



**City of Sherwood
PLANNING COMMISSION
Masonic Hall, 60 NW Washington Street
Tuesday, May 5, 1998
7:00 PM**

A G E N D A

- 1. Call to Order/Roll Call**
- 2. Approval of Minutes - March 3, March 17, and April 21, 1998**
- 3. Agenda Review**
- 4. Consent Agenda:** No items scheduled.
- 5. Public Hearings:** (Hearing Disclosure Statement. Also, declare conflict of interest, ex-parte contact, or personal bias)
 - A. SUB 98-2 Woodhaven Phase 7B Preliminary Plat:** (continued from April 21, 1998) a request by Genstar for approval of a 47-lot subdivision. Tax Lot 100, Map 2S 1 31.
 - B. MLP 98-1 Andrews Partition:** (continued from April 21, 1998) a request by George Andrews for approval of a minor land partition to divide an 8.68 acre parcel into two lots. Tax Lot 1000, Map 2S 1 28A.
 - C. MLP 98-2 Claus Partition (Columbia Street):** a request by Robert J. Claus for approval of a minor land partition to divide a 0.80 acre parcel into three lots. Site location: Columbia Street, Tax Lot 6800, Map 2S 1 32BC.
- 6. Community Comments:** are limited to items NOT on the printed agenda under Public Hearings.
- 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
May 5, 1998

1. Call to Order/Roll Call

Chairman Whiteman called the meeting to order at 7:04 PM.

Commission Members present:

Susan Claus
Scott Franklin
Dave Heironimus
Keith Mays
Angela Weeks
Bill Whiteman

Staff:

Sue Engels, Development Director
Greg Turner, City Planner
Jason Tuck, Assistant Planner

2. Minutes of March 3, 1998, March 17, 1998 & April 21, 1998

Chairman Whiteman advised that the word “theater” should be changed to “feeder” in the March 3, 1998 PC minutes. The other questions were clarified in the response prepared by Staff.

Chairman Whiteman moved the March 3, 1998 and March 17, 1998 corrected minutes be approved. Seconded by Dave Heironimus.

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

Chairman Whiteman moved the April 21, 1998 PC Minutes be approved as submitted. Seconded by Scott Franklin.

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

3. Agenda Review

Chairman Whiteman asked if there were any changes to the Agenda. Greg Turner advised there would be a request to continue Agenda Item 5B, MLP 98-1 Andrews Partition to the May 19, 1998 Regular Commission meeting. There were no further comments.

4. Consent Agenda

There were no items scheduled.

5. 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.

Susan Claus announced she had a conflict of interest and would not be participating in Agenda Item 5A, SUB 98-2 Woodhaven Phase 7B Preliminary Plat and Item 5C, MLP 98-2 Claus Partition (Columbia Street).

There were no further Commissioner comments.

5A. SUB 98-2 Woodhaven Phase 7B Preliminary Plat

Chairman Whiteman opened the public hearing and called for the Staff Report. Jason Tuck referred the Commission to the Staff Report dated March 3, 1998, a complete copy of which is contained in the Planning Commission's minutes book. He reviewed the Staff Report and specifically noted:

- The site is located within the Woodhaven PUD, north of Sunset Boulevard and east of Highway 99W, Tax Lot 100, Map 2S 1 31.
- On March 26, 1997, the City Council approved revisions to the Woodhaven Final Development Plan. He referenced the changes and the Notice of Decision which was attached to the Staff Report.
- The applicant is requesting approval of the preliminary plat for a 47-lot single family subdivision. The site consists of 17.2 acres, 6.9 of which is buildable.
- The proposed lot sizes vary from 5,045 sf to 15,283 sf which are in compliance with the PUD overlay.
- The proposed roads contained in 7B will connect to 7A, Phase 4 and eventually Meinecke Road. The applicant has provided a letter of credit for the improvements to the future connecting road.
- The site is zoned Low Density Residential (LDR). The proposed setbacks are within the Woodhaven Final Development Plan conditions of approval.
- He reviewed the required findings for preliminary plat approval. The plat complies with the Comprehensive Plan and applicable zoning district regulations.
- He referenced a memo dated May 5, 1998 to the Commission from Sue Engels, Community Development Director.

Sue Engels advised the May 5 memo is in regard to compliance of Phase 7B with Conditions 14A and 14B of the PUD Master Plan. With the recording of the plat for Phase 7B, the park property will be dedicated to the City. The City Council approved the PUD amendment which included the park property. With regard to the collector street to Meinecke Road, attached to the memo was a conceptual plan identifying a number of opportunities to connect from Phase 7B to Meinecke Road. This connection would start from Phase 7B. Staff feels this is sufficient because the connection beyond Phase 7B is dependent on the development of adjoining property. Based on this information, Staff feels the applicant has met Conditions 14A and 14B. These two conditions were included as "Attachment A" of the Staff Report. Greg Turner read the conditions.

Mr. Tuck said in conclusion, based on the findings of fact and agency comments, Staff recommends approval of SUB 98-2 Woodhaven Phase 7B Preliminary Subdivision Plat with the conditions contained in the Staff Report.

Chairman Whiteman asked for clarification regarding the street lighting. Greg Turner said Condition 3.L. should be removed from the Conditions of Approval.

