be allowed in this area. What would prevent people from parking there and blocking emergency access.

Mr. Jehnke said there would be a gate at Sunset Boulevard and the entrance to Tract E. You would be able to access parking from the road identified as "A". This parking would be in addition to the two parking spaces per unit.

Ms. Connell said it may be advisable to have this type of detailed review during the design review of the townhome site. You cannot tell from the drawing how the parking stalls would be lined-out.

Vice-Chair Mays asked if there was anyone who wished to provide proponent or opponent testimony.

Robert J. Claus, 22211 SW Pacific Highway, Sherwood, Oregon 97140, addressed the Commission. He was not a proponent or opponent of this application and noted:

- He did not agree with Ms. Connell regarding the design review process for the townhome site. If you do not have a clear set of standards, the PUD can move forward.
- A PUD has very clear standards. Canada did away with them by saying PUD's are simply a convenient way to buy zoning.
- The applicant bought the property at a fairly nominal price because the property had constraints. Now they are asking for a PUD. He cited the *Franland v. Lake Oswego* case which sets out the criteria for a PUD. There are five conditions that a PUD must meet and it has been held up in every court. This application must meet these standards.
- He did not believe this application meets the criteria for a PUD.
- He was especially concerned about an applicant who argues about providing pathways. If you are going to have connectivity throughout the City, you need to have the bikepath in this PUD.
- If the City of Sherwood is going to be tied together with a park system and bikepaths, which is one of the planning goals, a key piece will be going under the Hwy 99W and the railroad tracks to provide this connectivity.
- He would pay dearly for the pedestrian underpass on Highway 99W.
- The connectivity system for Sherwood is very important, even if it costs the landowners.
- A PUD is innovational and unique when you consider how you tie the plan with the City together.

Jean Lafayette, 230 SE Nottingham Court, Sherwood, Oregon 97140, addressed the Commission. This is a planned unit development where they will be building sixty units in a very small area. She noticed several open spaces with the first plan. She hoped that some of these open spaces could be used as play areas for children and not for parking. The project will not have very large yards and it is important to provide areas for the children to play.

Vice-Chair Mays asked if the applicant wished to provide rebuttal testimony.

David Drennan addressed the Commission. He said as an owner of the property, there are certain things they are concerned about. Some of these things are economical and others have to do with the livability of the project and need for open space. These are relatively small lots and what is done with the open space is really whatever helps the community and residents of the area. The other two phases have larger lots and there are some areas within the townhome section that have large lots. He would need to know more about the demographics of the area to see what would make the most sense for the open spaces in the project, which they had assumed would be best used for additional parking. They are flexible.

Mr. Drennan spoke about the trails. He did not know what would be involved with going under a railroad or highway. He could not respond to this unless he had some understanding of the economic impact. They hoped whatever is done would make it a viable piece of property to develop. It would be nice to have all of the trail links, but it has to be done in a reasonable fashion. He did not know realistically what the impact would be to make these types of improvements.

Keith Jehnke, AKS Engineering addressed the Commission. He said the layout of the plan limits the frontage access to the loop road. They have several odd-shaped lots. They could use Tract 7 for parks at the back of the site because there is extra space that could be utilized for playground space. It would be fairly easy to have something like this added to the plan.

Vice-Chair Mays closed the public hearing testimony on PUD 00-02 Drennan Estates for deliberations by the Commission.

