



**City of Sherwood  
PLANNING COMMISSION  
Masonic Hall, 60 NW Washington Street  
Tuesday, April 20, 1999  
7:00 PM**

**A G E N D A**

- 1. Call to Order/Roll Call**
- 2. Approval of Minutes - April 6, 1999**
- 3. Agenda Review**
- 4. 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. (Continued from April 6, 1999) PA 99-3 Hearings Officer Plan Text Amendment (Type IV)** to the Community Development Code, Part 3, amending Zoning Code Section 1.202.01 to include a definition for “Hearing Authority” and Zoning Code Chapter 3 to establish a Hearings Officer for the review of Type III decisions which include conditional uses, variances, major site plans (greater than 15,000 sf of building area) and major subdivisions (greater than 3 acres of land area).
- 5. Community Comments:** are limited to items NOT on the printed agenda under Public Hearings.
- 6. Other Business**
  - A. Discussion of Functional Plan Requirements**
- 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**  
**April 20, 1999**

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

Chairman Whiteman called the meeting to order at 7:00 PM.

Commission Members present:

Adrian Emery  
Sterling Fox  
Keith Mays  
Paul Stecher  
Angela Weeks (7:05 PM)  
Bill Whiteman

Staff:

Greg Turner, City Planner  
Jason Tuck, Associate Planner  
Roxanne Gibbons, Secretary

Commission Members absent:

Ken Shannon

**2. Minutes of April 6, 1999**

Chairman Whiteman asked if there were any additions or corrections to the minutes of April 6, 1999. There were none.

**Adrian Emery moved the Planning Commission accept the April 6, 1999 minutes as presented. Seconded by Keith Mays.**

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

**3. Agenda Review**

There were no changes to the Agenda. Chairman Whiteman asked for clarification regarding the Drill property and a January letter from Genstar regarding Sunset Boulevard improvements. Greg Turner said the City Council will hold a public hearing on Tuesday, April 27, 1999 to continue their review of the Sherwood Springs land use application and discuss the letter from Genstar regarding the payback agreement. This public hearing was continued from the April 13, 1999 City Council meeting. Chairman Whiteman asked what action was expected from the City Council. Mr. Turner said he would expect the action to be that Genstar has done the improvements and the Drill's would not have to contribute. Chairman Whiteman said Mrs. Drill believed because she gave a 5-foot easement to widen Sunset and in doing so, without compensation, she would not have to pay anything. Mr. Turner said this would all be discussed at the Tuesday, April 27, 1999, Council meeting. Chairman Whiteman said Mrs. Drill's main concern was a letter that the City apparently had in January 1999 did not show up until the very end of the process and she wanted to know why. Mr. Turner said the Staff Report included a statement that the City Council would be reviewing the payback agreement.

#### **4. Public Hearings**

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

#### **4A. PA 99-3 Hearings Officer Plan Text Amendment (continued from April 6, 1999)**

Chairman Whiteman said this is a request which was initiated by the City Council to consider a plan text amendment that would create a hearings officer. He called for the Staff Report. Greg Turner referred the Commission to the Staff Report dated April 6, 1999, a complete copy of which is contained in the Planning Commission's minutes book. He noted:

- The hearings officer would review subdivisions, conditional uses, variances, and major site plans.
- The Planning Commission would still review legislative decisions such as PUD's, plan text and plan map amendments.
- Based on the current system, appeals of the hearings officer decision would go to the City Council.
- The noticing would remain the same and the public hearings would remain the same.
- Typically, a hearings officer is a land use attorney, so they bring some expertise as far as the process is concerned.
- Other jurisdictions using a hearings officer are Tigard, West Linn, Gresham and Washington County. Oregon City is currently looking at the hearings officer.
- In response to Chairman Whiteman's question, Staff said that most of these jurisdictions are larger than Sherwood.

Keith Mays said when he attended the Commissioner training in Eugene last Fall, there were several jurisdictions in Oregon, outside the Metro area, which used the hearings officer process.

Sterling Fox asked who would advise the hearings officer. Mr. Turner said Staff would continue to write the report on the land use action for the hearings officer. He thought Staff would still attend the meeting which would be a public hearing. Chairman Whiteman said he had talked to Mayor about the additional cost for a hearings officer. Mr. Turner said the additional cost to the applicant would be based on the number of cases. He estimated the hearings officer would be reviewing about 20 cases at a cost of approximately \$1,000 per case. The applicant would still pay a fee for the land use application. He did not know if the City would raise the fees to help cover the hearings officer process. The Planning Commission would want to look at the Code which would enable the hearings officer to render decisions based specifically on the Code. Chairman Whiteman specifically referred to private streets and a recent ruling by the City Attorney regarding private streets. Mr. Turner said what the Commission did at the last meeting was proper because it was a subdivision. If you get into policy issues, Council has said they have a policy not to allow private streets, but the Code apparently allows some private streets.

