



**City of Sherwood  
PLANNING COMMISSION  
Stewart Senior/Community Center  
855 N. Sherwood Boulevard  
September 7, 1999 - 7:00 PM**

**A G E N D A**

- 1. Call to Order/Roll Call**
- 2. Approval of Minutes – August 17, 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. SP 99-4/SUB 99-5/CUP 99-2/VAR 99-3 Fred Meyer Site Plan, Conditional Use, Variance & Preliminary Plat (cont'd from 8-17-99) Tax Lot 300, Map 2S 1 29.**
  - B. SUB 99-3 Woodhaven Phase 8C Preliminary Plat (cont'd from 8-17-99):** a request by Genstar for a 55-lot single family residential subdivision, lot sizes 5,000 sf to 9,603 sf in the Woodhaven PUD. Tax Lot 300, Map 2S 1 31.
  - C. SUB 97-2 Lucas Subdivision Preliminary Plat Amendment:** a request by Lucas Development & Regency Realty to amend Condition #4 for the 5-lot subdivision further described at Tax Lot 300, Tract 2, Map 2S 1 29B.
  - D. SP 99-10/CUP 99-5 New Elementary School:** a request by LSW Architects for the Sherwood School District 88J for a conditional use permit and site plan approval for construction of a new elementary school and related facilities to be located on the west side of Old Hwy 99W and Timbrel Court. Tax Lot 1800, Map 2S 2 36D.
- 5. 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**  
**September 7, 1999**

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

Chair Angela Weeks called the meeting to order at 7:15 PM.

Commission members present:

Sterling Fox  
Keith Mays  
Jeff Schroeder  
Ken Shannon  
Angela Weeks

Staff:

Greg Turner, City Planner  
Roxanne Gibbons, Recording Secretary

Commission members absent:

Adrian Emery  
One (1) vacant position

**2. Minutes of August 17, 1999**

Chair Weeks asked if there were any additions or corrections to the minutes of August 17, 1999. There were none.

**Keith Mays moved the Planning Commission accept the August 17, 1999 minutes as presented. Seconded by Sterling Fox.**

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

**3. Agenda Review**

Greg Turner said he had nothing to add to the agenda.

Chair Weeks asked if the Commission wished to consider reordering the public hearing applications due to the length of the Agenda. It was the consensus of the Commission to hear rearrange the order and hear Agenda Items 4B, 4C, 4A and then 4D.

**4. Public Hearings**

Roxanne Gibbons 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. In addition, due to the number of applications scheduled, the Commission requested testifiers, other than the applicants and their representatives, to adhere to the 5-minute timeframe when testifying.

**4B. SUB 99-3 Woodhaven Phase 8C Preliminary Plat (cont'd from 8-17-99)**

Chair Weeks referred the Commission to a letter dated September 7, 1999 from Genstar granting a 14-day extension to the 120-day deadline for Phase 8C Preliminary Plat review. This would extend the 120-day deadline to September 28, 1998. The applicant was also requesting the public hearing on this application be continued to the September 21, 1999 Regular Commission meeting.

Chair Weeks asked if there was anyone representing Genstar in the audience.

**Jacki Herb, Project Manager, Genstar Land Company NW, 11515 SW Durham Road, Suite E-9, Tigard, Oregon 97224**, addressed the Commission. The applicant is requesting a continuance of this phase to the September 21, 1999 Regular Commission meeting. Their attorneys have been working with the City Attorney to finalize the park property transaction. The agreements should be finished and signed within this two-week period. The execution of these agreements will resolve the park issue.

Greg Turner reported the Staff Report contained in the Commission packets is recommending denial of SUB 99-3 Woodhaven Phase 8C Preliminary Plat until the park issue is resolved and Phase 7B moves forward so that they are not out of sequencing with the phasing.

The Commission discussed whether to hear or continue this application. Chair Weeks said based on the fact that Phase 7B has not been resolved and there are so many issues to be dealt with, her recommendation would be to hear the application and deny the applicant's request for a continuance. Mr. Shannon said this was what he wanted to do at the last meeting. He asked what the City Council has approved on Phase 7B regarding the Meinecke Road connection, half-street improvements, and signalization on Meinecke Road and Highway 99W.

Mr. Turner said the connector to Meinecke has been identified as a part of Phase 7B and this extension is located at the western-most stub street going to the north. Chair Weeks said she thought this location had not formally been accepted. Prior to hearing Phase 8C all of the issues on Phase 7B must be resolved.

Mr. Turner said it is anticipated that Phase 7B Final Plat will go to the City Council once the park issue is resolved. The other two issues will be resolved as a part of Phase 7B. City Staff is recommending a resolution on the issues for Phase 7B prior to moving forward with Phase 8C. The approved Phase 7B Preliminary Plat shows where the collector has been designated and this is just west of where Stellar Drive currently comes into Woodhaven Drive. This location was approved with the preliminary plat for Phase 7B.

Mr. Shannon asked if all of these issues would be resolved prior to the September 21 hearing on Phase 8C Preliminary Plat. Mr. Turner said Phase 7B Final Plat would need to be heard by City Council. Mr. Shannon said he would like to hear the Phase 8C application tonight.

Mr. Schroeder asked if Genstar was responsible for continuing the connection to Meinecke. Mr. Turner said Genstar put up a bond for \$87,000 for this connection. There is some question

whether the bond has expired. He did not know if Genstar has renewed this bond. Phase 7B Final Plat has not been scheduled for the September 14, 1999 Regular Council meeting.

**Keith Mays moved the Planning Commission deny the applicant's request for a continuance of Woodhaven Phase 8C Preliminary Plat to the September 21, 1999 Regular Commission meeting. Seconded by Jeff Schroeder.**

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

Chair Weeks opened the public hearing and called for the Staff Report and noted that the date for 120-day deadline on the Staff Report should be 9-14-99. Greg Turner referred the Commission to the Staff Report dated August 17, 1999, a complete copy of which is contained in the Planning Commission's minutes book. He identified the location of Phase 8C on the map and noted:

- The site is located on the south side of Sunset Boulevard, between the Portland & Western Railroad tracks and Pinehurst Drive in the Woodhaven PUD, Tax Lot 300, Map 2S 1 31.
- The application is for a 55-lot single family subdivision in the PUD.
- On May 18, 1999 the Commission considered this application. They continued this application until finalization of Woodhaven Phase 7B and the resolution of the location of the park.
- The final plat for Woodhaven Phase 7B has been submitted to the City and requires City Council approval.
- Based on the March 26, 1997, Notice of Decision for Phase 7B Preliminary Plat, the City Council cannot approve the final plat until the applicant dedicates the park parcel to the City or provides to the City an alternative park site which meets the needs and purpose of Condition #14.
- The last line of Condition #9 of the Woodhaven conditions of approval state that any changes to the sequence of these phases, except for minor adjustments for phase boundaries, shall be subject to further Council review and approval.
- The majority of the findings have been met, but the problem the City has is with the phasing and dedication of the park.
- The 120-day deadline is September 14, 1999.
- In conclusion, based on the findings of fact and agency comments, Staff recommends denial of SUB 99-3 Woodhaven Phase 8C Preliminary Plat.

**Chair Weeks asked if the applicant wished to provide testimony.**

**Ms. Herb declined to provide further testimony.**

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

**Tim Voorhies, Steel Tek Industries, PO Box 908, Sherwood, Oregon 97140,** addressed the Commission. His main concern is the applicant wants to run water down through his property. They have a 24-inch line coming in and only a 12-inch line going out. This does not make good

sense to him. He hired a consultant to look at this. He also contacted the railroad and they do not know how Genstar is going to run the line figuring a 25-year flood. He said this has to be a 100-year flood. There are many questions and he cannot get answers. He has talked to Mike Monical at OTAK, the applicant's engineer. He identified the area on the map where water runs and stands. There is a pond on the property. He has many concerns about what Genstar is going to do, especially when considering he is located downstream from this project. What happens if the culvert overflows? This would be a public easement and what would the City do? He did not know if there was enough information to make a good decision. His engineer will be meeting with OTAK representatives to find out what the grades are going to be. He does not want a wetland problem which he did not have prior to this development. He wants to put in another big warehouse on his property. He identified the location of the existing warehouse and office, and the proposed warehouse. During the 1996 flood there was water running on each side of the house. The collection system also overflowed and backed up into the street.

The Commission asked Mr. Voorhies to provide copies of his engineer's report to them.

**Robert J. Claus, 22211 SW Pacific Highway, Sherwood, Oregon 97140**, addressed the Commission. He placed the following documents into the record:

- LUBA No. 98-208, Genstar Land Company NW v. City of Sherwood, City File SUB 98-2 Woodhaven Phase 7B Preliminary Plat.
- June 22, 1999, PUD 99-3 Woodhaven PUD Modifications Staff Report, pages 1, 3 and 5.
- Resolution 99-789 accepting the designation of a 6-acre park site for the Woodhaven PUD.
- Pages 2,4,6 and 8 of the March 26, 1997 Woodhaven General Conditions of Approval.
- Woodhaven Phasing Plan with no date.

He noted:

- The Commission has no option, in a procedural sense, but to reject this phase tonight. The Code clearly states if major changes are made in a PUD, and the major changes are defined as a boundary change, density change, there are three specific definitions, it is a major change and in Sherwood it must go to a new amended hearing. City Staff knows this is in the Code.
- On Saturday, he received from LUBA the Motion to Dismiss for Phase 7B and it was done without stipulations and without mootness. LUBA clearly said on their ruling on Phase 7A that nothing was to move forward until the park and road issues were resolved. This ruling was not appealed by the City or Genstar.
- It appears, and we now have the record, that the City of Sherwood knew a number of phases ago that the park was going to the School District. It appears Mr. Phil Nachbar knew this. This means that those phases passed with knowledge there was a major change, both in boundary and density, occurring in this PUD.
- This brings about some serious questions. It activates the tree code. The applicant would have had to come in for a new amendment.
- The ex-Chair of the Commission, Mr. Whiteman, wrote a letter and specifically instructed the City Staff to not enter into any more back room deals and to not move 7B or any other phase forward until the road and the park issues had been resolved.



- He is sorry to see the Commission being put into such a difficult situation. What they have to do is reject this application because of a major change, the boundary line change of the park that Genstar has agreed to sell to the School District and order a new amended hearing on Phase 8C.
- He has been fighting this for two years.
- Affidavits were supplied at the last LUBA hearing saying that for well over a year it was known that the park property was going to the School District.
- Immediately after the affidavit was given by the Mayor, Roxanne Gibbons went through the records and found where Jon Bormet had made a detailed statement that we could not keep a secret in this town and the park was becoming a school district site.
- The park is a passive use and the School District is an active use, so there is a use change too.
- It is time that these runaway PUDs stop playing games in this town. We need to get the children the park or we go back and collect the SDCs and take away the PUD categorization of everything after Phase 6.
- The issue here is an equitable issue called estoppel and laches.
- He does not believe in Oregon that either of these stop the Commission from going retroactive on applicants who refuse to play by the rules.
- There has been a major change in the PUD, boundary, density and use changes and the Commission should order an amended hearing on the PUD, including 7B.

**Susan Claus, 22211 SW Pacific Highway, Sherwood, Oregon 97140**, addressed the Commission. She cited the Code Section for PUDs, Section 2.202, Changes to Approved Plans. When you have a major change, it shall be considered the same as a new petition and the applicant needs to come back through the process. She referenced the March 1997 General Conditions of Approval for Woodhaven, specifically Conditions 14A and 14B, regarding the park and the road. Through a resolution by the City Council, there was a designation for the park site. The park site was moved from the approved site in March 1997. The site was moved, it is still within the boundaries of the PUD, but now they have taken out the commercial use for the new park location at the corner of Pinehurst and Sunset Boulevard. Some townhouses and possibly apartments with flexible zoning have also been lost. Two other uses in the PUD have been lost. The Major Changes Section in the Code state if you have had changes in boundaries or uses, that these are changes in uses and triggers a major change. Genstar was going through a major amendment to the PUD and this was withdrawn. This amendment specifically addressed the fact that the park site had been changed. The Commission does not have any choice but to reject the application for Phase 8C because the road and park issues have not been addressed and resolved. Genstar should also be required to file a new petition because they have violated the terms of the existing PUD.

**Chair Weeks asked if there was any further testimony. There being none, Chair Weeks asked if the applicant wished to provide rebuttal testimony.**

**Jacki Herb** addressed the Commission. Phase 7B Preliminary Plat outlines where the Meinecke Road connection will be located. The only outstanding issue with Phase 7B is finalizing the park. Everything else is done. When this comes back to the Commission, you can't add new roads, or change lot sizes, you need to make sure that the park issue is resolved. The applicant is



trying to work in good faith with the City to resolve this. Some of the other things that are being brought up are really not relevant any more. The plat was approved and the road going up to Meinecke was designated. They spent a lot of time trying to determine where the road was going to go. There are two extensions shown on the plat for Phase 7B. The applicant has provided the two options for the connection to Meinecke as requested by the City. This should not be the burden of the applicant. The City has been talking to them about the signalization at Meinecke and 99W. It has not been signed, but they have agreed to this. It is part of the agreement which has not yet been signed. Phase 7B Final Plat is awaiting approval from the City Council. Once the park site is dedicated the Council can proceed with the review of the final plat for Phase 7B. She thanked the Commission for their time.