Vice-Chair Mays said he could not support this application. He reviewed each of the required findings for a PUD and made the following comments:

- Regarding Criteria #1 – The Comprehensive Plan identifies this site as being part of the parks trails system. The applicant knew this site has topographic restraints when they purchased it. They want to develop a PUD in exchange for dedicating the open space. All the City gets is a lot of land that cannot be developed and trails that the applicant does not want to provide. He felt there are other ways to meet the requirements of the Comprehensive Plan than allowing the site to be developed as a PUD.
- Regarding Criteria #2 – This site could be developed under the current zoning and the City could purchase the open space for the trail system from the applicant for a fair price. The cul-de-sac length is reasonable because this is the only way to get to that portion of the site. He did not support the number of small lots for the townhome site. The surrounding properties are zoned for single-family and the townhome site would definitely be noticeable. The Commission did not receive any detailed information on parking or townhome elevations. The sidewalks are not an amenity and the trails are needed, but the applicant objects.
- Regarding Criteria #3 – He did not feel the plan meets this criteria. The Woodhaven townhomes do not have the same high density requested with this application.
- Regarding Criteria #4 – The site will be developed at a higher density, but the applicant does not want to provide the trails system through the open space. If the applicant does not put in the trails, there would be no means to develop the open space.
- Regarding Criteria #5 – The Parks Department could make an offer to purchase the open space from the applicant and this would meet the intent of the Parks Master Plan. The PUD will not have a beneficial effect on the area which could not be achieved with the underlying zoning other than a higher density for an undevelopable site.
- Regarding Criteria #6, #7 – The application meets these two criteria.
- Regarding Criteria #8 – He did not believe the general concepts of the PUD had been met.

Ken Shannon said the City Development Code does not have townhome standards. There are hardships on the site and the Commission needs to be consistent when reviewing these applications. Other applicants have changed their plans to meet Code requirements. He was concerned about the length of the cul-de-sac. He supported the trail system.

Dave Wechner advised the Commission that the density of the townhome portion of the proposed PUD would be 13.77 units per acre on this site.

Sterling Fox asked how the Commission could recommend denial without findings to support this recommendation. Vice-Chair Mays said if the Commission recommends denial, they could direct Staff to prepare findings and bring them back for review at the next Commission meeting.

The Commission asked for clarification from Staff regarding their recommendation to the City Council. Mr. Wechner stated that Staff would take the Commission's recommendation, either for approval or denial, based on the minutes of the meeting and findings, to the City Council. Staff would not recommend approval, if the Commission recommended denial or visa-versa.

Mr. Shannon said the applicant knew the restraints on the property when it was purchased. He asked if the City is obligated to see that the applicant is able to develop this site.

Jeff Fletcher asked for clarification of Criteria #5 regarding the PUD having a beneficial effect on the area that could not be achieved with the underlying zoning. Is it beneficial for the City to have this site developed as a PUD. He said the applicant is not sure they can provide the trail system. If this cannot happen, why would the City want this site to be developed as a PUD. He asked how many cul-de-sacs there were in the City that were longer than 600 feet.

Ms. Connell said there are some cul-de-sacs over 600 feet in length. From the audience, Mr. Claus said the Wildlife Haven cul-de-sac is 800 feet in length. Vice-Chair Mays said there is a long cul-de-sac in the Oregon Trail PUD.

Vice-Chair Mays asked Staff if this site could be developed with the existing zoning and still allow the City to meet the Parks Master Plan for a trails system. Mr. Wechner said this could be done without the site being developed as a PUD. Ms. Connell said this may require an amendment to the Parks capital improvement plan.

Shannon Johnson reviewed the Commission's comments specific to each of the PUD criteria. He said that the criteria for a PUD is relatively subjective and noted that Mr. Mays does not believe the plan meets Criterion 1, 2, 3, 5 and 8. With regard to Criteria #4, the plan does not identify a trails system.

The Commission was concerned about the trails system, small lots and lot widths, reduced right-of-way, parking and the length of the cul-de-sac.

Keith Mays moved the Planning Commission direct Staff to prepare findings for denial of PUD 00-02 Drennan Estates Preliminary Development Plan and Plat and bring these to the August 1, 2000 Commission meeting, under the Consent Agenda. Seconded by Adrian Emery.

Vote for Passage of Motion: 3-Yes (Emery, Mays, Shannon), 2-No (Fox, Fletcher)

Vice-Chair Mays recessed the meeting at 9:00 PM for a 10-minute break and reconvened the Regular Commission meeting at 9:15 PM.

