



**City of Sherwood
PLANNING COMMISSION
Masonic Hall, 60 NW Washington Street
Tuesday, April 21, 1998
7:00 PM**

A G E N D A

1. **Call to Order/Roll Call**
2. **Approval of Minutes - March 3, March 17, & April 7, 1998**
3. **Agenda Review**
4. **Community Comments:** are limited to items NOT on the printed agenda under Public Hearings.
5. **Consent Agenda:** No items scheduled.
6. **Public Hearings:** (Hearing Disclosure Statement. Also, declare conflict of interest, ex-parte contact, or personal bias)
 - A. **PA 98-1 Plan Text Amendment:** (continued from April 7, 1998) to allow special care facilities are a permitted use in High Density Residential (HDR) and as a conditional use in the Retail Commercial (RC).
 - B. **SUB 98-2 Woodhaven Phase 7B Preliminary Plat:** (continued from April 7, 1998) a request by Genstar for approval of a 47-lot subdivision. Tax Lot 100, Map 2S 1 31.
 - C. **MLP 98-1 Andrews Partition:** a request by Leann Bennett for George Andrews, owner, for approval of a Minor Land Partition to divide an 8.68 acre lot into two parcels. Site location: 19939 SW Cipole Road. Tax Lot 1000, Map 2S 1 28A.
7. **Other Business**
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
April 21, 1998

1. Call to Order/Roll Call

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

Commission Members present:

Susan Claus
Scott Franklin
Dave Heironimus
Keith Mays
Angela Weeks (7:07 PM)
Bill Whiteman

Staff:

Sue Engels, Development Director
Greg Turner, City Planner
Jason Tuck, Assistant Planner
Roxanne Gibbons, Recording Secretary

2. Minutes of March 3, 1998, March 17, 1998 & April 7, 1998

Chairman Whiteman asked Mr. Claus if he had any comments regarding the March 3 and March 17, 1998 Planning Commission meeting minutes.

Robert James Claus, 22211 SW Pacific Highway, Sherwood, Oregon 97140, addressed the Commission. First, he said he had to tell the Commission why he is doing this, so they know. There are two things that are required; one is to attempt to exhaust administrative remedies and the second one is to reach finality before you can litigate. The Commission needs to hear carefully what he is saying.

Chairman Whiteman asked Mr. Claus what this had to do with the minutes. Mr. Claus said the minutes, in being incomplete, he has to draw this to the Commission's attention so that if the Commission wants to attempt to correct them, the Commission is adequately on notice to correct them because if he is pressing a civil rights violation and if he is going to go to federal court and he is going to name specific individuals, they have to have a chance to mitigate the damages. This is the reason the finality comes out.

Mr. Claus said the minutes are both inaccurate, misleading and there should not have been a decision based on them. He said he would start with the March 3 minutes and when the Commission decides they want to talk about that, he wanted to point out one thing on page 7, March 3, 1989 (*exact words*):

- Page 7, eight lines from the bottom of the page, "Meinecke Road was supposedly going to be the theater that tied the Old Town and the rest of the City together." The word "theater" should have been "collector". This needs to be corrected. Obviously, they were not talking about theaters, they were talking about streets. It is obviously a collector.

Mr. Claus said the manner in which this is handled is preventing people from being able to get due process and secondarily, substantial damages are developing. When he gets to the March 17 minutes, he will get into those damages.

Chairman Whiteman asked Mr. Claus what he was asking the Commission to do. Mr. Claus said to look at the error. If the Commission is going to depend on minutes where you say, read the paragraph, it is obviously not a theater leading any place, it was a road.

Chairman Whiteman said in other words, Mr. Claus believes the term "theater" was not the proper, theater as in a "theater of war" which is an area of.... Mr. Claus said he did not know what this meant, he could only guess as the Commission could. When he gets to the March 17, the Commission will see what the problem is and in considerably greater detail.

Mr. Claus said he has already started the appeal process on 7B. (inaudible)...but 17 is much worse. Chairman Whiteman said so possibly instead of using the term "theater", the word "connector" would probably have been a more appropriate term.

Sue Engels said the Recording Secretary could listen to the tape and verify what was said. If Mr. Claus had other questions, he could have provided this information a couple of weeks ago, prior to this meeting. Staff would have been able to listen to the tapes, review his concerns, and Staff could have brought this information to the Commission tonight.