**Chair Weeks closed the public hearing on SUB 99-3 Woodhaven Phase 8C Preliminary Plat for discussion by the Commission.**

The Commission agreed once these issues are resolved and Phase 7B is taken care of, then it will be appropriate for the Commission to review Phase 8C. These issues need to be resolved.

Mr. Mays said he agreed with the Staff recommendation. He believed a new PUD hearing should be called since the PUD has been changed, including the densities, boundaries and the use.

**Keith Mays moved the Planning Commission deny SUB 99-3 Woodhaven Phase 8C Preliminary Plat and call for a new PUD petition because the boundaries, density and uses have been changed, and this constitutes a major change to the PUD. Seconded by Ken Shannon.**

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

**4C. SUB 97-2 Lucas Subdivision Preliminary Plat Amendment**

Chair Weeks opened the public hearing and called for the Staff Report. Greg Turner referred the Commission to the Staff Report dated August 31, 1999, a complete copy of which is contained in the Planning Commission's minutes book. He noted:

- This is a request for modification to an existing condition which was imposed on the Lucas Subdivision. The site is located on Scholls-Sherwood Road and Highway 99W on the north and south sides of Scholls-Sherwood Road.
- When the Commission first heard this application, they took a lot of input in having a left-in turn to the site from Scholls-Sherwood Road because of the potential congestion that could be created if traffic were to backup to Highway 99W.
- The applicant appealed the Commission decision to prohibit the left-in turn to the City Council. At the Council level the applicant demonstrated that if the left turn access to Lot 1 on the south side were limited to 195 turns during the AM or PM peak hours, that it appeared, based on the traffic numbers, traffic would not back up onto 99W. This condition was imposed on the applicant.

- The applicant is requesting a revision to this Condition #4. They have revised some of the proposed uses on the property to the south. These uses would come back before the Commission during site plan review.
- Their applicant's traffic engineer put in approximately 82,000 sf of retail space and 4,000 sf drive-in bank, which are both allowed uses in this zone to see what the traffic numbers would be. The conclusion was that the intersection left turns would operate at a safe and acceptable level.
- Scholls-Sherwood Road is a Washington County (WACO) facility. The application was sent to WACO and ODOT for comments. The City also had Lancaster Engineering review the application. Lancaster had reviewed the original Lucas Development proposal.
- WACO comments dated August 25, 1999 are included in the packets. They state that the applicant has partially fulfilled previous submittal requirements for submitting an access report. WACO will not approve any accesses until the modification request has been approved. The applicant still has to go through WACO due to the close proximity of this intersection to Borchers Drive and Highway 99W.
- WACO offered the following modification to Condition #4:
  4. "In order to be consistent with R& R&O 86-95, comply with any conditions identified by the County Traffic Analyst following review of the required Modification Request. Scholls-Sherwood access approval/denial/restriction is contingent upon information yet to be provided by the applicant as part of the required Modification Request."
- ODOT's response dated August 9, 1999 is also included in the packets. ODOT continues to support the limiting of the left turn movements into the site from Scholls-Sherwood Road. They would like to keep Condition #4 as approved with the 195 trips. Based on ODOT's analysis, restriction of the left turns is critical to prevent the left turn queue from backing up onto Highway 99W.
- The applicant's engineer and Lancaster Engineering reviewed some of ODOT's calculations. They provided data to refute some of these calculations. Additionally, Scholls-Sherwood Road is a County facility.
- Lancaster Engineering stated the applicant's traffic engineer has demonstrated that the proposed design of the development access would operate satisfactorily for the projected opening-day volumes. The only limitation was that left turns out from the site would be something they would not like to see.
- Staff has added to the existing Condition #4 WACO comments and included not allowing a left turn out from the site onto Scholls-Sherwood Road.
- In conclusion, based on the findings of fact and agency comments, Staff recommends approval of the modification to Condition #4 of the Notice of Decision dated April 30, 1998 for SUB 97-2 Lucas Subdivision Preliminary Subdivision Plat as follows:
  - 4. The applicant shall comply with the Oregon Department of Transportation's comments for improvements along Highway 99W as stated in the agency's letter dated May 14, 1997. In order to be consistent with R&O 86-95, comply with any conditions identified by the County Traffic Analyst following review of the required Modification Request. Scholls-Sherwood access approval/denial/restriction is contingent upon information yet to be provided by the applicant as part of the required Modification Request. No left out of the site will be permitted on Scholls-Sherwood Road."

Chair Weeks said there is another entrance for this proposed development off of Borchers Drive. Mr. Turner said part of the conditions call for a traffic signal at the corner of Borchers Drive and Scholls-Sherwood Road. This would occur when the office building was built on the other side of Scholls-Sherwood Road.

Mr. Mays asked what the distance was between the access driveway and Borchers Drive. Mr. Turner said he would defer this question to the applicant.

**Chair Weeks asked if the applicant wished to provide testimony.**

**Michael Robinson, representing the co-applicants, Patrick Lucas and Craig Ramey, Regency Realty, 900 SW 5<sup>th</sup> Avenue, Suite 2600, Portland, Oregon 97209,** addressed the Commission. He introduced the other representatives; Gary Katsion and Dina Sykora, Kittelson & Associates, who performed the traffic study. He reviewed how they would make their presentation. Mr. Robinson noted:

- The original application was submitted in 1997 for a 5-lot subdivision. Lot 1 is located on the south side of Scholls-Sherwood Road. At that time the City had some concern whether a left-in turn to the site would cause some congestion. Primarily, would it cause traffic to back-up to 99W during PM peak hours.
- The applicant did not ever suggest a left turn out of the site. When the application was reviewed at the Council level, the applicant suggested a condition of approval which would do two things; give the site a left-in turn which is necessary, in addition to the other access off of Borchers Drive.
- Regency Realty approached Mr. Lucas to develop this property. The co-applicants decided to bring the application back to the Commission and request a modification to the conditions of approval.
- They concur with the recommended changes to Condition #4 as presented by Staff. This correctly places the responsibility where it belongs, with Washington County. Scholls-Sherwood Road is a County facility and it is up to them to give the applicant the driveway.
- As a part of the subdivision, the applicants need to come to the City and get the authority to go to the County and apply for this access.
- The application is still subject to all of the other conditions of approval for the 5-lot subdivision. These include substantial public improvements to the signal, and dedication of right-of-way.
- All other businesses on County highways are subject to County authority over their roads, just like ODOT is able to control their roads.
- If there proves to be a problem, which they do not believe there will be, the County has ample authority under the statutes to govern their County roads.
- There are six criteria for approval of a subdivision. Only one of the criteria is relevant with this modification and that is 7.201.03D, regarding adequate water, sanitary sewer, and other public facilities exist to support the use of land proposed in the plat. The applicant must show the Commission an adequate transportation facility exists.

- The Code is written in the present tense, not future tense. The applicant does not have to demonstrate that it will be adequate in 5, 10 or 15 years. They have to show that it is going to be adequate now. This is what they think the evidence shows.
- There are two pieces of evidence which show there is an adequate street system with a left turn in to the site with this driveway. One is the Kittelson & Associates Report.
- The Kittelson study looked at a retail center in the retail zoning district of about 82,000 square feet, with a right-in, right-out, and left-in on Scholls-Sherwood Road. They found that this driveway would operate at an acceptable level of service during the PM peak hours, during the weekday and Saturdays. This study is submitted with the application.
- The second piece of evidence is the analysis done by the City's transportation engineer, Tom Lancaster. He referenced the letter from Lancaster Engineering which was included with the Staff Report.
- The review by Lancaster found the Kittelson statement reasonable, it showed that there would be adequate storage on Scholls-Sherwood road for the left-in turn to the site and showed that the ODOT analysis was flawed. ODOT simply got it wrong. They used the wrong criteria and doubled the amount of traffic. ODOT tried to explain this analysis in their most recent letter dated August 31, 1999. The fact is that ODOT's basic analysis relied on the wrong numbers.
- Lancaster found that the City probably cannot require the applicant to take a look at 2010 traffic. The applicant believes this is correct because that is the way the Code is written.
- He can understand why ODOT would want to look at year 2010 traffic roads. ODOT is not in the business of seeing the City of Sherwood develop. They have to protect their interest and that is on Highway 99W.
- The issues in ODOT's letter regarding what traffic might be like in 10 years are not really germane to the criteria. The August 31, 1999 letter describes the impacts as potential; they are speculative.
- Both the Kittelson study and Lancaster letter explain there will be an adequate road system, even with the left-in turns to the site, after the applicant develops the necessary improvements that will be put in at the time of the subdivision.
- The ODOT letter is the only letter of opposition. The August 31, 1999 letter from ODOT suggests the City should consider ODOT's access spacing standards. If the applicant was asking for a driveway to Highway 99W, it would be appropriate. The applicant is subject to Washington County standards. This driveway is going to be about 500 feet from Borchers Drive and a little less than 500 feet from Highway 99W.
- The applicant intends to ask the County for a driveway at that location. They have every reason to believe this request will be granted.
- The applicant is asking the Commission to follow Staff recommendation for approval of the modification to Condition #4. The applicant is satisfied with Staff's recommendation.

**Patrick Lucas, 23861 Dewberry Place, Sherwood, Oregon 97140**, addressed the Commission. He noted:

- The prior traffic studies done by Group Mackenzie and Lancaster Engineering agree that full left-in access to Lot 1 would work. The bottom line was that the prior City Manager just

wanted to have a hammer over whatever they developed at the site. The prior City Manager and Staff recommended the subdivision be approved without any left-in turn to the site.

- The Commission approved this and the applicant met with Staff to come up with a condition which they thought was a compromise and would work. Then Staff recommended approval of the applicant's appeal to the City Council. This was approved and he went on to market the property.
- Since that time they have found that limiting the left-in access is the same as not having access. It is really difficult to get first class tenants without the left-in turn to the site.
- Regency Realty, owners of the shopping center across Highway 99W, approached him. They want to expand to the west side of the highway. They asked him to come back to the Commission and request full access off of Scholls-Sherwood Road.
- The shopping center Regency owns in Sherwood is very nice and expanding to the other side of the highway would be good for the City.
- Their site is 510 feet from Highway 99W. Some residents of the Wildflower Subdivision asked for access off of Scholls-Sherwood Road because they did not want commercial traffic coming around through a residential area. The access off of Scholls-Sherwood Road would help divert this traffic.

Mr. Schroeder asked about a designated right-turn in to the site going eastbound and what the speed limit was in this area. Mr. Katsion said there was no condition for a right-turn lane. There will be a signal at Borchers Drive and Scholls-Sherwood Road. Mr. Robinson said a designated right-turn in to the site did not come up during the review of the original application. Most of the people from this side of 99W would use Borchers Drive to gain access to the site. If it is a concern of the County, the applicant would need to get their permission as they go through the driveway permitting process. Mr. Lucas said the applicant is dedicating a 90-foot right-of-way. Scholls-Sherwood Road is being widened up to the intersection of Borchers Drive. He said Bill Carley from the City said this section would be closed for two months for widening and this would occur next summer. Bids for this project will be let in November, 1999.

Mr. Mays asked how the original intent for Lot 1 has changed from the original approval for the subdivision. Mr. Lucas said originally he was approached by fast food restaurants who were interested in the site and an oil company wanted to have a Shell station there. The uses have totally changed now to one of a retail commercial center as opposed to a fast food, gas station type of site. There are no access rights from this site directly to Highway 99W.

**Gary Katsion, Kittelson & Associates, 610 SW Alder, Suite 700, Portland, Oregon 97205,** addressed the Commission. They reviewed the facts from the previous application. Washington County had a recommendation prior to this to limit the driveway to a right-in, right-out and left-in. They did not request any restriction on the number of left turns coming in to the site. The City Staff, Lancaster Engineering, and Group Mackenzie, the developer's traffic engineer looked at this in detail. Since that time a lot of new developments have come in to the City. Kittelson looked at the traffic from existing and potential developments and included these in their analysis. They looked at whether this driveway could be put in safely and work with the capacity constraints of the system around it. They looked at AM, PM and Saturday peak times. The majority of the traffic to this site will come from the Highway 99W area. He reviewed the other



criteria they reviewed for the study. Once the signal goes in it will help filter traffic coming towards the left-in turn to the site. ODOT's analysis, which they did recant, did not use the correct criteria. The Kittelson analysis shows there is plenty of storage available in the 500 feet between the left-in turn to the site and the intersection with Highway 99W. They are extending the right-turn lane to 300 feet to allow for plenty of traffic to stack at this intersection. There is a transition of about 90 feet for the traffic to transition into this left-in turn lane. This is fairly typical in an urban type of setting. Right now there would be no raised median, it would be strictly striping. Washington County has the ultimate authority. They are in the process of reviewing this application right now. The applicant has had discussions with the County. They have not received any indication from the County that there is going to be any problem with this request. The County spacing standard is 600 feet. The applicant is also dedicating additional right-of-way for road improvements. There will be an official right-turn lane from Highway 99W. He identified the location of the driveway on the proposed roadway modifications map which was presented as an exhibit to the Commission.

