



**City of Sherwood
PLANNING COMMISSION
Stewart Senior/Community Center
855 N. Sherwood Boulevard
September 21, 1999 - 7:00 PM**

A G E N D A

- 1. Call to Order/Roll Call**
- 2. Approval of Minutes – September 7, 1999**
- 3. Agenda Review**
- 4. Adopt Findings of Fact for SP 99-4/SUB 99-5/CUP 99-2/VAR 99-3 Fred Meyer Site Plan, Preliminary Plat, Conditional Use and Variance. Public hearing and record are closed.**
- 5. Public Hearings:** (Hearing Disclosure Statement. Also, declare conflict of interest, ex-parte contact, or personal bias) **Public Hearings** before the City Council and other Boards and Commissions shall follow the following procedure (Resolution 98-743, adopted June 9, 1998):
 - Staff Report--15 minutes
 - Applicant--30 minutes(to be split, at the discretion of the applicant, between presentation and rebuttal.)
 - Proponents—5 minutes each (applicants may not also speak as proponents.)
 - Opponents—5 minutes each
 - Rebuttal—Balance of applicant time (see above)
 - Close Public Hearing
 - Staff Final Comments—15 minutes
 - Questions of Staff/Discussion by Body—no limit
 - Decision (Note: Written comments are encouraged, and may be submitted prior to the hearing, at the hearing, or when the record is left open, after the hearing for a limited time. There is no limit to the length of written comment that may be submitted)
- A. SP 99-10/CUP 99-5 New Elementary School Site Plan and Conditional Use (continued from September 7, 1999):** 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.
- 6. Community Comments**
- 7. Other Business - FYI**
- 8. Adjourn**

**ITEMS NOT COMPLETED BY 11:00 PM WILL BE CONTINUED
TO THE NEXT REGULARLY SCHEDULED MEETING**

APPROVED MINUTES

City of Sherwood, Oregon
Planning Commission Minutes
September 21, 1999

1. Call to Order/Roll Call

Chair Angela Weeks called the meeting to order at 7:08 PM.

Commission Members present:

Adrian Emery
Sterling Fox
Keith Mays
Jeff Schroeder
Angela Weeks

Staff:

Greg Turner, City Planner
Terry Keyes, City Engineer
Derryck Dittman, City Attorney
Roxanne Gibbons, Recording Secretary

Commission Members absent:

Ken Shannon

2. Minutes of September 7, 1999

Chair Weeks asked if there were any additions or corrections to the minutes of September 7, 1999. She noted a correction on page 35, the motion should include a reference to "transportation" issues. There were no other corrections.

Keith Mays moved the Planning Commission accept the September 7, 1999 minutes as corrected. Seconded by Sterling Fox.

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

3. Agenda Review

There were no comments.

4. SP 99-4/SUB 99-5/CUP 99-2/VAR 99-3 Fred Meyer Site Plan, Preliminary Plat, Conditional Use and Variance Land Use Application (public hearing & record closed, adoption of findings)

Chair Weeks noted that at the September 7, 1999 Regular Commission Meeting, the Commission requested Staff to prepare findings for denial of the application. Mr. Turner said the findings in the packets reflect the Commission's concerns regarding phasing, the use, and the traffic issues. He referenced page 2 of the report regarding streets and roads where the transportation issues were included. The Commission said he did a great job in preparing the findings.

Chair Weeks said it was her understanding that a PUD can elect to follow the Code wording one time only. She asked Mr. Dittman if this was correct. When the PUD was originally approved, they followed the 1995 Development Code for planned unit developments and zoning. When the

assisted living facility was applied for a different version of the Development Code was in effect. The applicant chose to use the 1998 version of the Code for the site plan application that was a part of the original PUD. From this point on, would the applicant be required to follow the 1998 version of the Development Code?

Mr. Dittman said he did not know if this would necessarily be the case. Chair Weeks clarified her question that it be as far as zoning goes? Mr. Dittman responded that if she was asking if they made an application for a conditional use permit for the assisted living facility, did that change the zoning applicable to the Fred Meyer site, he did not think that necessarily follows.