Chairman Whiteman asked Mr. Claus if there was anything else in the March 3 Planning Commission minutes he would like to have the Commission consider and correct.

Mr. Claus said as to the specifics, he did not want to get into, he just did not think that the minutes are specifically stating what the problem is that begins to come out on the 17th. He has read them and he does not agree. The substance is typical of that line. If the you miss what was being driven at as a point, and he believed, as he would point out on the 17th, the Planning Commission is not dealing with the code as they are required to. This is letting the Commission getting off into issues like the theater going downtown. Chairman Whiteman said to him this does not refer to a "motion picture theater." Mr. Claus said it could. Chairman Whiteman said this is not what it says, it could mean the other also, could it not. Mr. Claus said absolutely.

Chairman Whiteman asked that this be checked. If it is a quote, leave it as is. If it is not a quote, then the words could be changed. Mr. Franklin agreed.

Chairman Whiteman asked Mr. Claus what his concerns were regarding the March 17 Planning Commission minutes.

Mr. Claus specifically stated so the Commission knows he has appealed 7B to the City Council. He will appeal 8A and B to LUBA as soon as the Council deals with them, unless they completely reject the rephrasing. He will file a tort claim over the fees that have been filed and the procedures. He made the following references to the March 17 minutes:

- Page 2, under Community Comments, the second paragraph where Mr. Nachbar is speaking. Mr. Nachbar stated that he is going to limit testimony to 10 minutes. Mr. Claus did not agree that anyone can restrict testimony on a PUD to 5 or 10 minutes and require written testimony. He was suggesting, that indicative of that, the Commission needs to go back through the minutes and look at them and look at certain things.
- Page 7, Mr. Nachbar was addressing the Commission and stated, “Nowhere in the PUD does it call for the applicant to install a road through the proposed park. It is not a condition of their approval.” Mr. Claus said he would like verification that Mr. Nachbar said this. He would like verification that at no place on their plans that they have submitted over the years, there was not a road there and they were not required to put it in. This statement is material to his appeal and he wants to know if it was true.
- Page 8, “Mr. Nachbar asked if the City Manager would like to make any comments with regard to the issues being discussed. Mr. Bormet said Staff would answer any questions subsequent to the public hearing.” Mr. Claus wanted verification that Mr. Bormet said this. Is Mr. Bormet suggesting that after a public hearing the Staff will answer questions, not during it, so that if someone is going to appeal, as I have appealed, they can’t question the decision. You will see what I’m getting to in just a moment on that question.
- Page 10, the second paragraph, third sentence, “Mr. Bormet responded with the City’s ownership of this property, it in effect removes it from the PUD. The property would be dedicated with the final plat. It would be similar to the process used for the YMCA property.” Mr. Claus would like verification of this statement. What final plat are they talking about. There is almost proof per se here that this subdivision is illegal, but he is willing, as he said to Mr. Nachbar and Mr. Draper, more than willing to go to LUBA and see if this is true.
- Page 10, after Chairman Whiteman had recessed the meeting at 8:50 PM.....and reconvened the meeting, the fourth paragraph which begins, “Chairman Whiteman read a letter dated March 6, 1998 from AKS Engineering to Mr. Claus into the record.....” Mr. Claus asked for clarification. He wanted the record to reflect that the public hearing had been closed. This is not reflected and at this point he wanted to add, “Mr. Whiteman read a letter submitted by Sue Engels, Development Director, after the public hearing was closed, from AKS to Mr. Claus into the record.”

Chairman Whiteman said this was not true. Mr. Claus said the meeting was closed and he was not allowed to comment on it. He asked to comment on the letter and Chairman Whiteman said the meeting was closed and he would not allow Mr. Claus to comment on it. Chairman Whiteman said he did not think this was true either. Mr. Claus said the tapes needed to be checked. He would be more than willing to bet that is the case and she had the letter in her possession prior to closing the public hearing.

Mr. Claus continued to review the minutes:

- Page 12, 6C SUB 98-3 Woodhaven Phase 8A and 8B Preliminary Plat. Mr. Claus had absolutely no notification whatsoever that these phases were going to be heard on March 17, 1998. He alleged there is a notification problem and the public was not properly notified.

Mr. Claus would read from the Development Code why he was drawing this to the Commission's attention and hope the Commission corrects this before they get involved in what he thinks is going to be protracted administrative hearings that really are quite needless. He believed the Commission needs to reschedule all of this properly or the City Staff does. If you look at planned unit developments, which is Section 2.202.01 of your Code, you start with the "Purpose". He read the section.