5C. SP 00-01 Sherwood Industrial Park Site Plan (Oregon-Washington Lumber) (cont'd from 5-30-00)

Vice-Chair Mays called for the Staff Report. Dave Wechner referred the Commission to the Addendum to the Staff Report dated July 10, 2000, a complete copy of which is contained in the City Planning File for SP 00-01. He noted:

- The site is located between Tualatin-Sherwood Road and the Southern Pacific Railroad tracks, further described as Tax Lots 100, 101, and 102, Map 2S 1 29D. It borders Rock Creek on the west side and a good portion of the property is within the 100 year floodplain. It is also designated by the US Fish & Wildlife Service (USFWS) as being targeted for acquisition for the Tualatin River National Wildlife Refuge (Refuge).
- The application was heard on May 30, 2000 by the Commission. Mr. Ralph Webber, USFWS, representing the Refuge, testified at the hearing. The hearing was continued to allow all parties time to supply additional information.
- The USFWS provided additional comments in a letter dated July 11, 2000, which is attached to the Staff Report.
- He did some research on the Division of State Lands (DSL) and U.S. Army Corps of Engineers permits that will be required to work in the wetlands areas.
- Section 8.305.02 of the Development Code contains criteria for Wetlands.
- The USFWS comments related to the entire development of upland site for use as an industrial park; fill all seasonal wetland swales totaling an estimated 5 acres; establish a 25-foot buffer adjacent to the 100-year floodplain; and enhance and create nearly 6 acres of floodplain wetlands as a means to satisfy requirements for compensatory mitigation.
- The USFWS report focused on the protection of habitat on this site. The scrub-shrub wetland and forested wetland areas on the development site represent high-valued fish and wildlife wetland complexes.
- An environmental contaminant study was also submitted by the USFWS.
- The Friends of the Refuge submitted a letter dated July 18, 2000 and it was made part of the record and placed on the table for the Commission.

Vice-Chair Mays asked if the applicant wished to provide testimony.

John Brooks, VLMK Engineers, 3933 SW Kelly Avenue, Portland, Oregon 97201, addressed the Commission. He noted:

- The Staff conditions of approval have changed from the last meeting and he would address these.
- After they conducted a site visit with the USFWS, the applicant is more aware of the USFWS role in this process. The DSL and Corps of Engineers approval process will include consideration of the USFWS comments.
- When the applicant receives the DSL and Corps permits, hopefully, the USFWS comments will help shape how the final mitigation plan will be implemented.