**Craig Ramey, Regency Realty, 4000 Kruse Way Place, Building #1, Suite #130, Lake Oswego, Oregon 97035**, addressed the Commission. He discussed their interest in the property. Regency is a national firm who owns, develops and manages neighborhood shopping centers. He grew up and has lived in Oregon his whole life. Most of their employees grow up and live in the communities with which they serve. They are the owners of the Sherwood Market Center and are very pleased with this shopping center. It is almost 100% leased with high quality tenants. He discussed the company goals. They try to design their centers to meet the needs of the local communities. They began discussions with Mr. Lucas about expanding to the 9-acre parcel that is being reviewed tonight. After reviewing all the material on this property, the one condition that they found to be problematic was the left-in turn to the site. For them to make an investment into the property and build the type of shopping center seen out there the possibility of the left turn in to the site not being available does not make it marketable. They reviewed the prior traffic studies and commissioned new studies to look at existing conditions. All of these studies support having a left-turn in to the site without limitations. They are a current owner in the community and would like the opportunity to expand in Sherwood to help meet the needs of the community. This can be possible if their request is approved. He thanked the Commission for their time and said he would answer any questions. They are okay without having a left turn out of the site from this driveway. They are in agreement with the Staff Report and its recommendation. They are aware of the direct access restrictions to Highway 99W.

**Chair Weeks asked if there was any proponent testimony. There being none, Chair Weeks asked for opponent testimony.**

**Robert J. Claus, 22211 SW Pacific Highway, Sherwood, Oregon 97140**, addressed the Commission. He was absolutely opposed to this request. A transportation engineer can say anything. It is the assumptions he puts in his report. He talked about an article he wrote for a planning journal and how the only honest way to do transportation engineering was to plan around a cemetery. All they had to do was make assumptions on the uses. What the applicant is trying to do is put in a strip center and not have any interference with what they do. He

made reference to Washington Square being 87 acres and it having freeway interchanges for access. Sherwood has 14 acres in Sherwood Market Place with 80,000 square feet and they can double this. They had two wings in the Langer PUD, one of which is now built for assisted living and another that is wide open. Then they have Gramor's 20 acres. There are 10 acres where McDonalds is located. There is a theater, ice skating rink and another 50 acres of general commercial in town. The problem with "let me have this condition and then I will tell you what I am going to do" is exactly what has Sherwood in trouble with ODOT. ODOT has now reversed their position and they are saying the logical thing and we have to keep them there. They are saying if you bring in a series of uses that can generate an enormous tax base and you do not develop conflicting traffic patterns we will give you access to the highway. If on the other hand you propose the wrong traffic trips and tenants you are out of business. The City now has 40 acres of retailing and we are proposing adding another 60 acres. That's bigger than Washington Square. Do you really believe you can give anyone a carte blanche to put in a spec complex? He has been saying this, over objections, for 10 years. This town is going to be one of the most livable and preferential towns in Oregon. You don't need to give anything away. The Commission's job is to not let somebody get ahead of you. If they were sitting here with a Plaza Hotel and we could see the entire hotel, including accessory uses, it would be one thing. The Commission is being asked, because a traffic engineer took a bunch of origin destination studies around a series of assumptions that the moment their tenants start filling up won't be true. You're not hurting the applicant by saying no, but you are sending a message to ODOT, LCDC and Metro. We are not going to do anything out here that we do not know the results of when we do it. Keep planning in control. As the town begins to jam up we are going to destroy our own livability because we are too nice as a community to people. We do not need any more spec developments. You can't afford with a limited access primary highway to let anything happen without seeing the use and use patterns. Transportation engineers work on linear assumptions. Remove those assumptions and you aren't going to get the results you think you are going to get. We have the possibility now to build a wonderful tax base and you will see this on the police maps on crime for that area getting away from us. It has to be the Sherwood image and it has to be good for this town.

Mr. Shannon said this 9-acre site cannot get direct access to Highway 99W. People want easy access to a retail site. That's why Mr. Bormet's frontage roads would not work. This site is 500 feet off of 99W and all they are asking for is a left-in turn to the site to market the property. Mr. Claus said this is correct, but there is a bigger problem. Once you've located the access and they put something in on this site that ODOT is upset about, it is in. Mr. Shannon said this is just an access. The development phase of this site will come back before the Commission through the site plan review. Mr. Claus said give the access for something specific, not something that the guy tells you he is going to build. He thought ODOT would back off of their position based on how they have started to react when they see the use. ODOT is asking to see the use so the origin destination trips mesh into, rather than obstruct, the traffic. Mr. Shannon said the applicant would still need to come back to the Commission for site plan review. Mr. Claus said the site plans could potentially go through a hearings officer and not the Commission.



**Chair Weeks asked if there was any further opponent testimony. There being none, Chair Weeks asked if the applicant wished to provide rebuttal testimony.**

Michael Robinson addressed the Commission. He noted:

- They do have a site plan and an analysis of the uses. This is what the traffic analysis was based on. He referred to page 5 of the Kittelson Traffic Report which was submitted with the application. If you look at Figure 5, it shows the site plan. This is the assumption the traffic study used to analyze the impact of the left-in turn to this site. This is also what Lancaster Engineering reviewed.
- In response to Mr. Mays' question, without the left-in turn to the site, Regency will not be here and there will not be a design review application. For better or worse, the property does not work for desirable neighborhood centers without a left-in turn. The Commission is not giving the applicant anything except the ability to go to Washington County and ask for a left-in. The County controls the kind of driveway and where it going to be located on Scholls-Sherwood Road.
- They are not doing a concurrent application because Regency needs to know that they at least have the ability to ask for a left-in from the County.
- They agree that Sherwood is desirable. Mr. Lucas is a resident of the community. Craig and Regency are businesses in the community. They have a commitment and stake in this community. If the Commission imposes the condition of approval that the Staff recommends, this will give the City a better shopping center than with the imposed condition of approval.
- What is before the Commission is whether the applicant meets the approval criteria and that there is an adequate transportation system with a left-in. You can listen to all the extraneous issues, but the fact is the Commission knows their job as well as he does and that is to focus on these criteria.
- Regarding the transportation engineer using assumptions, if you don't put in good assumptions you get a flawed study. The Commission has seen this tonight in two ways. One, you have seen it with ODOT's analysis. They misused their own criteria, put in flawed information and got a flawed result. This is what ODOT's August 31, 1999 letter states. On the other side, Kittelson put in the right information and got a correct analysis. Their study was based on an 82,000 square foot shopping center. This is not a big shopping center.
- The City retained Tom Lancaster, an objective engineer, to look at the traffic study and decide if it was adequate. Lancaster said not only was the methodology adequate and reasonable, but it reached appropriate conclusions.
- Mr. Claus said the applicant is flipping the process and does not want any interference from the City. To the contrary, the applicant would not be here tonight unless they wanted the City's involvement.
- There are two other points at which the City has checks and balances on the application. The first is the County process to get the driveway approval. The City Staff will have an opportunity to comment to the County. The second is there are further design review approval reviews for this 9-acre parcel.

- Regency has told the Commission, if they are developing the property, what you will get is in effect. an extension of the Sherwood Market Center.
- There is a lot commercial zoning in the City, but the zoning is not before the Commission tonight. This parcel is a Retail Commercial (RC) zoned and it has been this way since they came in with the application in 1997.
- They are trying to get a shopping center that serves the community and makes sense with a left-in to the site which helps them develop the site and leaves the roads functioning at a level they need to function.
- He respects the people that work at ODOT, but in this case he did not think it was logical. No matter what uses are proposed, ODOT is going to hold you to a standard that none of us are sure of and they are not going to suggest a left-in would be appropriate.
- He does not think ODOT was logical because they misapplied their own criteria. He referenced the August 9 and August 31 letters.
- The applicant is not asking for and could not ask for any access to 99W because they don't have any rights to it under the deed.
- The Commission does need to keep planning in their control. It is in their control and Washington County's control.
- The proposed site plan is not set in stone, but it is a realistic site plan.

In response to the Commission, Mr. Ramey said it was not his intention to subdivide this property at a later date.

In response to Mr. Schroeder's question, Mr. Robinson said in 1997 the City asked them to do the worst case scenario for an analysis and that is what Group Mackenzie did. They did not propose these uses; the car wash, jiffy lube and fast food restaurants.

**Chair Weeks closed the public hearing on SUB 97-2 Lucas Subdivision Preliminary Plat Amendment to Condition #4 for discussion by the Commission.**

The Commission discussed at length the potential uses for this site and how it would affect traffic.

Mr. Shannon said for the applicant to market this 9-acre parcel, you need access to make it viable. You are talking about retail in this case. He was reviewing this for the access. Any site plan would have to come before the Commission anyway.

The Commission agreed that the County has jurisdiction over Scholls-Sherwood Road because it is a County facility.

Mr. Turner said the City would like the applicant to do this project as one whole piece, but there is nothing in the Code which requires them to do it as one piece.

The Commission discussed the planning review process that is in place now and how it may change if the hearings officer process is adopted. Mr. Turner said the Commission could ask that the site plan come back before them even if the review process in the Code is changed.

Chair Weeks said the applicant has spent a great deal of time and money on this application and that the applicant is legitimate about what they have planned. Mr. Schroeder and Mr. Shannon agreed.

Mr. Robinson said the applicant would gladly accept the condition of approval that the site plan review would come back before the Commission, notwithstanding what the Code may say.

Mr. Claus was not recognized by the Chair and made some further comments about what the Commission should require.

**Keith Mays moved the Planning Commission amend SUB 97-2 Lucas Subdivision Preliminary Plat, Condition #4 as follows:**

**The applicant shall comply with the Oregon Department of Transportation's comments for improvements along Highway 99W as stated in the agency's letter dated May 14, 1997. In order to be consistent with R&O 86-95, comply with any conditions identified by the County Traffic Analyst following review of the required Modifications Request. Scholls-Sherwood access approval, denial, restriction is contingent upon information yet to be provided by the applicant as part of the required Modification Request. No left out of the site will be permitted on Scholls-Sherwood Road. Lot 1 shall not be further subdivided, and the final site plan for Lot 1 shall come back to the Planning Commission for a public hearing.**

**Seconded by Jeff Schroeder.**

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

**Chair Weeks recessed the meeting at 9:20 PM for a break and reconvened the meeting at 9:30 PM.**

Chair Weeks asked if the Commission wanted to hear the New Elementary School Site Plan and Conditional Use application prior to the Fred Meyer application. It was the consensus of the Commission to hear the Fred Meyer application as previously agreed.

**4A. SP 99-4/SUB 99-5/CUP 99-2/VAR 99-3 Fred Meyer Site Plan, Preliminary Plat, Conditional Use, and Variance (continued from 8-17-99)**

Chair Weeks opened the public hearing and called for the Staff Report. Greg Turner referred the Commission to the Staff Report dated August 31, 1999, a complete copy of which is contained in the Planning Commission's minutes book. He noted:

- There are four parts to the Fred Meyer application. The first part is the preliminary plat to approve the subdivision of a 59.59 acre parcel into 8 separate lots. He referred the Commission to the map identifying these lots.
- The applicant is also requesting site plan approval for Parcel 1, which includes the Fred Meyer retail center and attached Garden Center.
- They are requesting a conditional use permit to allow seasonal outdoor sales of gardening-related merchandise and a variance for the freestanding sign which exceeds the square footage permitted by the Development Code.
- The property is located at the corner of Tualatin-Sherwood Road and Langer Drive. Langer Drive currently stops at Century Drive and the applicant is proposing to take Adams Avenue up to Tualatin-Sherwood Road from Century Drive.
- The property is zoned Light Industrial (LI) with a Planned Unit Development (PUD) Overlay, which is also identified as the Sherwood Village PUD.
- The Final Development Plan for the Sherwood Village PUD was approved by the Commission on August 1, 1995. A site plan for the Sunfield Lakes Apartments was approved for Phase 1 on August 15, 1995. A site plan change for Phase 1 was approved on March 5, 1996. The Sherwood Mini-Storage Site Plan was approved on Phase 4 by the Commission on November 5, 1996. The Renaissance Assisted Living Facility Site Plan and Conditional Use, currently under construction, was approved by the Commission on September 15, 1998. The Fred Meyer proposal is located on Phase 7 of the Sherwood Village PUD.
- The first issue the Commission needs to deal with is the phasing of the overall PUD. Sunfield Lakes was on Phase 1, the Mini-Storage was on Phase 4, and the Assisted Living Facility was on Phase 2.
- He referred the Commission to the correspondence from the applicant's attorney regarding the PUD phasing included as an attachment to the Staff Report.
- Staff researched the Development Code as well as the Conditions of Approval for the PUD regarding phase sequencing. They have also looked at the other phased PUDs in the City. Section 2.202.04 of the Code discusses developments being done in phases. The Code also states that if a PUD requires more than 24 months to complete, the PUD shall be constructed in phases that are substantially complete in themselves and the PUD shall conform to the phasing plan that was approved as far as the Final Development Plan.
- An argument could be made that the purpose of the phasing plan is to ensure necessary improvements are done as the project phases are built and that the phases need to be built in the sequence specified in the phasing plan. He made a reference to phasing plan for the Woodhaven PUD.
- The Council reviewed the phasing issue on August 10, 1999, but did not make a decision on the matter.
- The applicant's attorney requested a phasing modification for the PUD in a letter dated August 25, 1999 to the City Manager. This letter was included as an attachment to the Staff Report.
- Today, the City received a request for a minor change from the Langer Family attorney.