Mr. Claus said when a PUD has to go back to complete, total hearing again, is when you have made, according to subsection B of this, Section 2.202.04 General Provisions, proposed major changes in a final development plan shall be considered the same as a new petition and shall be made in accordance with procedures specified in Section 2.202. You now have, the City Manager, the Development Director, telling you that they are changing the open space requirement entirely. They are taking seven acres out and they are trying to tell you that is not a substantial change. The way they are doing this is they are not giving the public notice. Then there is flipping phases. If you read the rest of this, you will find they can't change the phases the way they have changed them. The way they are doing this is you are not getting an accurate public record and it is not reflecting what happened. We caught this Phase 8A and 8B at the City Council and I told the Council they did not have the record of what happened. The Council simply had "for your approval." It was implied the Commission had recommended the changes, in fact when it came from the Staff. Now the Staff has to read this on its face, this PUD because of failure to complete. You fail to complete this PUD within 24 months or one year, there are alternate periods, when substantial construction or development of a PUD or any approved phase of a PUD has not taken place within one year from the date of approval of a 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. We now have these phases totally changing. They are not the same thing. You have the City Manager saying you can't keep a secret in Sherwood, we don't know if we're selling it to the School District, we don't know if it is a park, we do know we are not going to put a road through it. Well, you've changed the roads, the utilities, the public space.

Chairman Whiteman said he failed to see what Mr. Claus was saying, how it makes any condition for the Commission to change the minutes of what happened at a Commission meeting. Mr. Claus said if he takes this to the City Council, he has to take the minutes and he has to tell the Council what occurred in these minutes. What is not in the minutes is the City Manager saying you can't keep a secret in Sherwood, we don't know whether it is going to be a school or a park. The City Manager said this on the tape. When Mr. Claus appeals this, it is going to look like the application went right through and he is the nut in the system. The fact of the matter is, every time, Nachbar gets up and said you can go to 10 minutes, you ask him a question, he says final plat, what final plat, nobody has ever said there is going to be a final plat on this. If there is a final plat on this that is changed, it is required to go back for total hearing because you have taken out the public space.

Mr. Claus said you can't make anything out of these minutes is the point he is making. When he goes to City Council he has to take these minutes to try to explain that the public hearing was

closed, read a letter into the minutes that Mr. Claus had no chance to comment on, that in fact is what started the problem, you say you didn't close the public hearing.

Chairman Whiteman said Mr. Claus said Chairman Whiteman had closed the meeting. Mr. Claus said the public hearing. Chairman Whiteman said Mr. Claus said Chairman Whiteman didn't open the meeting. Mr. Claus said he stood corrected. Chairman Whiteman said the public hearing was closed and the letter was read into the record. Mr. Claus said he wanted this reflected. Because it does not reflect that this public hearing was closed. You say why, because the best chance he (Mr. Claus) is going to have with LUBA is to stall these guys for one year until they do this right. He is not going to get any big change in this, but he can get LUBA to force them to come back and do this right and hold a public hearing where if they rephrase things per the City's, that they can't rephrase, they have to go back and prove there is a public interest. Mr. Claus cannot prove there is a public interest when the City Manager makes remarks on the record that are not reflected in the record. He can't make a challenge to a thing when a letter is read into the record that in fact is absolute proof that they have abandoned the utility plan. That letter that Jenke wrote is absolute proof the utility plan has been abandoned. It is so expensive to bring that up, you have to find an alternate way to bring in the sanitary sewer and that is what he needed to go to LUBA. He needs these corrected, and as long as he has said this, it is a de novo hearing at the City Council and he can bring it up.

Chairman Whiteman said he did not agree there are corrections that need to be made in this respect because on Page 9, at the top, it states the public hearing on SUB 98-1 was closed. The minutes reflect that the Mayor had assured Mr. Whiteman that there will be a park equal to the proposed park property in Woodhaven and he was satisfied the integrity of the park in Woodhaven would be maintained. The letter from AKS was read after the public hearing was closed.