Chair Weeks asked if a PUD was able to use one version of the Code for one phase and use another version of the Code for another phase, or is it a continual change for the entire PUD? Mr. Dittman responded a PUD is merely an overlay and the underlying, existing zoning continues with respect to the property. As to the Fred Meyer site, as set forth in a letter he wrote several weeks ago about this issue, the underlying zoning for the PUD in 1995 was industrial uses, but industrial uses included general commercial uses, so all of these were permitted uses in the zone. Subsequently, when the Code was amended, there was a provision that stated pre-existing uses would continue for PUDs that had been applied for previously. If her question was when they applied for the assisted living facility site plan that somehow this changed the underlying zoning rule that applied to the Fred Meyer site, his answer would be no.

Mr. Turner said under the current Code an assisted living facility is a conditional use and the zone where it is located is Retail Commercial (RC). Chair Weeks said the 1995 Code did not allow this use.

Chair Weeks said she was confused with the fact that this PUD or any other PUD could continuously change their mind. She asked where the control would fall and which version of the Code would they follow?

Mr. Dittman said the PUD does not change the underlying uses. A PUD allows the variances and flexibility in standards that are applied to the use, but the uses still have to follow what the Code provisions say. The Code provisions still permit the general commercial use for the site that was applied for with the Fred Meyer application. The 1998 version of the Code specifically states that an existing PUD continues to use the uses that applied to that property before that time.

Keith Mays said he did not necessarily agree with this interpretation. Chair Weeks said she wanted to be sure the Commission was doing their job right.

Keith Mays moved the Planning Commission accept the findings as presented denying SP 99-4/SUB 99-5/CUP 99-2/VAR 99-3 Fred Meyer Site Plan, Preliminary Plat, Conditional Use and Variance land use application. Seconded by Sterling Fox.

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

5. Public Hearings

5A. SP 99-10/CUP 99-5 New Elementary School Site Plan and Conditional Use (continued from September 7, 1999, the public hearing and record were closed)

Chair Weeks asked if there was any additional information received prior to the record being closed. Mr. Turner said the City received information from the School District on September 14, 1999. This information identified a turnaround on the site for buses. The City Engineer is in attendance to discuss the water issues. He identified on the map where the turnaround would be located. This new route would keep the buses from having to go out onto Highway 99W.

Chair Weeks introduced Terry Keyes, the new City Engineer.

Mr. Keyes reported on the water for the new elementary school and noted:

- The school site is in the far reaches of the City's water system that does not have as much pressure as they would like. Fire flow is an issue for the YMCA as well as the new school.
- The School District consultant, Harper Houf, Righellis, did an analysis of the water available on-site for fire flow. They took readings from the system in this area on August 20, 1999 and found they had adequate fire flow within the requirements of the Fire District.
- After reviewing this report and discussing it with the consultant it was determined that while there was just barely enough fire flow on August 20, because several additional developments have been approved and building permits issued in the area, by the time school opens in a year there is a high risk there will not be adequate fire flow.
- As more development occurs in the area and there are no further improvements to the City's water system, it is just going to get worse.
- The applicant and City representatives met and all came to the conclusion that it is a real risk and something that needs to be dealt with. The City is currently in the process of working on the water master plan. This plan was brought before City Council last week. It calls for major improvements in this section of the City; a possible new reservoir west of Highway 99W and new pipelines. This will cost quite a bit of money and the City would hope for some type of participation from the School District for these improvements. The Fire District is a key player in this because they would have to okay the fire flow.
- The applicant, TVFRD and the City are trying to come to some agreement for the School District to make some contribution to the City's water system improvements. At least by the time the new school would open, the City would be under construction with some water facilities. The Fire District has tentatively said this would satisfy them. This may not necessarily be a new reservoir, but may be new pipelines.
- The City is also in the process of testing the new booster station for Wyndham Ridge and this will help the area.
- He thought that within a week they would be able to come to some type of agreement as to how the fair share for the School District would be determined.
- The pipeline comes from the east through Woodhaven and all construction south of Sunset Boulevard would draw from this same pipeline.
- There was talk of Genstar building some type of booster station, but this was deemed not to be feasible and would not solve the problem.