He recommended the Commission deal with the phasing issue prior to continuing with the Staff Report. A phasing change is a minor modification which needs to be reviewed by the City

Council. The Code does not require this review to be made through a public hearing and would be considered a minor change to the PUD. The letter from the applicant's attorney is requesting a minor modification which does not need a public hearing. The notice from the Langer Family's attorney is requesting a public hearing which means notices would need to be sent out. The Code does not require a public hearing for a minor change to a PUD. This request would be through the City Council.

Chair Weeks asked what this request would do to the 120-day deadline. Mr. Turner said they would need to ask the applicant if they would extend the 120-day deadline. If they did not extend the time, the 120-day deadline would not be tolled. Mr. Fox asked why the applicant and property owner on two different wave lengths.

The Commission discussed how they could proceed with this application if the request for a minor modification was a Council matter.

Chair Weeks asked if the applicant would extend the 120-day deadline until the Council made a decision regarding the phasing.

Tim Ramis, representing the applicant, Fred Meyer addressed the Commission. Fred Meyer has been accommodating as possible in terms of timelines, including one extension already for the Council to decide the phasing and uses issue. Thirty days were lost and apparently nothing was resolved. The critical issue is not the 120-day clock, it is the 45-day clock. The Code has a provision which states from the initial scheduled hearing, the Commission must enter a final decision on the matter within 45 days. If this is not done, the matter shall go to the City Council. The applicant does not have the ability to waive this provision and the Commission does not have the ability to change it. If you count from August 10, 1999, the 45 days would be September 24, 1999. The real choice is between deciding if the Commission wants the Council to proceed first. The consequence of that is this matter automatically goes to the Council or alternatively review the application tonight to meet the 45-day time limit. The applicant is not in a position to extend the 120-day deadline.

Mr. Turner confirmed the Code states a Type III review action shall be forwarded to the City Council if no decision has been reached by the Commission within 45 days of the initially scheduled hearing. The applicant requested a continuance on July 20, 1999 and the Staff requested a continuance on August 17, 1999.

The Commission asked how they could make a decision when the Council has not ruled on the phasing. Mr. Turner said the Council could not act at the last meeting because there was not a request from the applicant to make this determination. Now there is a request from the applicant. The Commission discussed the 45-day time limit and the phasing issue.

Mr. Ramis said they understood the Council requested the applicant to file the request for an amendment and they have done this to cooperate. The consequence of it is to bring all these matters to the Council to decide and the applicant is willing to go either way. Hold the hearing tonight or at the Council level. There is no intention to have two different procedures. The

applicant would be happy with the procedure the Langers have requested simply because it is more detailed. They were just trying to comply and cooperate with the Staff's suggestion.

Susan Claus asked for a point of information. She said the 45-day time limit was a result of the streamlining process. The language in the Code which says "shall" does not give any flexibility and the date of the first scheduled hearing is when the clock starts for the 45 days. The Commission does not have the power to make the determination regarding phasing.

Mr. Fox was it was very unfair for the Commission to try to make a decision in a sea of ambiguity. How can they make a decision when they have to wonder about the phasing.

Mr. Mays reviewed the Commission's options regarding hearing this application. Chair Weeks said the applicant knew this was out of sequence when they submitted the application.

Mr. Ramis said the applicant asked Staff whether this was an issue and were told it was not an issue. The position changed which forced them to change their application.

The Commission acknowledged other phases of the PUD were done out of sequence.

In response to the Commission question, Mr. Turner said if the application were denied tonight, it could be appealed to the City Council and potentially to LUBA.

**Keith Mays moved the Planning Commission hear the Fred Meyer application. Seconded by Ken Shannon.**

**Vote for Passage of Motion: 3-Yes, 2-No (Fox, Weeks), 0-Abstain**

Mr. Ramis said the applicant would object to the Commission just hearing the phasing part of the application. They believe if the Commission is proceeding with the hearing, the applicant has the right to address all of the issues.

Mr. Turner continued with his review of the Staff Report. He noted:

- Regarding the interpretation of the use, the question has been raised regarding the uses within the Sherwood Village PUD and the allowance of a commercial use which is designated as Light Industrial (LI). Staff researched this issue and under Section 2.202.06A reads, "Permitted Uses, any commercial, industrial, or related use permitted outright in the underlying zoning district in which the PUD is located may be permitted in a Non-Residential PUD, subject to Chapter 8." Based upon the Code language that uses permitted outright within the underlying zoning are permitted in the PUD. The Code allowed General Commercial uses in the Light Industrial zone at the time of approval of the Sherwood Village PUD.
- Section 2.11.02K under permitted uses states, "Approved PUDs may elect to establish uses which were in permitted or conditionally permitted under the base zone text applicable at the



time of final approval of the PUD.” Based upon the Code language, the proposed commercial use would be an allowed use on Phase 7 of the Sherwood Village PUD.

- The City Attorney addressed this concern in a letter dated May 18, 1999 which is attached to the Staff Report.
- Page 10 of the February 28, 1995, Planning Commission minutes and May 12, 1998, City Council minutes were attached to the Staff Report for review.
- The opposite argument could be made that the Light Industrial designation for Phase 7 was specific in that only light industrial uses would be permitted in that phase. The original uses were laid out in the PUD and a traffic analysis was completed on the PUD as a whole based on those specific uses. A change to a general commercial use will have a larger impact on the traffic on and around the site than the designated light industrial use.
- The conditions of approval for the Sherwood Village PUD specify the completion of certain improvements as part of certain phases of the PUD. A change to the specified uses on the phases would have a greater overall impact on the PUD as well as on the surrounding area.
- Staff is also requesting an interpretation on the use issue within the Sherwood Village PUD. A decision to not allow the commercial use would result in the need for a PUD amendment to revise the assigned use from Light Industrial to General Commercial.
- Staff recommends that Phase 7 be considered as Light Industrial zoning which provides the staff a list of uses in the Code which would be permitted on the property. The Fred Meyer application traffic study was generated which addresses the traffic impacts of the proposed development.
- In response to the Commission question, the Fred Meyer application would need to meet the requirements of the Code in effect when the application was submitted.

Chair Weeks said the applicant followed the overlay of the Code which was in effect for the Assisted Living Center. Now they are using the previous Code for this application. The applicant cannot use two different Codes for the different phases. They can't use one edition of the Code for Phase 1 and use another edition of the Code for Phase 3 or 5. There seems to be not only a phasing problems, but also a zoning problem with this application. Mr. Turner said this interpretation sounded reasonable.

Mr. Turner referred the Commission to the zoning map for the Sherwood Village PUD. It identified mixed zoning uses which included Light Industrial, Retail Commercial, and High Density Residential.

Mr. Shannon asked if the Comprehensive Plan identifies a certain amount of acreage for General Commercial, how would this affect the change for this application from Light Industrial. Mr. Turner said the older Code allowed commercial uses to be blended in, in the light industrial areas. The City made a change to this and allowed the existing PUDs to use the same zoning that was in effect at the time of the original application. Mr. Shannon said per the Comprehensive Plan, the City needs to have a certain amount of light industrial, commercial and residential zoning. Mr. Turner said this application would certainly change the amount of acreage in the light industrial inventory.

Mr. Turner continued with the review of the Staff Report:



- Referencing the design guidelines, a condition for the Sherwood Village PUD was prior that to Phase 1 approval, revise the design guidelines for all residential and commercial development to increase the number of structures to have porches and recessed garages. These design guidelines are labeled as the “Front Porch Society”. The applicant has provided a narrative stating how they are meeting the overall intent of the design guidelines.
- He referenced the agency comments which were attached for the Staff Report.
- The Staff Report contains the findings for approval of the site plan, preliminary plat, conditional use and denial of the variance request.
- The applicant has provided a recommendation for revisions to the proposed conditions of approval. Included with this was an excerpt from the February 28, 1995, pages 1, 9, 10 and 11 of the Planning Commission meeting. These were distributed to the Commission and made a part of the record.
- In conclusion, Staff is recommending approval of the preliminary plat, site plan and conditional use permit. Staff is recommending denial of the variance for the sign.

Mr. Turner said 729 parking spaces are required and the applicant is providing 794. Chair Weeks said there were two different figures, one being 809. Mr. Turner said Staff is recommending 729 parking spaces.

**Chair Weeks asked if the applicant wished to provide testimony.**

**Tim Ramis, representing the applicant Fred Meyer, 1727 NW Hoyt Street, Portland, Oregon 97209**, addressed the Commission. He asked the Commission to consider extending the time limit for testimony because there were four land use applications being considered under this joint application. This would allow them the time to bring out all of the issues. The amount of time would be one-half hour for the presentation and one-half hour for rebuttal. The Commission granted the applicant’s request. He noted:

- The applicant was very pleased to be before the Commission. Fred Meyer has been interested for some time in locating in the Sherwood community. It has been difficult to find a site and this site meets the requirements.
- With the exception of the sign variance, they have a recommendation for approval of the project from Staff.
- He complimented the Staff for their professionalism in handling a complex application. While there are still some unresolved issues, these are issues that are difficult ones that require the judgment of the Commission and Council to resolve.
- The presentation will be in two parts. First, the project architect will introduce and describe the project. Next the transportation expert, land use planner and attorney will address the issues relating to the conditions and phasing question.

**Warren Tyler, Sienna Architecture, 411 SW 6<sup>th</sup> Avenue, Portland, OR 97204**, addressed the Commission. Mr. Tyler referred the Commission to the elevations and noted:

- He identified the site on the map, the Fred Meyer store location and accesses to the site.

- Access would be from the proposed Adams Avenue or a right-in off of Tualatin-Sherwood Road. They had shown a right-in and right-out, but Washington County recommended that this be removed. They concurred with this recommendation.
- They also acknowledge that off of Tualatin-Sherwood road there would be a left-turn out that would not be allowed.
- There are other parcels in the site which will be developed separately from the larger Fred Meyer store. The Fred Meyer store is located more toward the back of the site and this creates more of an internal parking lot. This is something that LCDC advocates.
- There are pedestrian connections to the site and internally throughout the site. He identified the locations on the map.
- They cannot build underneath the BPA power lines.
- Truck access will come in to the site and the loading docks are located at the rear of the site. The docks will be located away from the residential areas.
- All of the crosswalks will be painted and identified. Staff is recommending a textured concrete crosswalk. Customers with shopping carts do not like these type of crosswalks. They are noisy and hard to negotiate. They have been most successful with striping crosswalks rather than the textured type.
- The building itself will be 159,000 square feet, plus the attached Garden Center located on one end. Seasonal sales would use some of the parking spaces on the north side of the site. One of the conditions would be to identify where the limit of their seasonal sales would take place.
- He reviewed the floor plan for the building. The interior design of the store will be different from the Fred Meyer stores located in Newberg and Tualatin.
- The store will have two major entries and when the Garden Center is open, there will be another major entry. The standard departments will be located throughout the store with a central check-out area. This store will have some exterior specialty tenants located on the north end of the store.
- The exterior of the building will be concrete block in a variety of textures. The use of a smooth face block at the top of the building and a cornice piece will give it an old city building feel. The entries will be curved out away from the building to allow extra coverage for the customers as they go in and out of the store. The verticals will be smooth face block and are inset. At the tenant areas, they plan to use metal awnings.

Chair Weeks asked Mr. Tyler if he thought the building design meets the Front Porch Society design guidelines. Mr. Tyler said it does meet the guidelines. Part of the guidelines discuss using wood. Wood is not a product anyone would recommend on a building of this size. It meets the guidelines in that it is breaking up the facades and taking it down to a human scale. That is to get things down to a detail where you have textures and appearances down at the level you can touch them. Whenever they can, they bring in the pedestrian scale awnings. This is one of the items of the guidelines. He continued with his testimony:

- He showed the Commission photographs of the exterior and interior of a similar store that is located in Vancouver, Washington. The store in Washington is larger.
- Most of the tenants will be set up to have access from the outside of the store only.
- He identified the emergency exits on the store.