Mr. Claus said this was very substantial to the material proof he would need that this PUD is in violation of the Code. Chairman Whiteman said this may be, but the minutes reflect what happened and this is what happened, so to change the minutes to something that didn't happen is not appropriate. Mr. Claus said it is implied without saying that the public hearing was, that this letter was introduced after the public hearing was closed and read into the record. Chairman Whiteman said it was read into the record after the public hearing was closed. Mr. Claus said the letter was introduced without comment on this letter be allowed. He asked to comment on this letter and Chairman Whiteman denied this request. This is a procedural error of the first order and he (Mr. Claus) was going to exploit it.

Chairman Whiteman said that was fine and if he stood to be corrected by some other agency that was fine, but he was not willing to change the minutes of the meeting as to what happened. Mr. Claus said he did not need to do this as long as you admit..... Chairman Whiteman asked Mr. Claus what his point was. Mr. Claus said his point is that the way it is structured you couldn't make a judgment based on the Code because you took incomplete evidence into the Code and it was presented in such a way that it came opposite of proof on the Code and therefore you based on a mistake in fact on your vote. Mr. Claus said he was going to bring this up to the City Council and appeal it because he does not like the way Staff is handling this.

Chairman Whiteman said they are talking about the minutes and if the minutes need to be corrected because they do not reflect what happened, but he has not heard Mr. Claus tell him where they don't reflect what happened yet. Mr. Claus is not happy with what happened, but the fact is it happened.

Mr. Claus said they have now been told that nowhere in the PUD does it call for the applicant to install a road through the proposed park, it is not a condition for approval. This is a decision the Commission took from Mr. Nachbar and they voted on it and no one challenged it, least of all the Staff. Mr. Claus questioned whether this was true. Nobody questioned it, least of all the Staff. He has to question this because if he is going to appeal to the minutes if there is a mistake in the minutes and the Staff did not correct it, it is more than grounds to complain to the City Council, which he will. He wants a totally accurate record at the City Council. Bormet also went on to say that they would comment on these things after the public hearing was closed. Mr. Claus did not think this was proper and he did not want Mr. Bormet doing this at City Council and he is objecting to it here because it was not a fair hearing. He has to make the objection to what occurred here because when he goes to City Council the Council is going to ask him and he is going to have to start right with the minutes as to what happened. Then he is going to have to take them to the Code and show them where they violated this and the public hearing provision of the Code. The public going to LUBA is all technical and if you don't stay technical you will lose and the more technical you are, the more apt they are to send it back for another public hearing. Mr. Claus wants this to come back.

Chairman Whiteman said Mr. Claus was not saying that this did not happen, he is saying it did happen, what was reflected in the minutes. Mr. Claus said because it happened there wasn't a fair hearing. Chairman Whiteman said this was not his decision to make at this time because they are trying to figure out why the minutes are incorrect. Mr. Claus said the minutes are incorrect because Staff did not correct them. That's the whole point in the nutshell. Chairman Whiteman said the meeting may have been incorrect, because in Mr. Claus's opinion Staff did not correct them, but the minutes do reflect what happened at that meeting.

Mr. Claus asked Chairman Whiteman if he didn't vote on the record. Chairman Whiteman said he did not read the minutes and then make his decision. Mr. Claus said the record was made for them to vote on. First of all, there were completely false statements made which no one offset. Then the Commission allowed into the record a letter which was absolutely should have been countered and Mr. Claus was closed from countering. The Commission voted without Mr. Claus being given any opportunity to counter the letter. What is so hard to understand about the fact if Mr. Claus is saying the Commission voted on a false record and would not allow it to be contradicted, Mr. Claus has a right to come before the Commission and tell them that is what he is objecting to about the minutes to City Council.

Chairman Whiteman said that is okay, but that is exactly what happened in the minutes. Mr. Claus said that is exactly correct and he hoped the Commission verifies this.

Mr. Claus said if this is sent back by LUBA for a public hearing, the Commission might be very concerned about if Staff is advising the Commission on the content of the Code that the Commission is to read, to understand, and then to have facts and base the decision on that Code and the facts. If the Commission reads this provision and this provision, you have the Staff admitting substantial change, admitting they do not know what is going on, admitting they have pulled phases out and making a recommendation that you pass it. This is quite serious and it is in the minutes.