- In response to Mr. Fox's question, he said the Fire District realizes the pressure would be marginal and that this would be a risk. It is a risk they are willing to accept, if within one school year the system would be operating at more than adequate pressure. The City could start making these improvements as soon as there is some type of agreement between the City and the School District. In the interim, the School District is proposing a temporary solution of having a small booster pump at the new elementary school site.
- This would be sufficient in the short term for about one year, but not long term.
- If growth stopped, then there would be adequate water pressure, but just barely.
- The City needs a reservoir or bigger pipeline from the new booster station at Wyndham Ridge. These are the two alternatives the City is looking at right now. A new pipeline from the Wyndham Ridge booster station would be about \$400,000.

Mr. Turner said based on the conversations the City has had with the School District and reviewing the water information, the City is prepared to recommend approval of the new elementary school site plan and conditional use. The transportation issues have been resolved by the new design for the bus turnaround on the site.

Mr. Keyes said if the City is able, within the next two weeks, to work out an agreement with the School District regarding the water system funding, then the Commission could recommend approval of the application.

Keith Mays moved the Planning Commission continue SP 99-10/CUP 99-5 New Elementary School Site Plan and Conditional Use to the October 5, 1999 Regular Commission meeting. Seconded by Adrian Emery.

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

This will allow Staff time to prepare findings and conditions for the application. It will also allow the City and the School District time to execute an agreement for water system improvements.

Mr. Keyes said with regard street improvements, he feels the applicant will need half-street improvements all the way along the frontage of Old Highway 99W to the south property line. The District has accepted this recommendation. Mr. Turner said the Code requires half-street improvements. In response to Mr. Schroeder's question regarding water for future developments, Mr. Keyes said the City would need to be sure the size of the pipe for the water system improvements is large enough for present and future development. A preliminary estimate could be available for the next meeting.

In response to a question from Susan Claus regarding the 120-day deadline, the Commission advised they did not request an extension from the School District.

6. Community Comments

Robert J. Claus, 22211 SW Pacific Highway, Sherwood, Oregon 97140, addressed the Commission. He said at any time if the Commission asked he would stop. He wanted to discuss a critical question regarding the school district site.

- He discussed land use planning and the 1958 Highway Act. It says if you do not adopt rules and regulations that were equal to or more stringent than the Federal governments they would not bonus you. The 1965 Beautification Act changed all of this. It states if you do not follow the rules and regulations, you immediately receive a 10% penalty of your highway funds.
- He made reference to the *State of South Dakota v. Volpe*.
- The Commission has to be on notice that ODOT is increasingly getting upset with what has gone on. It is not because of what the Commission or Council has done, it has been because the Staff has taken it upon themselves to change agreements.
- It is nearly impossible to find in Sherwood where there have been ODOT agreements and compliance agreements with the Federal government that the Staff has not changed them.
- He cautioned the Commission on the school site because the School District is involved in a very big issue with ODOT.
- In his opinion, this could end up in very serious litigation.
- The School District needs to look very carefully at drainage plans and everything else out there.
- He discussed the driveway from his property on Highway 99W and how this was resolved with ODOT. Take it from him, don't mess around with the rights-of-way.
- Before the Commission issues any permit like this School District disaster, have Staff go to Don Jordon, who runs Division 2 and Ron Krupp, who runs Division 1, and make sure the ODOT Staff does a write-up on this application.
- The Attorney General will be the one who comes down on the City. The School District has not done their homework.
- He said if the Commission looks at the drainage plan that David Evans prepared, the drainage comes right across the School District property. We are talking about changing all of this and no one has picked this up. There is a permanent prescriptive easement that runs to a Federal highway and belongs to ODOT.
- He really does not want to get involved in this, but they made him the conduit.
- You can't go to ODOT and get a recommendation and then have Staff change it. This is ultravarious and is beyond the scope of the law.
- The Commission has done a very good job, but the Staff, in at least two cases, if not three, have seen fit to change these.
- The Commission needs to be sure ODOT has reviewed the School District plans.