- The site is targeted for acquisition by the Refuge, however, the owner is not obligated to sell the property to the Refuge. There is a question of economics and what makes the most sense for the property.
- The site is zoned industrial.
- Right now the plans show 15 acres of the site will be dedicated to the City of Sherwood to become part of the Refuge. He referenced the map and identified these areas.
- If the project does not received DSL and Corps approval, this development plan will not occur.
- The goal for the project has always been to provide for development of areas for new buildings by filling the lower quality wetlands on the upper portion of the site while preserving, protecting and enhancing the lower valley of the wetlands on the site.
- All the proposed work has been designed in accordance with the rules and regulations of the DSL, Corps of Engineers and Unified Sewerage Agency. These are the governing agencies for the work the applicant proposes to do.
- With regard to the 60-foot buffer, the applicant has always understood that if they wanted to do a proposal where they would not touch any wetlands, there is a standard 60-foot setback. If you want to do any fill in the wetlands or development you automatically go into the DSL and Corps review process.
- The wording of the conditions imply that the current plan will be acceptable with an approved permit from the DSL and Corps of Engineers. He suggested that this condition be revised to indicate that permits will be required from DSL, Corps of Engineers and USA, or meet the City of Sherwood standards. This way the wetland issues will be covered.
- The Corps of Engineers were not available for a site visit at this time. The DSL verbally commented that they did not have any big issues with the plan and they would suggest some changes to the mitigation. The applicant is pretty sure that the DSL will approve the plan.
- Both the DSL and Corps will take several months to work through the permit process.
- They have completed their traffic study and are working with Washington County. The initial conclusion is that the location of the proposed access road is acceptable.
- A right-turn lane in to the site will be required, but not during Phase 1. Once the next phase of buildings is built, a traffic signal will be required, as well as a left-turn lane to the site.
- They have significant water quality ponds on the site. There is a BPA easement through the middle of the site and this is where the ponds will be located. No one wants to get caught in the position of potentially polluting the wetlands with stormwater run-off. They are very sensitive to this issue and as well as any concerns of the Friends of the Refuge.
- He explained the stormwater water retention process and water quality facilities.
- USA said there should not be any detention on-site. The applicant will talk to USA again about this because of the concerns raised about the adjoining contaminated site, known as the Linke site. The applicant is not too concerned about the Linke site. They have read the report. The applicant will be very careful to make sure they maintain the current hydrology drainage.
- With regard to the 60-foot setback, it was their understanding that if you do not want to be involved in any wetland review, you would maintain the 60-foot setback from the wetland. If you encroach into that 60-foot setback, you are automatically subject to the State permitting process through DSL and Corps of Engineers. They plan to have the minimum 25-foot buffer

and they will also fill beyond that point. By the time they are done, there will be a 65 to 70 foot buffer between the wetland and the end of their development.

Dave Wechner read Section 8.305.02 of the Development Code, Wetland, Habitat and Natural Areas. In part, "The setback may be reduced to as little as 20-feet if the applicant shows such lesser setback will not adversely affect the wetland, provided Section 8.303.09A does not require more than the requested setback. The lack of adverse effect can be demonstrated by showing the following among other means." He read the three criteria a, b, and c. The interpretation of Staff is that 60 feet is the setback. The analysis of the wetland issue is that the 60-foot setback can be reduced if it complies with the Federal and State permit process. Staff has not received any evidence that the applicant has complied with these standards through the permitting process.

Mr. Brooks said the project could be conditioned to meet these criteria. The permitting process will take time. All of this criteria will be easy to achieve. They are going to maintain the 25-foot setback within the established 65-foot setback when they are done. To demonstrate that there is a necessity for this project, the necessity would be you need the development to have the economic return on the property. He asked if Staff thought there was some reason the applicant could not meet these criteria.

Shannon Johnson reviewed the conditions the applicant made comments on.

Mr. Brooks said the application should meet the City of Sherwood standards for wetland setbacks and obtain required permits from DSL, Corps of Engineers and USA.

Mr. Johnson said this is covered on page 15 of the May 23, 2000 Staff Report, Condition B3.

Mr. Wechner clarified that the applicant was responding to the finding on page 4 of the Staff Report Addendum dated July 10, 2000, as well as proposing changes to the conditions of approval. The applicant shall comply with the City standards for wetland setbacks or obtain the necessary permits from DSL, Corps of Engineer and USA.

Martin Schott, Schott & Associates, 11977 S. Toliver Road, Molalla, Oregon 97038, addressed the Commission. They prepared the wetland determination and delineation report for the applicant. This report is a part of the applicant's land use application submittal. He noted:

- He referred to the map and identified the location of the wetlands. There are a series of wetlands up to the center of this site that have been artificially created. This site has been massively graded in the past.
- In 1970's, the whole southern half of the upland areas of the site was terraced. Three terraces were created which run north-south on the west side of the creek. There used to be a creek that came to the property from the west. It was culverted and no one knows where the mouth of that culvert it located.
- Where the site is terraced, there is a break in the slope and a series of parallel wetlands. Because these wetlands are over an acre in size they are under the jurisdictional wetlands. Some of the wetlands are under the BPA power lines.