- When you travel down Tualatin-Sherwood Road the back of the store will not be as visible because it is set back so far on the site.
- They have approval for a left-turn in to the site from Tualatin-Sherwood Road. The semi-trucks could come from both directions, but will schedule their delivery times so they are not coming in and out during peak customer hours.
- The extension of Century Drive is an issue Mr. Ramis will address.
- They propose an entry sign on Tualatin-Sherwood Road and a second sign on Century Drive. One is proposed at 25 feet in height and they are offering to take the second sign down from the proposed 35 feet to 25 feet in height.

**Dick Clark, Fred Meyer, PO Box 42121, Portland, Oregon 97242**, addressed the Commission. Mr. Clark is the senior site acquisition manager for Fred Meyer Stores. He noted:

- They did a customer spotting map identifying where all of the customers will come from to the existing Fred Meyer stores in relationship to Sherwood. They found most of the residents are going to Newberg or Tualatin with only a few going to Tigard.
- Fred Meyer is truly a neighborhood store in the metropolitan area.
- Their research department provides a sales forecast for the trade area to several different sites. They also look at the financial impact on the existing stores in the trade area.
- This information is taken to senior management, who are the operators of these stores, and ask them to validate the information based on their experience. This information is placed into a financial analysis market. It tells them if Fred Meyer is going to be in Sherwood, this is the site where they need to be. This also provides the citizens of Sherwood with convenience because they will no longer have to drive to Tualatin or Newberg and this will reduce vehicular traffic.
- Regarding the concern for industrial property, this store will employ roughly 250 full and part-time people. Initially, it will employ close to 300 people.
- Generally, they will do 90-120 days of site work, and once the building pad is poured, 26 weeks for construction, and 4-6 weeks for merchandising.
- The Tualatin Fred Meyer is about 200,000 square feet.
- They plan to dedicate the necessary right-of-way on Tualatin-Sherwood Road for improvements.

**Brent Ahrend, Group Mackenzie, PO Box 69039, Portland, Oregon 97201-0039**, addressed the Commission. He noted:

- The reason the City requested the particular alignment from Adams Avenue is because of the location of the Sherwood Mini-Storage on the other side of Tualatin-Sherwood Road to coincide with any possible future extension. He identified the site on the map.
- Washington County is in agreement that the Adams Avenue intersection will require signalization. This is a condition of approval from Washington County and City Staff.

Mr. Shannon asked how far Century Drive would go behind the store location? Mr. Ramis responded to the extension of Century Drive and identified where the driveway would stop and not continue all the way to the property line. The principal reason is that when the City Council

approved the PUD in 1995, took this requirement out. Originally, it was proposed to be a requirement of the PUD that Century Drive would be punched through all the way to the property line. This requirement was removed from the conditions of approval for the PUD as identified in the Notice of Decision for the PUD. The applicant is not required under the PUD to address this or provide it. The second reason is a constitutional one. It is obvious that this project doesn't create the need for that connection. Therefore, there is no way to proportionally require this project to pay 100% of the cost of construction.

Brent Ahrend continued with his testimony:

- They prepared the original traffic study for this application. It was decided at the time of the original study that they would look at the entire development of this phase, even though the application is only for the Fred Meyer store.
- The City, Lancaster Engineering, and NWS Engineering have reviewed the traffic study. ODOT and Washington County comments are also included with the Staff Report.
- In general they agree with the recommendations of the engineering firms with two exceptions. One is the Adams Avenue extension to Oregon Street and the second has to do with the curb extensions on Century Drive.
- The requirement for Adams Avenue to be extended to Oregon Street under the original PUD was with Phase 6.
- Their traffic analysis showed that the roads in the City could accommodate development of the entire subdivision without this extension and they were willing to put in a temporary signal at the intersection of Century Drive and Sherwood Boulevard to help this intersection operate more efficiently. They prepared an analysis of just the Fred Meyer Store and found a temporary signal was not even needed at this location. He distributed a letter dated September 7, 1999 from Group Mackenzie regarding the Fred Meyer traffic impacts.
- The extension of Adams Avenue to Oregon Street was with Phase 6. Phase 6 is the parcel directly to the south of the proposed Fred Meyer store.

Mr. Shannon asked how the Commission could determine when Phase 6 was going to be developed when the phases have already been developed out of sequence.

Mr. Ahrend said the important point they are showing is that the traffic impacts can be accommodated with the improvements that are recommended with the exception of the Adams extension to Oregon Street.

The Commission asked how people were going to get to the proposed Fred Meyer store. Mr. Ahrend showed several different routes to the proposed store on the map, such as Oregon Street to Tualatin-Sherwood Road, going through Old Town Sherwood or coming from Highway 99W. He said in the PUD it states that the City is responsible for constructing this portion of Adams Avenue and the PUD is responsible for another portion. The traffic analysis that has been prepared shows that the Adams extension is not needed at build out. As other developments come in, this extension may be needed. Neither one of the two independent traffic analysis the City had done recommended that the Adams extension be constructed with this application. Century Drive is classified as a major connector in the City of Sherwood. It is built to 40 feet

wide and designed for 3 lanes and has a shared pedestrian bike path along it. In general, a major collector is designed to circulate traffic through town and is one step below a minor arterial. It is not to provide local access. Adams Avenue is also considered a major collector. They are connecting Century Drive with Tualatin-Sherwood Road.

Chair Weeks asked if the applicant was aware of Condition #10 of the Staff Report regarding the applicant shall construct Adams Avenue from Tualatin-Sherwood Road to Oregon Street and the improvements. Mr. Ahrend said they do not believe this is needed. With regard to the curb extensions, Century Drive is 40 feet wide and has a 3-lane standard in the City's Transportation Plan and not allow parking on it. Putting curb extensions essentially puts Century Drive back to a two-lane roadway and takes out the center turn lane which is planned. To do this he thought the Transportation Plan would need to be amended. They would not recommend doing this.

Tim Ramis said he would respond to some of the specialty questions, phasing, use and proposed conditions. He noted:

- The fundamental issue the applicant asked when they approached the City is whether the use was permitted. They received the unequivocal opinion from the City Attorney and Staff that the use was permitted outright. They relied on the language which was placed on the board which states, "Uses permitted outright. Existing PUDs may elect to establish the uses that were allowed at the time they were approved." There is no dispute that retail was permitted at the time this application was approved.
- There is a more fundamental reason why the use is permitted and it is Oregon's Vested Rights Law. This law, in the State of Oregon, the law overriding all jurisdictions is one that states if you have a project that is to be built over time and you expend in good faith substantial sums to start this project, you are permitted to finish it. In this case, three of eight phases have been completed, 20% of the land area has been developed, and millions of dollars have been expended. In Oregon, even cases where there has been less than 10% of the overall cost expended have qualified for vested rights. This use is a permitted use because there is a vested right to continue with the project as it was originally approved. The Commission minutes the applicant has provided substantiate this.
- With regard to the appropriateness of conditioning the project to extend Century Drive and Adams Avenue all the way as proposed in Conditions #9, 10 and 12, it is not appropriate for several reasons. The Council took out the requirement for the extension of Century Drive in the original PUD. It is really not possible to extend Adams Avenue all the way because Mr. Langer does not control the frontage all the way. There are other property owners. Mr. Ahrend showed where the Langer property ended on the map.
- The more fundamental problem with these exactions is that the evidence in the record establishes that the project can maintain itself and meet all the requirements without these extensions. Therefore, there would be no constitutional proportionality if this were to be conditioned.
- The issue arises as to whether the phasing changes this analysis. The argument on phasing is this application would have been serviced by an extension of Adams to Oregon had Phase 6 gone first. Therefore, since you want to take Phase 7 first we want you to put in the road that Phase 6 would have provided. This does not change the constitutional analysis. This is the



argument that has been advanced to the applicant by Staff. Staff is asking that Phase 7 bear the costs that should be borne by Phase 6.

- There are other problems with the phasing argument. They see no evidence in the record of this case that there was any intention to impose mandatory sequential phasing on the project. The applicant's view is consistent with the way the application has been treated. This project has been built out of sequence, virtually from the start, without any requirement to amend phases. The applicant does not see phasing as a relevant criteria in this case.
- There is some history in the City on how the Code is interpreted when it comes to phasing. Woodhaven is a good example. In the cases where the City wants a specific phasing plan and it is mandatory, it is imposed as a condition, as was done with Woodhaven. In this case, there is no mandatory requirement.
- Despite the fact in Conditions 10 and 12 have what the applicant believes is an overreaching condition that goes beyond their fair share, the applicant thinks there is compromise resolution. They are not taking a hard line position that they would not do any improvement or make any contribution. Therefore, they would suggest that the compromise is to take out Conditions 10 and 12, but leave in Condition 9. Condition 9 requires the dedication of right-of-way. Therefore, they would be contributing probably more than their proportionate share, but at least taking this street a step closer to completion.
- With regard to the sign variance, the applicant is very much in search of a compromise. Their view of the Code was that if they took the signs out of the setback, they would not need to apply for a variance. The Staff recommended they apply for a variance because that was really the vehicle to develop some sort of compromise on the sign issue. The applicant has suggested a compromise which is to limit the height of one of the signs to 25 feet rather than 35 feet. They would invite comments from the Staff as well as the Commission on what a reasonable compromise might be. Their goal is whether the sign is consistent with other retailers. Simply applying the industrial signage limitation of 60 square feet does not make sense for a retail project and they have some visibility problems due to the setbacks and pads out in front. They are in search of a compromise and would entertain any further suggestions from Staff.
- He referred the Commission to the proposed revisions to the condition which was provided to the Commission for the record. He reviewed this document in detail.

Greg Turner read into the record a letter dated September 7, 1999 from the **Sherwood Village Homeowners Association, PO Box 1274, Sherwood, Oregon 97140**. They wholeheartedly support the application with one exception. They request that a condition be included in the approval of the application that Adams Street be punched through to Oregon Street. The letter asked the Commission to consider the traffic impact a store of this size would bring through their neighborhood if Century Way is the only interior access to the Fred Meyer Store.

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

**Wendy Swanson, 15633 Thrasher Way, Sherwood, Oregon 97140**, had filled out a card to speak, but was no longer in attendance.

**Barbara Leonard, PO Box 1088, Sherwood, Oregon 97140**, addressed the Commission. Ms. Leonard said she had been involved with other citizens looking at transportation issues in Sherwood. She was quite concerned about road gridlock. She spoke before the Commission regarding the proposed Act III theaters (Regal) which was going to be constructed. After negotiating with the applicants of the theater, the theater complex was downsized. ODOT was also involved in this and had not granted access to Highway 99W or changing the timing of the light at the intersection of Tualatin-Sherwood road and Highway 99W. Now we are talking about a development that is going to add an additional 729 to 809 parking spaces in the Fred Meyer complex. She imagines this only adds on to the Fred Meyer complex and any other pads would create additional traffic. She talked to the transportation division of Washington County and unfortunately was not able to get the material faxed to her. Tom Walsh from the Engineering Department reviewed access study for this application. He prepared the Staff Report from the County and it was sent to the City. There is also a letter from ODOT.

Chair Weeks said this information was included with the Staff Report.

Ms. Leonard said these reports note there is a lack of through capacity on Tualatin-Sherwood Road now and it is a problem. There is no way to address this problem. It is a regional, county-wide issue. Tualatin-Sherwood Road needs to be increased to five lanes and right now it is three lanes. They have a draft version in progress to change it to five lanes. This widening would be from Highway 99W to Teton in Tualatin. The timeframe on this would be in sequences between the years 2006 to 2010. They have not even started on this yet. It also depends on what funds are available and how it is prioritized. There is another actual connector road which needs to be constructed. Through capacity means the one lane that is there is not going to handle the traffic that is going to get through. This means gridlock. The City needs to seriously start looking at the infrastructure in Sherwood and where businesses should and should not be located. Unless it is a safety issue, Washington County can put in requirements to mitigate this safety issue. The County said this has to be stopped at the City level with the land use issues. This is the only way to preserve Sherwood and stop the traffic congestion that it is only going to get worse.

**Chair Weeks said she had a conversation with Mr. Claus this afternoon and he requested he be allowed more than 5 minutes. She told him he would be allowed to speak as long as it was information that was pertinent to the application and if he got off track he would be asked to stop his testimony. He agreed to this.**

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

- Photographs of the interior and exterior of the Fred Meyer Store in (Salmon Creek), Vancouver, Washington. This store is just one year old and is an experimental model.
- Map and directory of the Salmon Creek Fred Meyer Store.
- Photographs of the Sherwood Mini-Storage facility in Sherwood which is a part of the Sherwood Village PUD.



- Letter dated September 7, 1999 with attachments in opposition to granting rephasing approval of the Langer PUD. The attachments included case law, notice of decision and sections of the Development Code.