Mr. Claus said he was objecting to the absurd \$1,500 fee that he is paying to take this to City Council. Chairman Whiteman said the Commission does not set the fee schedule. Mr. Claus said this is part of a continual, you try to get a record that is straight, you try to read the Code, the record is changed, the Code isn't reflected and in order to object, a citizen has to pay \$1,500. He said he could go to Yamhill County and pay \$50 and make the same appeal. He can go to LUBA for less than \$350, but in order to come into his City there is a scheme to fix the minutes, not say what the law is, change the record and then tell the citizen if you want to object, by God you better have a lot of money because you can't otherwise. Mr. Claus said he has had enough of it. If these records can't be reflected, he wants an easy way to get to City Council for \$50 to object to it and then he is mollified. There is something wrong and the Planning Commission better start asking these questions. These minutes ideally reflect why people start getting infuriated. In Oregon we give up enormous property rights for the surety that we will have water, sewer and we can build as zoned. We give up everything for that surety. These minutes do not reflect either the law or the situation.

Chairman Whiteman asked if the minutes reflect the meeting. Mr. Claus said unfortunately, thanks to you, yes. Chairman Whiteman said that's all the minutes are supposed to do.

In response to the Commission's question, the City is required to retain audio tapes of meetings for one year. The tapes are public record.

Chairman Whiteman moved the March 3, 1998 minutes be continued pending verification of the word "theater" on Page 7. Seconded by Angela Weeks.

Vote for Passage of Motion: 5-Yes, 0-No, 1-Abstain (Mays)

Chairman Whiteman asked the Commission if they had any comments regarding the March 17, 1998 minutes.

Susan Claus said she had a clarification on her abstention (page 16) on the vote on Phases 8A and 8B. She abstained basically when what was added to the motion to rephrase Phase 8A and 8B in front of Phase 7 and it was just as a potential conflict of interest, since she had not voted on Phase 7A or 7B. She did not have a conflict of interest on Phase 8A and 8B. She asked that this be added to the March 17 minutes. The Commission agreed.

Chairman Whiteman moved the March 17, 1998 minutes be approved with the addition clarifying Susan Claus's abstention on Phase 8A and 8B. Seconded by Scott Franklin.

Vote for Passage of Motion: 1-Yes, 2-No, 1-Abstain (Mays) MOTION FAILED

The Commission discussed whether the March 17, 1998 minutes should be continued pending verification of the issues.

Susan Claus moved the March 17, 1998 minutes be continued to the May 5, 1998 meeting. Seconded by Dave Heironimus.

Scott Franklin said he needed more clarification. At what point are the tapes listened to and translated word for word as to what appears in the minutes. Chairman Whiteman said the minutes should be a reflection, not verbatim, of the intent and comments of the meeting. If there are specific areas the Commission would like to have listened to specifically, these should be pointed out. The Commission agreed. The Commission asked that the following be verified:

- Page 7, what Mr. Nachbar said, "Nowhere in the PUD does it call for the applicant's....."
- Page 8, what Mr. Bormet said at the bottom of the page regarding Staff answering questions subsequent to the public hearing.
- Page 10, what Mr. Bormet said, "...with the City's ownership of this property, it in effect removes it from the PUD. The property would be dedicated with the final plat. It would be similar to the process used for the YMCA property."
- Page 10, verification whether Mr. Claus requested to comment on the AKS letter and whether it was denied by Chairman Whiteman. Susan Claus said to add in a statement when the letter was introduced.

Scott Franklin said the tapes are a part of the facts behind the public record. If there is an appeal the tapes could be used as well. Chairman Whiteman said he would assume this was so. Susan Claus said the record that stands is the written record. The Commission asked Staff for clarification.

Vote for Passage of Motion: 5-Yes, 0-No, 1-Abstain (Mays)

Chairman Whiteman asked if the Commission had any further comments regarding the April 7, 1998 minutes.

Keith Mays moved the Planning Commission approve the April 7, 1998 minutes as presented. Seconded by Susan Claus.

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

3. Agenda Review

Chairman Whiteman advised that Agenda Items 6B SUB 98-2 Woodhaven Phase 7B Preliminary Plat and 6C MLP 98-1 Andrews Partition would be continued. These would be dealt with during the public hearing process. He referred the Commission to letter he wrote to Bert Diamond, Sherwood Middle School, discussing the 7th Grade Students in the Arts and Engineering Class, project that looked at the question of the Act III Theater. This letter and the information from the class was distributed to the Commission.

4. Community Comments

Chairman Whiteman called for comments from the audience. There were no community comments.

5. Consent Agenda

There were no items scheduled.