- There is one smaller area that is developing into a forested wetland. Most of the wetlands in the upper area are very low quality, emergence wetlands. These are the wetlands they are proposing to impact. This would be the top 5 acres of wetlands.
- They are proposing two main types of mitigation. The blue area on the map will be the wetland enhancement. Initially, they wanted to put in a series of dams to raise the water level from Rock Creek. This idea was dropped because of the old tannery site and possible pollution. They will not be doing any grading within the existing wetland area in the 100-year floodplain.
- He explained the process they would use in the upland area referencing the map. This will include re-establishing native vegetation in the 25-foot buffer. They also plan to daylight a portion of the creek.

Ralph Webber, (opponent) USFWS, Tualatin River National Wildlife Refuge, 16340 SW Beef Bend Road, Sherwood, Oregon 97140, addressed the Commission. During the last thirty days they have had an opportunity to look at the site and gather more information. He read the July 11, 2000 letter from the USFWS, Kemper M. McMaster, State Supervisor. This letter was made a part of the record and included in the Planning Commission packets. He said they have a specialist who would answer any questions regarding the site adjacent to this property which has contaminants on it. He noted:

- The July 11, 2000 letter summarized that because of the potential impacts to the Refuge and Federal trust resources, it is their recommendation that the project, as proposed, be denied approval of obtaining a permit from the City of Sherwood.
- The USFWS was concerned about any transfer of contaminants from the Linke site.
- He asked where some of the information came on what the history of the site was, as presented by the applicant's representative.
- Long term management of the wetlands is the key. If the applicant went in and restored the floodplain, who would be the land manager. If not managed, the reed canary grass could come back in, over time, and take of the rest of the herbaceous wetland plant community.
- The National Fishery Service will be involved in this process. They are not the permitting authority, but because of the listed species in the basin, the Corps of Engineers will go through consultation with this agency.
- He heard a lot of discussion about DSL. This permitting process is in addition to the Corps of Engineers permit. It is not in replacement of and the primary jurisdiction is the U.S. Army Corps of Engineers. Without their permit, the project cannot be developed if they are dealing with filling the wetlands.
- Two important criteria that the Corps requires are the site analysis to avoid wetlands the applicant must demonstrate that they have made every effort to avoid the filling of wetlands. The Corps also looks at the relationship to contaminants in the area.
- It is the policy of the USFWS not to accept compensatory mitigation projects on the Refuge. This is a national policy of the Agency.
- With regard to having sediment detention ponds under the BPA lines, in almost all easements the USFWS has dealt with the BPA on the powerlines crossing the Refuge, these lines are dedicated for the sole purpose of the intended purpose easement. The BPA does not grant

any other easement underneath their powerlines. He questioned whether it would be possible to locate these ponds under the BPA lines.

Mr. Webber said Mr. Buerger would answer any questions from the Commission regarding contaminants.

Ted Buerger, USFWS, Oregon State Office, 2600 SE 98th Avenue, Portland, Oregon 97266, addressed the Commission. He noted:

- The Linke Enterprises site is located to the south of this project. Currently, two tax lots adjacent to the Linke site are being proposed to be purchased. These are Tax Lots 400 and 500. Tax Lot 600, the Linke property, is not being proposed for purchase. This is where the sediment basin lagoons are found. This is where they did most of their work on sampling the area for find out what the existing contaminants were and any influence they may have downstream in Rock Creek.
- They could not really address to a great degree the amount of migration of contaminants from the Linke site to this proposed project area because at the time the study was done in 1994, the property owner would not allow them access to the Oregon-Washington Lumber site.
- They did sample near the railroad trestle and Tualatin-Sherwood Road. Essentially, contaminants had not moved off the Linke site, into Rock Creek and downstream in either of these two locations in concentrations that would be of concern to the USFWS. What they don't know is what would happen to the Linke site if anything occurs in terms of soil movement or adjustments to these sedimentation lagoons.
- In their opinion, the Linke site should be addressed. This can only be addressed by the DEQ in coordination with Linke Enterprises of Oregon, Inc.
- Their recommendation is to not consider restoring or enhancing the wetlands until the contaminants on the Linke site are addressed.