**Chairman Whiteman asked if there was anyone who wished to testify regarding PA 99-3 Hearings Officer Plan Text Amendment.**

Robert James Claus, 22211 SW Pacific Highway, Sherwood, Oregon 97140, addressed the Commission. He wanted to discuss why some changes needed to be made. He made the following comments:

- He was aware this request was coming from the City Council and not the City Staff.
- The City Council has a small investigation on their hands now and it comes about for exactly the same reason he is going to suggest to the Commission why, if he were them, he would want a hearings examiner.
- He said the Commission is a legal governing body. The state of Oregon gives the Commission certain absolute authority and then the City Council, through the City Charter, delegates other authority to the Commission. The principal governing body is the City Council.
- Every state starts out with an “enabling act”. He discussed the California and Oregon acts. This act allows cities to have powers delegated to them to regulate land use. The right to use your land is not merely a property right, it is a civil right. He talked about some examples.
- Oregon took the enabling statute which Hoover did and blended it in with one from California and created authority. Governor McCall came along and created Senate Bill 100 which granted more authority and formalized the process.
- There is an interesting situation in Sherwood right now. They have a City Manager who tells everybody what he wants and then he gets it implemented. This is a structurally flawed process and that is why a hearings examiner is necessary. The City needs someone to look at the statutes, tell you what they say and where they don’t say something, come back to the Commission and say as a policy, what do you want me to do. The City needs a professional in lieu of the current Staff and City Manager. This person would answer directly to the City Council. They would have to be hired and fired by Council.
- Sherwood has the strongest form of City Manager in the state of Oregon. There is not another City in Oregon which has a Charter like Sherwood’s. Technically, if the Mayor has a long talk with the City Manager, the citizens could call for his resignation. Under the current system you can’t talk to these people in order to set policy. You have to go to Jon Bormet, or in the past, Jim Rapp, and say this is the policy and hope it gets interpreted. The first thing structurally to clear this up is to get a hearings examiner who works for the Commission and the Council. Then let’s get a lawyer.
- When they did the Columbia partition, he tried to warn the Commission, with an attorney, that the Code was not clear. This is in the record. He distributed three exhibits:
  - April 15, 1999 letter from City Planner, Greg Turner to him regarding MLP98-2 Claus Columbia Partition.
  - Multiple Listing System information regarding the Cottle Partition.
  - Multiple Listing System information regarding the Stocker Partition.
- His partition is now illegal over exactly the issue his attorney, Mr. Hart, tried to tell the Staff it was going to be illegal. What did Hart know, Mr. Hart is only the City Attorney for Willamina.
- He spent \$6,000 on an attorney trying to correct this and now they find out Derryck Dittman’s 1996 letter was wrong. He has \$25,000 in the Columbia Street Partition and he still can’t partition his property.

- He has no resentment towards Mr. Cottle, but he recorded his partition and he sold it, through the same process, and he did it with an easement. So the letter which makes the Columbia Street Partition illegal, allowed Cottle to do his. Did the Staff immediately called the County and title company and say please notify everyone that this is an illegal parcel, as they are required to do?
- He said they must have notified Mr. Stocker, who was not assessed any charges. This parcel was also recorded and is being sold without any notification from the City.
- Both of these partitions have easements and they were not charged any fees. He was charged fees, he has put in the same easement and now it is illegal.
- When they are at LUBA, they have the right to make this interpretation on Cottle and Stocker. They don't have the right not to make it the same way on him. Think about it, if he was an ordinary citizen and did not know he had been targeted.
- From a planning viewpoint, every time one of the planners spoke, particularly Ms. Engels, the accountant, he wondered if he had ever been to Stanford or Berkeley. He brought in a lawyer to try to say this could not be done. They put a 1996 letter in the record from Derryck Dittman which he is now recanting on.
- The City needs a professional that is hired by the City Council, not Jon Bormet. They need someone who knows the law and can come back and ask for policy land use decisions and then implement them. They need a lawyer who will look at case law and not put something in the record as was done to him and then turn around and recant.
- The Commission should wonder why Mr. Dittman drafted a letter at the request of Sue Engels and set policy in this town about how you parcel. Why didn't he come to the Commission and ask what the policy was on private streets.
- For one year he has been pouring money into the Columbia Street project, listening to utter nonsense, bringing lawyers to the Commission, having him call and write Dittman letters and then finds out we were right.
- The Commission needs to get a hearings examiner who works for the City Council, because the Commission works for the City Council. They don't work for the City Manager. Second, they need to have him go through the Code and identify the policies and ask the Commission what they are. He trusts the Commission and he has seen them in their toughest moments.
- The Code is not very clear and this is the very reason he is encouraging the Commission to do this. The Commission needs to make policy and say:
  - The hearings examiner works for the City Council.
  - The hearings examiner should write the analysis and findings of fact.
  - The fees should go through the hearings examiner, not through the Staff.
- He does not particularly have anything against narrow streets, other than they kill people and they don't work. The Commission should have made this decision, this is a policy decision. He really does not care about sewer lines as long as they work. If anybody is going to change the sanitary sewer plan in this town, no citizen should have to make a private agreement with the City Attorney and City Manager because they changed the plan.
- He believed the Staff is here to implement policy decisions and they have demonstrated so thoroughly that the current mechanism with the City Manager running everything and getting his likes and dislikes of people involved has to change.