6. Public Hearings

Chairman Whiteman read the hearings disclosure statement and requested that Commission members reveal any conflict of interest, ex-parte contact or bias regarding any issues on the agenda.

Mr. Claus asked if there were going to be any community comments allowed. Chairman Whiteman advised he had asked previously asked for comments and there was no response. However, if Mr. Claus wished to speak the Commission would go back and hear community comments.

Robert James Claus, 22211 SW Pacific Highway, Sherwood, Oregon 97140, addressed the Commission. Mr. Claus said he wanted to apologize because he knows it is almost boring, but since he in the process of spending a considerable amount of money in appealing Woodhaven, and intends to pursue it, both A and 7, he wanted to comment to the Commission which he hoped is helpful. He noted:

- The Commission has two diametrically opposed models of land use planning. On one hand you listen to the Staff and the Staff simply pushes things through, the streamlining is somewhat typical of that, not as extreme as Canada, and on the other hand you have one where you come to the citizens and you ask them to look at the Code and the facts. He pleaded with the Commission to read the PUD carefully before they hear any more PUDs.
- He was contending if he could get the citizens to review this, most of the nonsense that is happening to the land owners in this town, adjacent to these PUDs, will be by nature stopped.
- He discussed the land use laws where the land is zoned.
- He discussed case law, Amber Realty v. Village of Euclid.
- He discussed Oregon land use laws, in particular to PUDs and the City's Code regarding PUDs. He made specific reference to Sections 2.200, 2.201, and 2.202.
- He was trying to tell the Commission that the Council approved this PUD conditionally. They did not give the Staff the right to start changing the PUD. Staff is not giving the Commission the facts.

- He referenced 2.202.04, subsection 2, Failure to Complete. He read this section and subsection 2, Minor Changes.
- Since when is seven acres not significant. They are telling us that seven acres is worth \$1.5 million or \$150,000 per acre.
- He went to LCDC and said we gave up \$1.2 million by the estimate of the Staff in SDCs in order to get this park. LCDC said the Commission could not do anything about this. He asked why and said there is a nexus here. LCDC said there is a nexus, but LUBA does not accept a nexus. In other words, the Staff has the right to make this decision, but LCDC said once they take this land out of the PUD and they put it in a park and the plat changes, the Commission has the right to look at all of the PUD.
- He wanted the Commission, as citizens of Sherwood, to have the chance to look at this whole thing and determine if it is really in their best interests. He did not think it is.
- He was sorry that he does not trust professional staff. He did not like them in Canada and he does not like them here. He fights them at every chance he gets.
- He does not think the Staff has any business telling a businessman what he is going to do. This is his bias and he is entitled to it.
- In Sherwood, if it is a substantial change the Commission has the right to review it and the Staff has the obligation to tell the Commission why it is not a substantial change.
- Since 7B is not on tonight, he is free to talk about it. Why can't they review 7B in terms of the Code.
- He does not want to hear the final plat approval, the road was never approved, he wants Staff to give the Commission those things and show them if the PUD was changed. He wants the Commission to make the findings of fact that there was a substantial change. He does not want the Staff to make this decision. This is not Staff's prerogative.
- He admits he is right wing, he trusts the citizens more than he does the paid government official.
- The Commission needs to have these questions discussed because this is really significant to a lot of us.
- They are literally taking citizens that have lived in this town for years and have their businesses destroyed, have their ground destroyed and it is not even coming to the Commission to make the decision.
- He said he did not like Carole Connell a lot of times, but when she had this same question come up on J.C. Reeves subdivision, she said I'm not going to make the call, you tell me if it is in the public interest, because he has not met the letter of the Code. The Planning Commission said no, and they forced the City Council to reverse it. The City Council got quite a few concessions out of J.C. Reeves that they hadn't got up until that time, in his opinion.
- If the Commission does not do it, what the PUD turns into is "buying zoning". That's the reason they don't have them in Canada any more. It is interesting Genstar is Canadian, it is interesting they come down here to use the PUD, it is interesting they don't try the same thing in Canada any more because it is illegal. It got to be buying zoning.
- The Commission should read the Code carefully and then decide if pulling seven acres out of the PUD, changing the roads, changing the utilities, answer if this even meets the standard of a PUD. He is suggesting it doesn't.