Sterling Fox asked what would happen if the applicant did not enhance their site and built the buildings. Adrian Emery asked if the USFWS was prepared to accept the recommendation of the Corps.

Mr. Webber said this would really be under the jurisdiction of the Corps of Engineers. The Corps will come to the USFWS with a request to review the project proposal. The USFWS will provide comments. The Corps will take these comments into consideration and write their final recommendation for conditions. The Corps determines whether they want to apply conditions as requested by the USFWS in issuing the permit.

Mr. Fox asked why Linke Enterprises did not clean up their site. Mr. Buerger said unfortunately they are in a situation where Linke Enterprises is probably not a viable party to clean up the site. So the reality of the situation may be if they are not financially able to clean the site up, this would mean it would become an orphan clean up site. The only way it would be cleaned up is when DEQ evaluates the site and believes it is a priority to expend its limited resources to clean up the site. The water moves to the north from the Linke property. He identified the Rock Creek flow movement on the map.

Mr. Fox asked if the applicant could leave the wetlands on their site alone and build their project.

Mr. Webber said there is still the issue of the wetlands the applicant is proposing to fill within the upland areas. He identified the area on the map. There are 5-6 acres of wetlands that are jurisdictional that are being proposed to fill. The Corps will review the applicant's application to see what type of analysis was done to try to avoid the filling of these wetlands. Thus far, there has been no change in the proposal to fill all the wetlands on the site. To his knowledge, the applicant is proposing to fill all the wetlands on-site. If the applicant decided to reduce the amount of fill of wetlands, then perhaps the Corps may issue the permit with the condition that they have compensatory mitigation and that it occur at another site, away from the contamination. Normally, the Corps would prefer that wetlands not be filled and then have mitigation occur for equal acreage. The first preference is avoidance. The actual basin portion of the wetlands, where you have the herbaceous wetland plants may be a lower quality, but there is a shrub and tree canopy around these swales that is very valuable. It has a very diverse canopy structure that is very important to wildlife referred to as "edge habitat".

Mr. Shannon asked what businesses contaminated the Linke site. Mr. Buerger said primarily it is the tanning operation that uses a chromium in the tanning process. There was also a battery manufacturing plant on the site. In his discussion with the DEQ, the proposed purchaser of the Tax Lots 400 and 500 wants to enter into the voluntary clean-up program with DEQ – the previous tannery site and the battery factory site. There is a fair amount of contaminants between the lagoons and the infrastructure that was there. This is partially the result of burying hides on the site.

Clarence Langer, (proponent) 15585 SW Tualatin-Sherwood Road, Sherwood, Oregon 97140, addressed the Commission. He noted:

- The Oregon-Washington Lumber site used to be a dairy. As far as he knows there was never anything dumped on the site.
- The opportunity is here and you can't just let this piece of property sit. It is time to do something with it.
- Traffic and signalization is an important issue. He identified on the map where the proposed realignment of Adams Avenue would occur. This would alleviate many of the potential traffic problems from this site.
- When they go to mitigate the wetlands, maybe they should mitigate another portion of the site.

Jean Lafayette, 230 SE Nottingham Court, Sherwood, Oregon 97140, addressed the Commission. She asked how this project would fit into the Council goals. One of the Council goals is to see that the Refuge is fully funded and developed. It does not sound like the development of this site is taking the Refuge into consideration. She asked for clarification regarding the recently adopted Metro 2040, Title 3 and how this project would be affected by it.

Shannon Johnson responded that this application was submitted prior to the adoption of Title 3. Any changes to the Comprehensive Plan after the date the application was submitted would not apply to that application.