He continued with his testimony, noting:

- The Fred Meyer being proposed is a classic big box. There is nothing in this store that is actually better than a Wal-Mart which is usually considered the worst design.
- You are not really dealing with Fred Meyer, you are dealing with Kroegers. There are 30,000 supermarkets in the United States and Kroegers is the largest single grocer.
- He made specific reference to the apparel section in the Vancouver store.
- He made specific reference to the sweating bricks on the outside of the Vancouver store which is only one year old.
- He made specific reference to the Garden Center and back of the Vancouver store. What you have in the rear of the Vancouver store, outside, is their garbage area.
- The two cases that state the prevailing law are *Frankland v. Lake Oswego* and *Rockaway v. Stefani*. In *Frankland* there are five criterion set out for a PUD. These were listed in his letter.
- He would suggest that this application is just a big box and on its own, it does not meet a PUD requirement.
- The Commission has also heard that the PUD has been grandfathered. In California, a vested right is when you have poured the foundation.
- The real problem the Commission has in front of them is that this is a PUD. It is not phase separate. He referred to the *Stefani* case. The public record must be accurate.
- He would suggest the report prepared by Mr. Tuck is not accurate. He explained why. Phase 1 is complete. Phase 2 is another set of apartments. Phase 3 is two parts; RC zoning and it is where the Assisted Living is being built and is on the other side of Sherwood Plaza. This phase, which is now being built, is not going to be completed in one year. His wife will discuss Phase 3. Phase 4 is the mini-storage and is what he believes destroys this hearing tonight and requires an immediate rejection of the entire application.
- Phase 4 was not built to the specification the Commission allowed and it is not finished. He made specific reference to the signs on this site. The middle of the sign, saying “self-storage” is 49 feet from the middle of Tualatin-Sherwood Road. One of the conditions from Washington County was the dedication of 49 feet of right-of-way. Either the sign is in the right-of-way or the conditions of the PUD were not followed. This is serious because now you have to have a new public hearing on this to determine what is to be done.
- The documents he provided show the Commission that the City Staff tried to talk the County out of enforcing the Commission’s conditions.
- He made specific reference to the trucks at the mini-storage. Jason Tuck, the planner, in identifying it, called this site general commercial. It is not, it is light industrial. When the Commission voted on it, they were told it was general commercial and this was an outright use. In the light industrial zone you can have the vehicular storage. In order to carry on the selling, as is being done with the U-haul trucks on this site, you will find reference in the material that a conditional use permit that is required.

- The Code states that if these phases are not finished in one year, you must have a hearing to determine that there is a public benefit. If the phases cannot be completed within 24 months, you have another hearing.
- The Staff Report is not complete and Mr. Turner is not denying that Phase 3 is not going to be complete. The care center or assisted living, and there is a real questions as to what is really is, was not finished in one year and the mini-storage did not meet the conditions of approval. He made reference to the Notice of Decision and read the condition to comply with Washington County Department of Land Use Transportation required conditions of approval dated October 28, 1996.
- The site plan has been changed, the conditions were not met and a junior planner, with no authority, okayed this to be done.
- Is this PUD any longer a public benefit? Sadly, and Mr. Ramis' law firm is certainly an outstanding law firm, in his mind they are missing his whole point. If you look further in the package you will see that when this was passed, prior to building Phase 3, the Adams extension was to be finished. There are other irregularities with this PUD that are currently under investigation such as the SDCs and the sewer and water line.
- Now is the time for the Commission to simply cancel the PUD and say it is not finished in one year, you have the record in front of you, and say this PUD is no longer valid. You can reject this application tonight completely because Mr. Ramis is asserting to you that the vested right in the zoning fits with the land and is not dependent on the language in the PUD Code giving the Langer subdivision a monopoly on the zone. He states it is vested. If it is vested nothing is lost by turning this down and say do a new application. But you will find that you have no option, as was done with Woodhaven, and that is rejection.
- The Commission has a history of when PUDs are not done annually and the phase is not finished, you have a hearing to determine there is public benefit. We don't even know if this is a PUD anymore. The Commission has substantial deviation in the report from the Staff. What this Commission passed, Mr. Langer did not build. The place to defend this and tell the Commission why is in a hearing to determine if there is a public benefit.
- This is 60 acres and add this to the existing Albertsons store and to what was okayed tonight, or Sherwood Plaza which is owned by the Langer Family under a 50 year lease to Mercury Development, you have a Washington Square. In order to meet the traffic conditions, the Commission needs to be back to ground zero, because any deviation causes problems.
- When the PUD was passed, the assisted living in the Retail Commercial zone was a prohibited use.
- A literal reading of this language means the applicant has terminated their own PUD.
- Mr. Ramis is telling the Commission it does not matter what is done, Fred Meyer has a vested right to build this store in an industrial zone. It is grandfathered. He wants to see the law on this. Mr. Dittman is not able to produce this and he has never said it is in the law, he said it is in the Development Code and that is a different thing.
- The Code states if the phases are not complete within one year, the Commission will have a public hearing to determine if continuation of the PUD is to the benefit of the City. The Council tried to work on this problem, but they were rebuffed by the Langer's attorney.

Mr. Schroeder asked Mr. Claus what he would rather see, an industrial area or the Fred Meyer store. Mr. Claus said this was a good question, but this is not what he is concerned with tonight.

When Mr. Langer first brought this PUD in it was turned down by the City Council. Mr. Claus testified in favor of this PUD and now he is embarrassed that he did. The City now has someone who is not following the process. He is not concerned with Fred Meyer and when you can hire someone of Mr. Ramis' stature and you can pay that kind of bill you are going to get every legal right in the world. This is not the issue, the City has let PUDs not follow the rules and the City ends up with no connector road, no money, no bonds and guess what, every time they are saying the same thing. The Staff let me do this, I didn't do it. This is what the Commission is going to hear, that the Staff, Jason Tuck, came up with all of these changes on the mini-storage, including allowing the sign in the right-of-way. They were to dedicate 49 feet for right-of-way. The rules are cumbersome and deliberately inefficient, but he plays by the rules and everybody else has to. This is not a matter of issue, it is a matter of process. The PUDs are an exceptional gift to the landowner and they should be treated with the kind of reverence they are given in terms of exception. They should not be a way to avoid the rules.

**Marv Taylor, 26383 S. Meridian Road, Aurora, Oregon 97002**, addressed the Commission as an opponent of this application. He is the manager of the Albertsons store in Sherwood. He said there is a real traffic problem already. Everyone who lives or works in the area knows there is a traffic problem. Why would the Commission consider approving another project on a street that is already congested. They do not have any idea on when the street is going to be completed. He is not afraid of competition. Albertsons is second only to Kroegers. They will do just fine, but some of the small businesses may not. He cannot compete with a traffic jam and all the other businesses on Tualatin-Sherwood Road can't compete with the traffic jam. Fred Meyer will bring some of the customers from Tualatin to the Sherwood store. This will cause more traffic. The Commission really needs to look at the traffic situation. He was not sure they could do anything about it except to maybe deny applications until something gets resolved with the traffic situation. He is not opposed to any competition. The traffic congestion is cutting off accessibility to their own town. You can take a poll of the citizens and they are going to say the same thing. Traffic congestion is a real problem. You have the biggest retailer in the grocery industry wanting to move into you community and it sounds like they do not want to give you any help in solving your traffic problems. This proposed Fred Meyer is going be bring in a lot of vehicle traffic. The Commission needs to consider denying the application. He said he was speaking on his behalf, not as a representative of Albertsons.

Chair Weeks said Mr. Taylor is also an active member of the Sherwood Chamber of Commerce and probably does get a lot of feedback from other business owners. Mr. Taylor said the Chamber does promote business.

**Susan Claus, 22211 SW Pacific Highway, Sherwood, Oregon 97140**, addressed the Commission. She presented the following items for the record:

- Section 2.200 of the Development Code regarding Planned Unit Developments (PUDs).
- Brochure and information on Avamere a Genesis Assisted Living Facility.

She continued with her testimony and noted:

- There are some basic issues which have to deal with the Sherwood Development Code in the Langer PUD 95-1. The Fred Meyer application has to rely solely on the fact that this PUD is valid in order for them to make the leap that in this industrial zone they have the right to this Fred Meyer use.
- She referenced the 1995 Development Code because this is when PUD 95-1 came in. The PUD portion of the Code has not changed from 1995. Section 2.202.04A2 Failure to Complete. “When substantial construction or development of a PUD, or any approved phase of a PUD, has not taken place within one (1) year from the date of approval of the Final Development Plan, the Commission shall hold a public hearing to determine whether or not the PUDs continuation, in whole or in part, is in the public interest.”
- The conditions of approval for this PUD state that the approval is valid for one year. This PUD has its own ordinance. The PUD has an annual review and if you don’t complete something within one year the land use process contemplates holding a hearing for this. There has never been a subsequent hearing on PUD 95-1 specifically this portion of the Development Code. This is one of her concerns.
- The second point relates the phasing. She referenced the letter from the City Attorney addressing the sequencing and that it is a concern.
- If you look at the Staff Report for PUD 95-1, the infrastructure was a critical issue. She identified on the map how Adams Avenue was slightly adjusted. The Commission approval of the mini-storage was that they were supposed to provide an access report. As a result of this, there was a change to the access for Adams Avenue.
- There is an inherent problem with the PUD itself. When you create a PUD, it is a separate entity. There were some Code changes since the PUD was applied for. The 1995 Code applied to the original PUD. On May 12, 1998 the General Industrial (GI) and Light Industrial (LI) zones were modified. This plan text amendment states, in part, that PUDs new and existing, are subject to the provision of Section 2.202, the PUD Code. On May 24, 1998 there was a plan text amendment to allow special care facilities as an allowable use in the High Density Residential (HDR) zone. They were allowed as a conditional use in the Retail Commercial (RC) zone.
- On September 15, 1998, on Phase 2 of PUD 95-1, an application was submitted for the assisted living facility which is being constructed now.
- She referred the Commission to the original map for PUD 95-1, identifying the various phases and assigned zoning. There was other land in the PUD which would allow the care center without the plan text amendment to the GI and LI zones.
- The question has been raised as to which version of the Code should be applied to the various applications in each phase.
- She referenced the Code for major changes to a PUD, Section 2.202.04B1.
- The Retail Commercial (RC) zone as written in the Code, does not contemplate densities for putting in a residential facility. The acreage required for 65 units, 16 units per acre, would have taken 4.06 acres for them to put the same facility in the PUD and not violate the amount of land in the PUD or the number of units for that use. She took this information from the application for the assisted living facility.
- The Code did not require parking requirements for assisted living facilities, and the Staff based the parking requirements on the applicant’s description of other areas which is one parking stall for two units. This was based on the facilities in Hillsboro and Newberg. The

facility in Newberg just opened in the Spring of 1999. She was not sure about the Hillsboro location. So, there was no track record on the parking. The parking is severely restricted on the assisted living facility site in Sherwood.

- There has been an election on this PUD, with knowledge and understanding, of the development team for this PUD that has been in place with the Langer family since its inception.
- She did not think the Fred Meyer people even had a clue about some of the underlying problems with the PUD. This application has to be rejected because there is evidence in the record to show that there have been density changes, conditions that trigger a major change in the PUD, and whether PUD 95-1 still exists as a valid zoning tool to piggyback this grandfathering in of the general commercial uses in the light industrial zone. This mixed-use PUD 95-1, light industrial section is being blocked out.
- The 45-day timeframe was a specific insertion by Jon Bormet into the streamlining process with other language, because of his frustration with the Commission not marching to his tune. This was not even emphasized at the Council level.
- She has reviewed the complete Fred Meyer application and has some concerns on it.
- The more critical issue is the PUD zoning violations that need to be taken care of at the City Council level.

**Chair Weeks asked if there was any further opponent testimony. There being none, Chair Weeks asked if the applicant wished to provide rebuttal testimony.**

**Warren Tyler, Sienna Architecture, 411 SW 6<sup>th</sup> Avenue, Portland, OR 97204**, addressed the Commission. He noted:

- Regarding the photographs and flyer on the Vancouver, Washington store. The tenants on the end of this store had to do with its location on the site. Fred Meyer looks at every site to determine if they can add tenants. In this case, they came in on the end.
- The photos also showed some exterior storage. This may be due to some separate agreements that this store has with Clark County. If this is something the Commission feels strongly about they could condition limits on exterior storage. This is something that has been done and could be done in this case.
- Over one-half of the submitted photos are of the interior. These are really irrelevant to the application. The applicant showed their photos of the interior of the store so the Commission would have an idea of how it is going to be laid out.
- A couple of photos showed some efflorescence on the concrete masonry. This is not unusual for the first 12-18 months after construction. It is a simple matter to clean it off and repaint if necessary.
- The photos from Mr. Claus actually indicate, as they discussed, a very good looking store. The Vancouver store is similar to the one proposed in Sherwood. It shows architectural detail, good use of contrasting materials, the pedestrians walks and the photos support the applicant's case.