- Why are private streets the rage right now, because you can't have a private street right now without a maintenance agreement.
- Major policy decisions should be made by the Commission and Council and the Staff should implement them. The only way to do this is have the hearings examiner work for the Council and not the City Manager.

Chairman Whiteman said he heard Mr. Claus making a very definite difference between a hearings officer and hearings examiner. Mr. Claus said he wanted a hearings officer/examiner. He wants the individual to write their own findings of fact and be a full blown hearings examiner because he would have to come in front of the Commission. The Commission and Council would then make the policy decisions. He discussed how this process is done in Canada. He has some comments and changes for the plan text amendment which he would provide to the Commission.

Adrian Emery reviewed Mr. Claus's major points:

- The Code would need to reflect what the Commission wants.
- Fairness to all concerned and unbiased.
- Policy issues come back to the Commission from the hearings authority or officer.
- Hearings officer/examiner is hired by the City Council.
- Review and identify policy issues for the Commission.

Mr. Claus discussed estoppel and latches, the Pacific Lumber site plan, and the actions of the City Manager being ultravarious. In response to Ms. Weeks' question, he said he would have an attorney for the hearings examiner.

**Chairman Whiteman asked Mayor Hitchcock if he wished to provide testimony.**

Mayor Walt Hitchcock said he was there at the request of the Chairman Whiteman to respond to the question of why they were recommending this plan text amendment. He made the following comments:

- There is a long list of Code changes which need to be done.
- The City is at the implementation point for the Metro 2040 and the Functional Plan. The City needs to look at all of these items and decide what needs to be done.
- The Code needs to conform to the street standards that are currently being applied.
- The Council's desire is to take the routine land use applications which seem to take a lot of the Commission's time and have them decided, where the state land use statutes say they should be decided, and purely on the issues of Code requirements.
- It is an issue of time and for those decisions which are relatively straightforward, or should be, there needs to be a system of streamlining where things go according to the Code.
- The Commission has a lot of work to do and not much time to do it in. They will never get to it if they continue to review the relatively routine land use applications. They haven't even got to the roads yet and it has been three years since the street standards in the Code have been updated.

- Relative to what is being proposed, the Council has great faith in the Commission that they will go through the Code, decide which items should be heard by a hearings officer, who should appoint the hearings officer, how Code interpretations and appeals should be handled. He suggested the Commission review the process for land use decisions and recommend which ones would be appropriate for review by a hearings officer, the Planning Commission, or Staff.
- The Commission should look at the process in general, including appeals.
- If they have a hearings officer, why would they take a 3-acre subdivision and make it a Staff decision? There are a lot of things which are taken as a given when looking at the Code, but would not be taken as a given if there was a hearings officer.
- He would hope two things would come out of this review:
  - A recommendation of giving the hearings officer ordinance modifications to the existing system which does the best job for the City, and
  - When you step back from it, should the hearings officer plan text amendment be supported or not.
- This is an important issue and to a degree removes certain levels of authority from the Planning Commission, and potentially from the Council, and it should be done in a very thoughtful manner.

Angela Weeks asked if he was suggesting the Commission review the current streamlining process. Mayor Hitchcock said if the Commission feels this is appropriate, they should review it. Any recommendation or Code changes would be adopted by the City Council. The hearings officer is one piece of the process. It should be looked at as one complete package.

Chairman Whiteman thanked Mayor Hitchcock for attending the meeting. Mayor Hitchcock extended an invitation to the Commission to schedule a joint meeting with the City Council. The Commission suggested the joint meeting could be held on the 5<sup>th</sup> Tuesday of the month when there is no regular Commission or Council meeting scheduled. Roxanne will communicate with Chris Wiley to schedule the first joint meeting for June. Ms. Weeks asked if this could be done on a quarterly basis. Mayor Hitchcock said this would be fine and it is important. He agreed the joint meetings could be held on the 5<sup>th</sup> Tuesday of the appropriate month.