The Commission asked Mr. Turner to contact the two representatives from ODOT and report back to them at the next meeting.

Keith Howe, 17852 Galewood Drive, Sherwood, Oregon 97140, addressed the Commission. He said his next door neighbor is an engineer for ODOT. Three weeks ago she was doing some traffic studies for Highway 99W for the new elementary school. He asked if the Commission had received any copies based on these studies? He believes there are some very serious problems that impact Highway 99W going into this new school simply because of the corner at

Sunset Boulevard and Highway 99W. He believed the School District had ordered these studies. The streets in Woodhaven cannot handle the changed routes for the school buses.

Mr. Claus said this is complicated because the school districts are split in this area. He said ODOT District 2 was not notified, but they are now aware of this application. Mr. Howe the problem is the amount of traffic that will be coming to the new school will be coming from the other side of Highway 99W. Chief Middleton would be able to verify the number of accidents at this intersection.

Mr. Claus said if the Commission looks, the agreement on conditional use permits is supposed to be in place before it ever passes; written and in place. He said this is the first condition. The Commission asked where the right-of-way for ODOT was located on the School District property. Mr. Claus identified the area on the map. Mr. Howe said the Biggis either own or have an option on the property located right across the street from the school site. He said this site may be a future Middle School. Chair Weeks said she asked the School District Superintendent the same question and was told that this was not the case. Mr. Claus said you can destabilize an entire highway by moving its drainage.

7. Other Business

Greg Turner advised the Commission that future Staff Report will include information on SDC credits and what they will be used for.

He noted that the City Council continued the Hearings Officer plan text amendment to their September 28, 1999 Regular Council meeting. The Council directed Staff to make further changes that included site plans greater than 40,000 sf of building area and subdivisions greater than 200 lots would be heard by the Commission and Council under a public hearing or Type IV, two hearing process. The Hearings Officer would hear site plan less than 40,000 sf of building area and subdivisions that are less than 200 lots. City Staff would still review minor land partitions. The Council directed Staff to ask the Commission if minor land partitions should be reviewed by Staff or a way to send these to a Hearings Officer if they became controversial. The Commission suggested this could be the first step of an appeal, to the Hearings Officer.

Chair Weeks asked if the Commission could review this prior to the City Council meeting. Mr. Turner said copies could be made available for the Commission.

Chair Weeks asked if the Commission could review the City's PUDs. Mr. Turner said he thought Council had directed Staff to begin this process.

Mr. Turner said the new elementary school would be reviewed at the next meeting as well as a work session to review sign code definitions. There are no further public hearings scheduled. Chair Weeks said if there is time, the Commission could begin reviewing PUDs.

Mr. Schroeder asked with regard to the Fred Meyer application, specifically the Adams Avenue extension, has anyone come up with a cost for this street extension from Oregon Street. At the hearing the applicant said they did not know the cost. From the audience, Mr. Claus asked if he

meant the cost including sewer and sidewalks. From the audience, Mr. Langer asked why he would want to know this. Mr. Schroeder responded that if Fred Meyer did not pick up the cost, the City of Sherwood would pay for it and this extension would be for the benefit of Fred Meyer.

Mr. Mays said if a minor land partition was controversial, it would be up to the applicant to appeal the decision. The Commission cannot define what "controversial" would mean.

Mr. Fox asked why the Commission and Council couldn't discuss some of these issues at the "5th Tuesday of the month" joint meetings.

The Commission said they would like to start reviewing the current Code language for PUDs at the next meeting.

8. Adjourn

There being no further business to discuss, the meeting was adjourned at 8:15 PM.

Respectfully submitted,

Planning Department