**Brent Ahrend, Group Mackenzie, PO Box 69039, Portland, Oregon 97201-0039**, addressed the Commission. He noted:



- The comment was made that some traffic would be added to Tualatin-Sherwood Road with people coming from Tualatin to the proposed store in Sherwood. There are a lot of people commuting now to the Newberg and Tualatin Fred Meyer stores. They believe more people will stay in Sherwood with this new store, than those who would drive from Newberg and Tualatin to the Sherwood store. There would be a decrease in traffic on Highway 99W and Tualatin-Sherwood Road between these cities.
- One of the persons who testified mentioned their conversation with Tom Walsh at Washington County and how the County is moving toward trying to implement a five lane classification for Tualatin-Sherwood Road. This is a good thing. What the Commission should key on is what happens at the built-out of the proposed Fred Meyer. All the evidence the Commission has received in the traffic studies point to the fact that traffic can be accommodated for the entire development, not just the Fred Meyer store, without the Adams Avenue extension.
- The City has placed the condition for the Adams Avenue extension to Oregon Street, but there is no evidence that states this needs to be done. The only reference in any of the material the Commission has, is ODOT recommendation that this occur so it would take traffic off of Highway 99W. In fact, it would transfer more traffic onto Tualatin-Sherwood Road between Adams Avenue and Highway 99W, in the interim, further congesting this intersection. It would reduce traffic on Highway 99W between Tualatin-Sherwood Road and Sherwood Boulevard.

**Tim Ramis, representing the applicant Fred Meyer, 1727 NW Hoyt Street, Portland, Oregon 97209**, addressed the Commission. He addressed some of the legal arguments which were made.

- The question of the status of the PUD, has it evaporated and should the Commission follow the advice of the opponent testimony, that is has disappeared and does not exist any more. Section 2.202.04 of the Development Code.
- Mr. Simon said he would be able to answer questions on the factual status on the ground.
- Does the Code say that there is automatically no PUD. The language does not say this. What it does is empower the Commission, if they feel there has not been *substantial construction*, to have a hearing. If at the close of this hearing, the Commission determines that there has not been substantial construction and it is not in the public interest to continue, then there is another hearing at the Council.
- These hearings have not taken place. There is nothing in the Code that states there is some automatic process that magically evaporates the PUD. Until this process takes place, this PUD exists. The argument, while interesting, is not relevant to this procedure. This PUD could not be taken away without a hearing.
- The question as to the legal standard, the argument was made that if there is any condition that has not been met, any aspect of it is not completely done to 100% satisfaction of the punch list met, that this PUD is vulnerable. The Codes does not say this. The Code states that substantial construction and this is a term that has a clear meaning.
- Substantial construction in vested rights law means that in good faith someone has made ample expenditures, large expenditures, towards the project. Many of these cases are based

on the idea that they had expended less than 10% of the total value. In this case, these expenditures far exceed this.

- Even if there was a hearing, there is a real question about whether you could even take it apart if you had a dispute before you.
- Interesting issues in the Code, but not before the Commission tonight.
- Regarding the uses question, are the uses permitted. The Commission has had cited the vested right question whether you should follow California law. California has a different legal history on vested rights than Oregon. California is known as a late vesting state and this is not the law we have in Oregon. In Oregon we have well over 20 years now of litigation on virtually all aspects of the vested right argument. The law has been consistent since the Court in the 1970's upheld the continuation of a chicken processing plant in Clackamas County. The rule is if you substantially spend money in good faith, which has taken place here, then you acquire vested rights.
- The argument on the Code itself, he would not repeat the City Attorney or himself, he would direct the Commission's attention to the City Attorney's memo of August 10, 1999. It is the most closely reasoned document within the record with respect to whether the use is permitted. The City Attorney concludes that it is and the Staff has concurred in that consistently.
- Regarding the phasing, the issue here turns on whether or not there is in the record some kind of mandatory phasing plan that has been imposed. They have not been able to find this. Had it existed, the City would not have allowed the development to take place in order which it has. The City has clearly allowed the development to take place in the sequence that matches the market rather than the sequence that matches some arbitrary sequential plan that does not exist.

Mr. Ramis said Fred Meyer very much wants to become a part of the Sherwood community. This is why they are here and they would not have spent the time and effort if this was not the case. They appreciated the Commission's time and consideration.

**Chair Weeks closed the public hearing on SP 99-4/SUB 99-5/CUP 99-2/VAR 99-3 Fred Meyer Store application for discussion by the Commission.**

Mr. Mays asked Staff about the 45 day rule and whether the final action could be taken in two weeks. Mr. Turner said if the Commission was going to deny the application, they could deny it pending preparation of the Staff preparing findings for denial being presented at a future meeting. The 45 days does not affect the appeal process.

Chair Weeks said she thought the Commission had more than sufficient reason to deny the application. The zoning is a major issue. She reads it as this application is to be using the 1998 zone code changes and if that is the case, then this property would not be a use in the general commercial. This is because of the Code changes the application elected to go with versus the previous code. Phasing is also an issue.

Mr. Mays said the approval of the PUD specifically required that prior to Phase 6 certain improvements were to be made.



Chair Weeks said the original conditions for the PUD state Adams shall be constructed from Century Drive north to Tualatin-Sherwood Road prior to completion of Phase 3. There is later information that states this was placed on Phase 6. The language was changed from the original PUD. The determination needs to be made whether the PUD is still legal.

**Chair Weeks moved the Planning Commission deny SP 99-4/SUB 99-5/CUP 99-2/VAR 99-3 Fred Meyer application due to the major issues of zoning and phase sequencing. The motion was seconded by Sterling Fox.**

Mr. Shannon said he agreed with what the Commission was saying, but what also bothers him on this project is the livability for the citizens of Sherwood. The applicant has designed the project, not to extend Adams Avenue. The applicant does not want to do anything with Tualatin-Sherwood Road.

Chair Weeks said she was not sure this applicant is responsible for Tualatin-Sherwood Road because that would be a County issue. They definitely have a responsibility to make the store more accessible to the downtown community which is the Adams Avenue connection.

Mr. Mays said he was not attacking Fred Meyer, but the infrastructure should have been in place to support the additional traffic. Mr. Shannon said to build it now and hope for better roads in the future is not good planning.

The Commission agreed that the applicant was not totally at fault. The developer and Staff should have reviewed all of these issues.

Mr. Mays asked for clarification on the motion.

Mr. Schroeder said he did not believe the current roads would support the Fred Meyer store. It is just going to make the intersection unbearable for the community. He would never bring a business out here because of the traffic problems. On the other hand, he knows most of the community would support having a Fred Meyer store.

Chair Weeks withdrew the original motion and Mr. Fox withdrew his second.

**Chair Weeks moved the Planning Commission deny SP 99-4/SUB 99-5/CUP 99-2/VAR 99-3 Fred Meyer Site Plan, Preliminary Plat, Conditional Use and Variance application based on zoning, phasing, and transportation, and instructed Staff to prepare findings for denial to be brought before the Commission at their September 21, 1999 Regular Commission meeting. Seconded by Keith Mays.**

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

The applicant thanked the Commission for their time. The Commission said they looked forward to the application coming back with the issues being answered.

**Chair Weeks recessed the meeting at 12:30 AM for a break and reconvened the meeting at 12:40 AM.**

**4D. SP 99-10/CUP 99-5 New Elementary School Site Plan and Conditional Use**

Chair Weeks said prior to starting with the Staff Report, she asked if the Commission wished to continue this hearing to a time specific at a special meeting next week. It was determined that because of a School Board meeting and City Council meeting on Tuesday, this night would not work. It was the consensus of the Commission as well as the applicant to hear the application tonight.

Chair Weeks opened the public hearing and called for the Staff Report. Greg Turner referred the Commission to the Staff Report dated August 31, 1999, a complete copy of which is contained in the Planning Commission's minutes book. He noted:

- The applicant is requesting to construct a new elementary school consisting of approximately 63,000 square feet. The proposal includes areas for ballfields and open space. The site proposes two vehicular accesses from Old Highway 99W to two separate parking lots consisting of a total of 81 off-street parking stalls.
- The site is 11.25 acres. The site is zoned Medium Density Residential High (MDRH) and the proposed use of a elementary school is a conditional use within the current zoning designation.
- He reviewed the required findings for conditional use approval. All public facilities and services are not available and are not adequate for the proposed use at this time. The primary concern is the availability of water, in addition to water pressure to serve the site. The City Engineer has stated that acceptable water pressure is not available to the site through the City's water system. The applicant has indicated that they are in the process of designing an on-site water system in order to construct the school.
- Staff received a study on Friday and it is currently being reviewed by the City Engineer. This review will be of the water system the School District is proposing.
- The second item is transportation access and public safety concerns. The current design provides for a bus turnout on Old Highway 99W. From there the buses would travel down Old Highway 99W to Brookman Road. If they turned left toward Ladd Hills Road, Staff was not sure there was enough space for the buses to make these turns. If the buses turned right on Brookman Road, they would head out to Highway 99W. There is some concern with buses pulling out onto a roadway with a 55 MPH speed limit.
- Staff received information from the School District's traffic analyst which was received on Friday. It states the buses have been making these turns for more than seven year onto Highway 99W without any incidents or accidents. The sight distance is adequate and there is approximately 90 feet of paved shoulder before the grade drops down to the adjacent property.
- These are the two issues. Due to the fact additional information was just received, Staff is recommending a continuance of this application.

Mr. Turner identified the property where the school is going to be located on the City zone map. He also reviewed the routes the buses would take to and from this school site.

**Chair Weeks asked if the applicant wished to provide testimony.**

**Jim Carlile, Interim Superintendent, Sherwood School District 88J, 23295 S. Sherwood Boulevard, Sherwood, Oregon 97140**, addressed the Commission. Mr. Carlile thanked the Commission for hearing this application tonight and noted:

- They did present a letter to the Commission tonight in which they addressed some of the issues, at least in brief, that are facing the School District.
- They believe there are solutions available for each of the issues contained in the Staff Report. The architect, traffic engineer and civil engineer are also in attendance representing the applicant.
- Some of the issues relating to water are somewhat out of the School District's control. They have a better understanding of the severity of the water issue, which it is fair to say has come as somewhat of a surprise to the School District and the City. Otherwise, they would have been before the Commission with their request earlier.
- It is absolutely critical that the School District have the school open one year from now for a couple of reasons. One is the large number of students to manage the growth over the past four years has been in the 13-14% increase. They projected a 6% increase this year, but it appears it will exceed this projection.
- They have a responsibility to the citizens who passed a bond issue authorizing this school last November.
- The 1999 Legislature gave \$112 million to support school districts in growth areas where they were opening new facilities during the 1999-2000 biennium. This represents about 8% of the construction costs for this facility as well as some other facilities in the School District. This means something in excess of \$600,000 which would come to the School District next year and allow them to open this new school more smoothly.
- It would help pay for the additional staff, furniture and equipment that is needed.
- The critical issue is that they be allowed to get a permit to get onto the site and begin the grading and construction of a pad prior to the rainy season. If they can do this, they would expect to completely resolve any of the issues that Staff has indicated related to traffic and water.
- They believe they have solutions to both of these issues and will continue to work on these.
- He asked the Commission to consider allowing them to get their grading permit.

**Ralph R. Willson, LSW Architects, P.C., 825 NW Glisan, Portland, Oregon 97209**, addressed the Commission. He noted:

- He identified the location of the new school on the map. The site is about 11.25 acres. They took the high end of the site in dealing with the water and sewer.
- From their earlier meetings they were under the assumption that there was going to be a water booster station east of this site in the Woodhaven area. This is what the design encompassed going into this process.

- When they met in August 1999, they were told this was not going to work so they needed to come up with another solution. There was also some discussion on the Water Master Plan which was going to be considered. They did have to supply some additional documents as to how they will take care of the water situation.
- The new elementary school is planned for 600 students to offset the current capacity of the District at the elementary level. They have a separate the bus circulation from the parent drop off area in response to the community regarding safety issues. This type of scenario is done at other locations and has proven to be successful.
- Their traffic engineer will address the Brookman Road intersection. Currently, the District has about 3 buses in the morning and 3 buses in the afternoon going out onto Highway 99W. They are projecting this will increase to 4-5 buses in the morning and afternoon. There is also one bus going east on Brookman Road and this will increase to 2 buses in the morning and afternoon.
- They provided Staff will a letter to increase the radius at the Brookman Road intersection to provide a 25-foot turning radius.
- He discussed access to the site and identified the areas on the map. He also reviewed the floor plan of the proposed school. A materials board for the construction of the school was provided for the Commission review.
- They have provided a location on the site for future portable classrooms, if they become necessary.

Chair Weeks asked where the water facility was going to be located. Mr. Willson said it is planned to be a looped system with booster pumps on both the domestic and the fire flow. The District has been looking at the property across Old Highway 99W as a possible middle school site. Nothing has been finalized in this regard at this point in time. There will be a slat screen fence to buffer the school site from Highway 99W. The Staff Report discussed parking and per the Code, they are proposing two parking stalls per teacher. They are proposing 81 parking stalls. Archer Glen has 750 students and about 100 parking stalls.