- The City is going to pay for this and pay for this. It started with the YMCA. They changed the use and now they have road problems so they are talking about paying additional money for the YMCA. If they had taken it as what it was, and it was an end to their PUD, they would not be hassling Meinecke Road today. We told them, okay boys, you sold the property, we're zoning it for the YMCA, it's a change of use, it's taking our property, it's nothing that we went to the public hearing on, okay fellas, now you've got to go back to the original road grids.
- This is his objection to the minutes and the content.
- None of the property owners surrounding Woodhaven know what they can do with their property. Why, because the PUD has been changed.
- Seven is a phase, A, B and C are part of that phase. If they wanted to call it differently, they would have called 7, 8, 9 and 10, etc. This Staff should be able to count to thirty, but they didn't do it.
- He asked the Commission to force them to come back and review the PUD inside and out and make life easy for him. Because he is going to appeal it, he'd just as soon not appeal it. He does not like filing a tort claim, he is very unhappy about having to file a tort claim, it is going to take an enormous amount of time but he can't get the Staff to listen to the facts.
- The average citizen is not going to pay \$1,500 to appeal. By the time this is done, he will have \$5,000 to \$7,500 worth of fees to get this thing up to LUBA and then the money will start getting spent. That's not the way it is supposed to work in Oregon.
- That's why Oregon has built communities. They build communities because they insist the control stay with the appointed and elected officials. This is what has got LCDC upset about Act III.

There were no further community comments.

6A. PA 98-1 Plan Text Amendment - Special Care Facilities in the HDR and RC Zones

Chairman Whiteman advised the public hearings statement had been previously read. This application was continued from April 7. He referred to a letter from Staff with new information. Jason Tuck said the memo in the packets was in response to questions the Commission had at the April 7 meeting. He reviewed the changes that are proposed:

- 2.105.02 Permitted Uses, they are proposing to add nursing homes and specialized living facilities.
- 2.108.03 Conditional Uses, they are proposing to add nursing homes, specialized living facilities and assisted living facilities.
- Definitions for assisted living facilities, convalescent homes, sanitariums, specialized living facilities, and special care facilities were included with the report.
- Robert Simon sent a letter which addressed definitions. Referencing Page 3 of the letter, item 6, assisted living, the definition of Staff and Mr. Simon are the same until the end where it states, "assisted living promotes resident self direction and participation in the decisions that emphasize choice, dignity, privacy, individuality, independence, and home-like surroundings." Staff proposes to add this into the definition.
- There were other definition included by Mr. Simon, which Staff did not address at this time.

- Staff is recommending the adoption of the definitions included in the memo for Section 1.202, with the inclusion of the above-referenced addition.

Mr. Turner said specialty care facility is the umbrella and anything after that such as convalescent homes or nursing homes are under this general definition.

Chairman Whiteman asked if the Commission had any questions of Staff. The public hearing had been closed, but the Commission could reopen the hearing for further testimony. He also referenced page 4 of Mr. Simon's letter which discussed Congress intended local governments to bend the rules but not break them.

In response to Susan Claus's question, Mr. Turner said the definitions came out of the Oregon Administrative Rules. The only one that is not verbatim from the OARs is the special care facility definition.

Keith Mays said he would like a more detailed explanation of the specialty care facility definition provided by Mr. Simon.

Keith Mays moved the Planning Commission re-open the public hearing for PA 98-1 Plan Text Amendments, for further testimony. Seconded by Susan Claus.

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

Chairman Whiteman asked Mr. Simon if he would like to provide further testimony.

Robert Simon, 712 Main Street, Oregon City, Oregon 97045, addressed the Commission. Mr. Simon noted:

- The definition which he suggested to the Commission is intended to serve the same purpose which Staff is looking at, except with fewer words.
- There were two issues from the last meeting, one was the commercial aspect and how to deal with it and the second one was the nature of the facility and how to assure it would not become an apartment house in the future.
- He raised a third issue where there are two definitions in the Code, residential care facility and residential care home.
- He read his definition of specialty care facility, "Specialty Care Facility is one licensed by the State of Oregon, defined in OAR, and not otherwise defined in this code. Where such facility contains uses which are otherwise listed as conditional uses in the base zone then those uses must be subjected to the conditional use process if they are independently accessible to the non-resident public from the outside of the facility building(s). Uses which are prohibited in the base zone are also prohibited within the facility."
- He explained the reasons for this definition. The definition is flexible and at the same time, it gives Staff latitude and good direction. He apologized for not getting this definition to Staff until last Friday.
- Staff has spent a substantial amount of time working on some very useful definitions.