Joan Patterson, Friends of the Refuge, 25795 SW Meadowbrook Court, Sherwood, Oregon 97140, addressed the Commission. She distributed a corrected copy of her letter dated July 18, 2000 for the record. The Friends of the Refuge have some concerns regarding this application. They believe the site plan does not comply with the 60-foot wetland setback standard. She referenced Section 8.305.02 of the Development Code. The application, in its current form, does not meet the Code criteria for approval regarding wetland setbacks and mitigation for the elimination of wetlands.

Mr. Wechner read Section 8.305.02A2 of the Code that Ms. Patterson referenced, "Where existing wetlands are eliminated by the facility, the applicant will develop or enhance an area of wetland on the site or in the same drainage basin that is at least equal to the area and functional value of wetlands eliminated."

Vice-Chair Mays asked if the applicant wished to provide rebuttal testimony.

John Brooks, addressed the Commission. He said most of these issues were discussed previously. They deal with a lot of industrial sites that have wetlands on them and there are always compromises. With regard to the comments by Mr. Webber, some of the issues are typical for projects that go through the DSL and Corps of Engineers permitting process. They have been required to provide several alternative analysis designs. They had several different layouts for this project. It is a combination of what makes the most economic sense and what meets the development requirements. This is all part of their application and a part of the record. If they were to leave all the wetlands alone and place buildings between the wetlands, they would not be industrial buildings. This site has been zoned industrial for twenty years and it has to be developed that way.

Mr. Brooks was concerned with the discussion regarding the polluted site next door. No one has shown any evidence that what they are proposing is going to have an effect on the floodplain. Most of this discussion was speculation. They are not going to do any work on the site next door. With regard to long term maintenance of the wetlands, that is a part of the Corps of Engineers primary requirements. The applicant will have to post a bond for long term maintenance, 5 to 15 years. If some of the wetlands are turned over to the USFWS after they are required to maintain it for a certain period of time, he was sure the USFWS has some projects in place to continue that maintenance.

Mr. Brooks said the proposed project is the best use of the site for industrial land and allows the owner to get the best economic use out of the property. They have to address the sixty foot setback by having no adverse effects. They have provided a complete landscape plan which identify how the buffer will be enhanced and maintained.

Vice-Chair Mays asked if the applicant was aware of the Staff recommendation that the Commission continue the hearing until more information is received regarding the wetlands mitigation.

Mr. Brooks said when they started out, Staff was recommending this because they were not sure the project could be conditioned relative to DSL and Corps of Engineers approval. He thought this was resolved by modifying one of the conditions.

Mr. Wechner said part of Staff's recommendation was to review the material that had been received. The applicant has not shown that they can meet Section 8.305.02A1C of the Development Code by submitting the application for review to the DSL and Corps of Engineers. The City has not received any analysis from these agencies. He asked Mr. Brooks several questions about elevations on the site and what the slope would look like between the wetland area and the upland area as developed.

Mr. Brooks said they start at the edge of the wetland and maintain 25 feet so that the existing slope stays and a 2:1 slope starts 25 feet back from the edge of the wetlands that is about 45 feet wide. So there is a total of about 65 feet setback. The final elevation in the parking lots for Building A would be about 160 feet. The floodplain elevation is 133 feet. The 25-foot buffer that they have to maintain has a very steep slope. They do not touch anything inside of the 25-foot buffer. They are proposing plantings on the 2:1 slope.

Mr. Wechner said given the elevations on the property and the placement of the water quality facilities, where would the drainage to the water quality facilities be and how was it going to be drained out.

Mr. Brooks responded that it would have to be a dropped manhole with a flat pipe running out of the bottom of it. It would not be a spill going down the hill.

Mr. Wechner said they would propose to USA that they maintain stormwater on the site and metering it out at a 25-year storm rate. Mr. Brooks said he was not the civil engineer on the project and depending where you are in the drainage basin there are different requirements for the pre-developed rate and post-developed rate. You try not to release any faster than a normal 25-year storm. From what USA has said previously, he did not think they were going to allow the applicant to do any detention.