**Chris Robertson, the civil engineer for the project, Robertson & Olson, 8715 St. Helens Road, Vancouver, Washington 98664, addressed the Commission.** He noted:

- The conditional use they proposed originally had an on-site water system to be served from the existing City water main extension at Timbrel and Middleton to their site. This assumed there would be a booster station provided by the City prior to construction of the school. The proposed Water Master Plan does not have a booster station, so they had to find another solution for the water.
- In talking with the Tualatin Valley Fire & Rescue, they determined the fire flow requirements. A new subdivision is be constructed just north of their site. It has an 8-inch stub and 8-inch main. He identified the location of these lines.
- They submitted to the City on Friday, an analysis to provide a looped water system that connects to the 8-inch stub and wraps around the school, up Highway 99 and connects to the other 8-inch line. The looped system, from their analysis, will provide the minimum fire flow requirements.

- The domestic water will be brought off the main in the street to the site. They plan to have an above-ground pump station. This will be a private water booster. The fire sprinkler and pump will have a diesel generator back-up.
- Their analysis shows that the two stubs for water will work.

Mr. Mays said the booster pump station was shelved from the Water Master Plan because it was not going to be sufficient to serve the school. Mr. Robertson said this booster pump station was to serve the school and Woodhaven. This booster pump station did not have enough flow to support the charge this booster was going to provide. They are not going to provide a public booster. They are hooking onto the public system using the pressure the City has and they have found a system design that uses these pressures to get adequate fire flow. They are putting a private, on-site booster for the domestic and fire flow. This has significantly less demand than the fire hydrants. It is their intention that the proposed system they have designed will work.

**Frank Charbonneau, Charbonneau Engineering, One SW Columbia, Suite 1685, Portland, Oregon 97258**, addressed the Commission. He noted:

- They produced the traffic study report and is based upon a detailed scope including data collection and traffic counts for the area. They also surveyed trip generation data from the existing middle and elementary schools. This information is documented in the report.
- They studied several critical intersections along Sunset Boulevard from Highway 99W, the Woodhaven area, Timbrel and Colfelt. They looked at future projections through 2005, taking into consideration the City's Transportation Plan.
- There will not be any level of service or capacity problems.
- He addressed the two points of concern which have been mentioned. They recognize there is some tight radii at the Brookman Road intersection and it is their proposal to increase the standards up to 25 feet. The buses would have a better pattern to make the left and right turns.
- Regarding right turn movements onto Highway 99W, they have reviewed the sight distance. It is a stop sign controlled approach. The speeds are relatively high on the Highway, but the approach is handled with the sufficient gaps that occur. Buses make the turns now and there is no history of accidents. They feel it is sufficient to continue this process.
- The possibility of lowering the speed limit on Highway 99W would require ODOT's approval. Generally, as more development occurs, they are more likely to consider a change in the posted speed.
- They have proposed a marked crossing at Timbrel Court and Woodhaven Drive, along Sunset Boulevard. Chief Middleton reviewed the study and indicated he would like to see the yellow flashing beacons mounted on the signs that bracket these crosswalk locations during the school hours. This has been included in the supplemental information provided to the City.

Chair Weeks asked what area most of the students would come from. Mr. Carlile said they have not done a boundary study to determine where the students would be pulled from for the proposed new elementary school. Presently, there are about 200-250 elementary school students

in the Woodhaven area. There are about 1400 elementary school students in the District which would be divided between the three elementary schools when this one is completed.

Mr. Mays asked why this site was chosen. Mr. Carlile said the District was involved with the bond issue from about September 1998 to November 1998. The District was already in the negotiation process on this site and they did have maybe seven or eight other sites. The School Board members would be able to better address this question. It is a tight timeframe to have this school opened, but in defense of the School District, they were maybe one of four districts that passed an overwhelming majority on this bond issue. From that time they had to sell bonds and get the money together. They started on this in February 1999 and the property was acquired in March 1999. It has been a tight timeframe all the way through the process.

Mr. Carlile said they believe they have solved both the water and traffic issues. It is the applicant's request that if there is a way to not hold the conditional use portion up based on what they have presented to the City, but look at the issuance of the building permit as a condition of building, this would help some timeframe issues. They would like to go out for bid and get the contractor on site as soon as possible.

**Chair Weeks asked if there was anyone who wished to speak in favor of the application.**

**Dave Backen, 23062 Cuthill Place, Sherwood, Oregon 97140**, addressed the Commission. He is the Chairman of the School Board. He noted:

- The District spent an extensive amount of time in selecting this piece of property.
- They can only pass bonds in even numbered years in General Elections. They are a little late and they are very sorry, but they have tried to follow all the rules they can and get done in a timely fashion. They really want to make this happen as soon as possible.
- They have a long range, 20-year plan that includes the kind of future sites they will need. This school was a part of that plan. They started out with seven pieces of property which were then eliminated to this one piece because of the contiguous acreage that they need.
- Their elementary school population right now is about 1400 students. Their design capacity is 1200 student, so they are 200 students over capacity right now.
- The proposed school is, by design, so they can maximize the dollars their patrons give them in bond issues. This is the optimum time in the long-range plan to put the school on the election and accommodate growth.
- This plan necessitates opening the school in the Fall of 2000. They certainly do not want to hold the Commission hostage and say we need the school absolutely, but they really could use the school in the Fall of 2000.
- The students are still coming, but they do not have the classrooms to accommodate them.
- They have attempted to abide by all guidelines and procedures as best they can. If you want to talk public good this is it. We may like to have Fred Meyer in the area, but the community absolutely needs this elementary school to open in the Fall of 2000.
- They will work with the City in whatever manner possible to make this happen. They appreciate the Commission staying so late in hearing this application.



Chair Weeks asked how long it would be before this school would be over capacity. Mr. Backen said the growth rate of 13% compounded by the next year, caught the District by surprise with regard to Archer Glen being over capacity so soon. Archer Glen was not designed to have that many portables. It is certainly not in the best interest of the District to have portables. They are very expensive and this site is designed to have three portables. They don't anticipate that need for a very long time. This is based on growth rates they can guess at which is somewhere in the 6-7% range. This school will be grades Kindergarten through Five (5). The bond measure for the Middle School and High School, was designed for classroom expansion to house kids so that the District will have a capacity through the year 2004. Mr. Carlile said they would probably need a new Middle School if the growth continues at the current rate. The next facility would be a Middle School and this would be in about five years. Mr. Backen said possibly another elementary school depending on growth.

**Peggy Stevens, 13680 SW Morgan Road, Sherwood, Oregon 97140**, addressed the Commission. She is a member of the Sherwood School Board and as a volunteer, she appreciates the time the Commission takes volunteering for the betterment of the community. She thanked the Commission for taking the time to hear the application. She noted:

- They realize that they could have worked better as a School District with the City in the past. They want to do this in the future for planning purposes.
- A couple of years ago they should have come to the City and said where is the best spot for a school. What's done is done.
- They would like to gather information from Portland State and Metro projecting what the growth will be, what their student population will be and work with the City to find a location for a second Middle School and fourth Elementary School.
- Taxing their property is the only way they can build the schools in the state of Oregon right now. This has somewhat limited their ability to build the schools. They don't want to go to the taxpayers before the school is absolutely necessary. They become almost too late like they are right now with two over-crowded elementary schools.
- They would like to designate a future spot and then when the time is right go back to the citizens for the funding.
- Their architects say it would take a good ten months to build a school. As was mentioned, the rainy season is coming. They are asking for the Commission to help them get started on this project.
- They learned in late July 1999 that the 1997 Legislature has designated some money to school districts in the state and the citizens of Sherwood will benefit by \$600,000 if they can open this school in the Fall of 2000.

**Chair Weeks asked if there was any further proponent testimony. There being none, Chair Weeks asked if there was any opponent testimony.**

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

- He does not like people who continually create problems for Sherwood. This is what the Commission has before them. It is always the City's fault.
- The Commission is going to end up in litigation, in all likelihood, because there was a back door negotiation between the School District and Jon Bormet for over 18 months to take the park property out of Woodhaven and convert into the School District site. If Sherwood does not get sued over this it is going to be a wonder.
- Regarding not being able to get a site, the School District condemned the proposed new elementary school site. When they wanted to, they filed condemnation proceedings.
- He asked that the public record be kept open for two weeks. He guaranteed the Commission, that in all likelihood, he will take them to LUBA this time.
- They did not get a stop light on Sunset, but they got commercial space on South Sherwood Boulevard.
- The reason they can't put public safety in that school is because you have to have 4,000 gallons a minute for 4 hours. These are the calculations from the City Engineer. That is 722,000 gallons of water.
- Now they are talking about looping the system. Nobody ever intended to build a school building out there. This is the use in the wrong place.
- Everybody has known that the water district was not delivering pressure. How does the District not know this, because they decided what they were going to do and then they told the City. If they had gone to the City Council before they bought this piece of property this would not have happened.
- He is getting tired of the District begging for clemency. They have a closed campus policy and have destroyed downtown Sherwood. They took \$750,000 from the City on Archer Glen and then turned around and tried to use it by taking the proposed park property out of Woodhaven. The City is now in the mess with Woodhaven because of this.
- If the District wants to they will take it and this has to stop in this town. They do not care about the trouble it may cause.
- Sherwood will not remain livable if you cannot meet these conditions. Four-thousand gallons a minute and you talk about an agricultural well. The people on Parrett Mountain, who live in this School District because 40% of the people come from outside Sherwood, would sue you in a minute. In fact they are suing the City over our wells now.
- Booster pumps, we have a booster pump and we do not dare turn it on because it will collapse the lines. The District cannot meet Section 4.302.03. They have to have a binding agreement between the applicant and the City. And they don't have one.
- An acre is 43,560 square feet. In order to do what they are talking about they need to put water out there on one acre, two feet deep. This is their 4,000 gallons per minute. These are the City Engineer's figures.
- Over one-half of the site cannot be served by the City's sewer and we are going to have trouble with the water.
- This is a school in the wrong place. There are other sites, the Drennan property is close. They could have condemned Woodhaven and got it for \$135,000 an acre. It was just a matter that it was convenient.
- This is going to have a negative effect on the surrounding property. They are not talking about paying for the collector street. These are the same people who would not pay for a

light on South Sherwood Boulevard and Sunset Boulevard, but they could build a District Office with the money they saved.

- The Commission's obligation is not to accommodate another municipality that serves kids from as far away as West Linn. It is to apply the Development Code. There is no study showing how much impact they will have on the property out there. This school will have a negative impact on the property.
- They will be taking buses out into a 55 MPH zone and there is not a chance that ODOT is going to change the speed limit for them.
- This application is encouraging growth exactly where the City does not want it and do not know if the City can serve it.
- Why doesn't the District support the voucher system and then they won't have so many kids in the public schools.
- He does not see the District talking about any alternative besides putting a burden on the City.
- The School District does nothing for this City. They overload the traffic system, do not cooperate with the downtown merchants, and they are an island unto themselves. In spite of what Ms. Stevens says, they will tell you whatever they need to get this application through.
- They got Archer Glen because this town gave it to them.
- The application has not met any of the criteria and should be denied.
- If necessary, he will appeal this to the City Council.

**There being no further opponent testimony, Chair Weeks asked if the applicant wished to provide rebuttal testimony.**

**Chris Robertson** addressed the Commission regarding the fire code requirements. LSW Architects and he met with Tualatin Valley Fire and Rescue to discuss these requirements for the site. The 4,000 gallons per minute is not the required fire flow for this site. The required fire flow before you take reductions is 5,800 gallons per minute. They are given a reduction because they had a central station, and supervised automatic sprinkler detection system. This reduces the fire flow by 75% to 1,464 gallons per minute, but the minimum is 1,500 gallons per minute. This is the required fire flow as set by Tualatin Fire District.

Mr. Fox asked Staff who makes the judgement whether the water system is adequate? Mr. Turner said the City Engineer would review the calculations. He just received this information and has not had an opportunity to review it.

Mr. Claus said as a point of information, the City Engineer acted on this during the City Council meeting when the Water Master Plan was reviewed. This is where he gave the figure and what was required.

**Chair Weeks closed the public hearing for discussion by the Commission. The public hearing record is left open for 7 days for additional testimony and the applicant, per Oregon statute, is allowed an additional 7 days to respond to any new information.**

The Commission agreed that the City Engineer should respond to the new information regarding the water system.

**Keith Mays moved the Planning Commission continue SP 99-10/CUP 99-5 New Elementary School Site Plan and Conditional Use to the September 21, 1999 Regular Commission meeting. The public hearing is closed and the record will be left open for 7 days for additional written comments and the applicant is allowed 7 additional days to respond to the new information. Seconded by Jeff Schroeder.**

Mr. Schroeder said he would really like to see a plan for rerouting the school buses so that they would not need to go out onto Highway 99W. He has the same water sprinkler system in his business and he believes the 4,000 gpm is high. He would like to see strong numbers to review regarding the water system. The Commission concurred.

Mr. Shannon said the relationship between the City and the School District goes back to when Mary Tobias was Mayor and Bill Hill was the Superintendent.

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

## **5. Adjourn**

There being no further business to discuss, the meeting was adjourned at 2:00 AM.

Respectfully submitted,

Planning Department