- He suggested what Staff has done may be better, the purpose may be better served, by the paragraph which he has suggested. They would not object to the Commission adopting Staff's suggestions either.
- He addressed the "Congress intended local governments to bend the rules but not break them" in reference to the Fair Housing Act Amendments of 1988.
- He has indicated to the City Manager that he would be glad to talk to the City. He has published four different training manuals on different aspects of the Fair Housing Act.

Chairman Whiteman thanked Mr. Simon for providing information to the Commission.

Mr. Simon said there are some kinds of group living situations that are not licensed and the literature is replete with them. This relates to the City of Edmonds, Washington case which talks about unrelated people living together. If the City were to adopt the definition of a family unit for the purposes of a single family dwellings, this would be the case. This issue is not what they are talking about tonight.

Mr. Turner said in terms of the definition for the specialty care facility, the second sentence of Mr. Simon's definition, in the HDR and RC zones, he was not sure what uses that are currently conditional uses would be included in an assisted living facility.

Mr. Simon said churches, the assisted living facilities have chapels in them almost invariably. As per Sue Engels's question, the Commission could eliminate the last sentence of his definition.

The Commission discussed at length the definition for special care facilities. Chairman Whiteman suggested the Commission take a break to allow Staff to reword the definition.

Chairman Whiteman recessed the Commission meeting at 8:35 PM to allow Staff and Mr. Simon to prepare specific language for the definition of special care facilities. Chairman Whiteman reconvened the meeting at 8:45 PM. The public hearing for PA 98-1 was still open.

Greg Turner read the definition for Special Care Facilities:

"Special Care Facility is one licensed by the State of Oregon, defined in OAR, and not otherwise defined in this code. Uses wholly contained within the facility and not independently accessible to the non-resident public which are either essential or incidental to the primary use shall be permitted. Where such facility contains uses which are otherwise listed as conditional uses in the base zone then those uses must be subjected to the conditional use process if they are independently accessible to the non-resident public from the outside of the facility building(s)."

There being no further testimony or discussion, Chairman Whiteman closed the public hearing for PA 98-1 Plan Text Amendments.

In response to Mr. Franklin's question, Mr. Tuck said the numbers for the definition would be updated with the new Code.

Mr. Simon asked if Staff could articulate to City Council the fine tuning they went through to get the definition of special care facility in the Staff Report.

Angela Weeks moved the Planning Commission recommend to the City Council approval of PA 98-1 Plan Text Amendments, with the changes per Staff, including the change on assisted living facilities and special care facilities. Seconded by Scott Franklin.

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

6B. SUB 98-2 Woodhaven Phase 7B Preliminary Plat

Chairman Whiteman said this application was continued from the April 7, 1998 Commission meeting. Staff was recommending this application be continued to May 5, 1998. The 120-day deadline is not in jeopardy at this point in time.

Bill Whiteman moved the Planning Commission continue SUB 98-2 Woodhaven Phase 7B Preliminary Plat to the May 5, 1998 Regular Commission Meeting. Seconded by Scott Franklin.

Vote for Passage of Motion: 5-Yes, 0-No, 1-Abstain (Claus)

6C. MLP 98-1 Andrews Partition

Chairman Whiteman said Staff is recommending this application be continued to May 5, 1998. Mr. Tuck said there are still questions regarding access issues and public easement.

Susan Claus moved the Planning Commission continue MLP 98-1 Andrews Partition to the May 5, 1998 Regular Commission Meeting. Seconded by Scott Franklin.

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

7. Other Business

Chairman Whiteman said the Council is going through the process of appointing a new Mayor. After this occurs, the Council and new Mayor may begin the process of filling the vacant Commission position. The vacant Council position will be filled from a pool of interested citizens. He said anyone who would be interested in either the Commission or Council positions should fill out an application form.

Jason Tuck reviewed the list of pending land use applications which will be scheduled for Commission review.

Chairman Whiteman asked if there was an advisory board which works with the YMCA regarding the fee structure. Sue Engels said there is a governing board comprised of YMCA officials and members of the public appointed by the Council. Dave Heironimus said he sits on the Westside YMCA Board and he would be one of the citizens on the initial governing board for the Sherwood YMCA.

There being no further business to discuss, the meeting was adjourned at 9:00 PM.

Respectfully submitted,

Planning Department