Vice-Chair Mays asked if the applicant was willing to continue the application until the applicant has filed applications with the DSL and Corps of Engineers or if the applicant wished to Commission to make a decision at this hearing.

Mr. Brooks said to wait until the applicant has filed the application would not solve the problem. They would need a final decision on it from the DSL and the Corps of Engineers. This would create a kind of indefinite continuance. Filing the application is not a problem, but receiving a response to their review could take up to six months. He would rather have the Commission vote

on the application tonight and condition it to receive approvals from the DSL and Corps of Engineers. If the applicant does not receive these permits, the whole project would be dead.

Mr. Johnson provided a copy of Development Code to the Commission to review Section 8.305.02 Wetland Standards. He made specific reference to Section 8.305.02A1, Parts a, b, and c. He read these sections. As a general review, there are no “ands” or “ors” in these sections. His point of view by the general context of the language is that you don’t have to show all of these sections being met. The Commission could make a decision that the applicant meet one or all of these sections. His understanding was that there was no text submitted by the applicant specifically addressing these criteria. If there is no additional evidence that the applicant wants to provide, it would not make sense to continue the hearing, and the Commission could make a decision based on the information they have before them.

Mr. Brooks said they have provided a wetlands mitigation plan which would meet the criteria for Section 8.305.02A1b. They will go through DSL and the Corps of Engineers for permits to meet Section 8.305.02A1c. He discussed the wetland mitigation to meet Section 8.305.02A2 regarding wetland enhancement.

Vice-Chair Mays closed the public hearing testimony on SP 00-01 Sherwood Industrial Park Site Plan for Commission deliberations.

The Commission discussed the DSL and Corps of Engineer permitting process. They discussed whether they should approve an application prior to seeing the permits from DSL and Corps of Engineers.

Mr. Wechner reminded the Commission that their decision would be a recommendation to the City Council. This application is being reviewed as a Type IV.

Mr. Brooks said the applicant would agree to a continuance to August 15, 2000 and extend the 120-day deadline by 60 days.

Mr. Wechner said Staff is saying at this point in time, the applicant has not justified the plan as meeting all of criteria for Site Plan approval, in particular the criteria under Section 8.305.02 Standards. He asked if the State had reviewed the mitigation plan submitted by Mr. Schott.

Mr. Brooks said the applicant had not received any evaluation from the State at this time and they do not know when they will receive it. The Corps of Engineers have to tour the site first before they will accept the application. They will not be available for another 2 weeks and it may be longer before they can tour the site.

Mr. Webber said the USFWS can accept a donation of land, but they cannot accept a donation of land that has mitigation associated and tied with it as a condition of the Corps of Engineers. They cannot accept a compensatory mitigation donation because it does not support a “no net loss of wetlands policy”. If the applicant donated the wetlands to the City, the USFWS could not

accept this donation from the City and be responsible for management as a condition of the Corps of Engineers permit.

Mr. Brooks said the applicant would agree to a sixty day extension of the 120-day deadline and agree to a continuance to the August 15, 2000 Regular Commission meeting.

It was the consensus of the Commission to continue SP 00-01 Sherwood Industrial Park Site Plan public hearing to the August 15, 2000 Regular Commission meeting and extend the 120-deadline by 60 days, as agreed to by the applicant. The Commission asked the applicant to provide documentation that they have met the criteria of Section 8.305.02.

6. New Business

Dave Wechner advised the Commission there were no public hearings scheduled for August 1, 2000. The plans are to have a work session for this meeting. This session will be to review the public hearing process, transition to the Hearings Officer and discuss the Development Code update. This work session may be scheduled to begin at 6:00 PM.

7. Adjourn

There being no further business to discuss, the Regular Commission meeting adjourned at 11:20 PM.

Respectfully submitted,

Dave Wechner
Planning Director