**There being no further testimony on PA 99-3 Hearings Officer Plan Text Amendment, Chairman Whiteman closed the public hearing and left the record open for discussion by the Commission.**

Chairman Whiteman suggested the record be left open to receive written comments from Mr. Claus as well as any other party. There also may be some possible amendments to the City Charter which the Commission may recommend. Following further discussion and because of noticing requirements, the Commission decided the public hearing should remain open.

Chairman Whiteman suggested if there was nothing else scheduled for the May 4, 1999 meeting, the Commission could have a work session at this meeting. The Commission concurred.



**Keith Mays moved to reopen the public hearing on PA 99-3 Hearings Officer Plan Text Amendment. Seconded by Adrian Emery.**

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

**Keith Mays moved PA 99-3 Hearings Officer Plan Text Amendment be continued to the May 4, 1999 Regular Commission meeting. Seconded by Sterling Fox.**

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

## **5. Community Comments**

Robert J. Claus, 22211 SW Pacific Highway, Sherwood, Oregon 97140, addressed the Commission. He discussed the Tualatin River National Wildlife Refuge (Refuge). The Mayor has appointed a Refuge Task Force. This is the first refuge to be built inside an urban area. Sherwood could be the poster community for the entire nation, if not the world, because of this refuge. All of the forces are coming together now including the Bureau of Reclamation. The previous Steinborn Dairy will soon become a true functioning marsh as a part of the Refuge. There is a very good chance that the Senator Mark Hatfield Wildlife Interpretive Center will become a reality. The US Fish and Wildlife just moved into the Onion Flats which means they now own one half of it. Part of what Mayor Hitchcock was referring to is that the Commission is going to have some incredibly tough rules on this region. The implication the Refuge has for land values in Sherwood is simply unbelievable.

Paul Stecher asked what was going to happen to the U-Pull It Auto Wrecking Yard because when it floods, it looks like the water level rises up to the cars. He asked what effect this has on the Refuge?

Mr. Claus said to get the Refuge, the City had to do a Level 2 Study. He talked about what happened with the Tannery. This site has to be cleaned up. To get the Refuge, they drew a line around the wrecking yard. The County really didn't do anything to help anybody. The County could have got DEQ in there and done all kinds of things. You have to say I am not interested whether humans can live there, I want to know whether wildlife and fish can survive. They are going to have to find the money to clean it up, but it is all possible. There are enormous loads of mica in the Tualatin River. The mica prevents the sun from doing its action. This is phosphoric soil. Phosphoric soils and mica do nothing in a marsh. The marsh loves the phosphorus and then the river water going back in will sustain Chinook and Spring Salmon as well as the native Cut Throats. The goal is to clean up the Tualatin River so that kids can safely swim in it. This is going to have to be a major community effort. They had 2-1/2 million dollars for the restoration of the Rock Creek floodplain and they lost it because they have untreated stormwater going into the Refuge. They are going to correct that and try to get the money back.

Mr. Claus said they had the promise of the finest hardwood forest in Western Oregon which would have been in the Rock Creek floodplain. He knows that everyone was upset and worried about what he did on the little Cedar Creek (inaudible). They spent \$5,000 for plants in there this

year. He got zero for the water and it cost him money to get because it had been logged when he got it and ended up paying \$50,000 cleaning it up and got nothing out of it and he put \$5,000 in it this year. They are having a hard time getting the trees to grow. He is going to have to plant it again next year. This is what they are saying, if they are going to meet Kitzhaber's goals, they have got to learn how to reforest, clean the rivers, go back to the City and make sure the water coming in from the creeks is totally clean and then you have to go back on the stream restoration. If you can think about what this is going to do for this area is unbelievable. Hatfield said he is heartsick over the last 3 years of what has happened. The City had the Refuge and then it just started to get away from the City. Now it looks like the City is back on the right track.

## **6. Other Business**

The Commission reviewed the March 9, 1999 memo from the Staff regarding the Title 2 Regional Parking Policy which is a part of Metro's Urban Growth Management Functional Plan. The memo included the minimum standards for off-street parking. Mr. Turner said Staff is asking the Commission to consider these standards and make a statement. The Commission concurred the City of Sherwood is on the outer reaches of Metro's jurisdiction and they believe that the critical mass in their community does not reach the demands of these standards at this time. Staff will schedule a public hearing on this subject. The Commission asked Staff to prepare some examples on how these standards would affect current businesses and residential areas.

Jason Tuck reviewed the list of pending land use applications the Planning Department is reviewing. These include applications for Fred Meyer, Oregon Trail No.3 Preliminary Plat, Woodhaven Phase 8C Preliminary Plat, and Pride Disposal Expansion.

## **7. Adjourn**

There being no further business to discuss, the meeting was adjourned at 8:45 PM.

Respectfully submitted,

Planning Department