Scott Franklin asked for clarification regarding the drawing which was attached to Ms. Engels' memo. Staff responded the drawing was prepared for this memorandum. The modified PUD identified the park in the same location as this drawing. Mr. Franklin asked if the extension of the 8 foot concrete path along Carlson Street should be eliminated. Mr. Tuck said this was correct and Condition 3.G. should be removed from the Conditions of Approval.

Chairman Whiteman said there was a question regarding the 25 foot radius. Mr. Turner said the Engineering Department has recommended Condition 3.S. be removed from the Conditions of Approval.

Scott Franklin said Condition 3.T. should be modified so it does not reference the collection line behind the curbs. Mr. Turner said this would be correct and Condition 3.T. should be removed from the Conditions of Approval.

Angela Weeks asked for clarification regarding the specific location of the connecting street to Meinecke Road. Mr. Turner said as far as specific location, any one of the locations identified on the drawing would work. Ms. Engels said within Phase 7B, all three locations are available and would work for the connection to Meinecke Road. Mr. Franklin said of those three, the only one that meets the collector typical sections regarding street width, etc. is Stellar Drive. Mr. Turner said this would be correct with the current plan.

In response to Ms. Weeks question, Sue Engels advised the Transportation System Plan (TSP), when adopted, would not necessarily specifically locate the exact location of the collector any more than the current Transportation Plan does. The reason Staff was waiting for the TSP was attached to the frontage road and whether the location of the frontage road would alter where the collector would be located. In looking at how Phase 7B is arranged, Staff believes the connection would be frontage road neutral. The TSP would not specifically site this connection. The current Transportation Plan has a straight line drawn from Sunset Boulevard to Meinecke Road to indicate the general area for this route.

Chairman Whiteman said he has very specific ideas on where the connection to Meinecke Road should be located. He feels the road should be located on the west side of the park property connecting from Woodhaven Drive to Meinecke Road. He would discuss this at the appropriate time.

Ms. Engels referred the Commission to a map showing the original PUD in relation to how the connection to Meinecke Road was proposed. When the PUD was amended, there was a dotted line which showed one of the locations for the connector on the west side of the park property. Mr. Mays asked what the intent of the Council was when they approved the PUD amendment. Chairman Whiteman said he believed Staff made the City Council aware that the location on the west side of the proposed park property was not Staff's recommendation. The reason it was

shown at this location was as a recommendation from the Planning Commission. It would be more appropriate to discuss this during Commission deliberations.

The Commission asked if there was not a street connection to Meinecke Road, would this still be within the original Traffic Impact Study area which Woodhaven would be responsible for. Ms. Engels said Woodhaven would be on tap for a portion of the costs of the 99W/Meinecke Road intersection and signalization because of an agreement at the time the Wyndham Ridge development was approved. Mr. Turner referred the Commission to the March 26, 1997 conditions of approval, Condition 2.A.9. which states the applicant will fund a share of the costs of this rebuilt intersection. This is based on the 1994 Kittelson Study. Mr. Franklin said the question would be, if they are not connecting to Meinecke Road would this still be applicable.

Chairman Whiteman said he had discussed the proposed park with several parties. The previous minutes reflect that the City Manager indicated it was his feeling when the City acquired this property, it removed it from the PUD. Chairman Whiteman said he did not believe this to be the case. One of the original conditions of the PUD was that there was to be a certain amount of park space in this development. All of the little park space was traded off for this one large piece of park area. As soon as you remove a piece of property out of the PUD, the condition would no longer be met. The Commission cannot tie the hands of the City Council with regard to what they do with their property in the future. The Commission has to deal with what they know and what the Commission knows is on the map. The Commission is not a policy setting body. The policy setting body can do whatever they want with this piece of property.

Chairman Whiteman said he believed if the park property is removed from the boundaries of the PUD, it is a major change and would have to go back through the public hearing process for another amendment to the PUD. The park property is about 7 acres. Staff is aware of his feeling in this regard.

Mr. Mays asked if there were any remaining concerns about services going to adjoining properties. Chairman Whiteman said there was some concern about sewer and water going up Meinecke Road to that property line if the City owns the park property. The Commission would probably hear something about this during the public testimony. Ms. Engels said Staff would not be prepared to address the issue regarding what City policy would be. In terms of the Engineering Department's review of this development stubbing services to adjacent property, the view was the stubbing was appropriate and adequate to take it to the edge of adjacent property. There are other directions from which the utilities could come from.

There were no further questions to Staff at this time.

Chairman Whiteman asked if the applicant wished to provide testimony.

Phil Nachbar, Genstar Land Company NW, 11515 SW Durham Road, E-9, Tigard, Oregon 97224, addressed the Commission. Mr. Nachbar noted:

- He understood that Conditions 3.G, 3.L, 3.T, and 3.S should be removed from the Conditions of Approval. In addition to these, he recommended:
 - Regarding Condition 3.N, using the new cul-de-sac design for “A” Court which provides an island in the center which provides more green space, he feels it would be more pedestrian friendly if the cul-de-sac were paved. Kids tend to use cul-de-sacs and a fully paved cul-de-sac would allow for greater access for trailers and boats from the driveway. If you calculated the actual amount of runoff that is occurring from this small area, it is relatively insignificant. The applicant would like to see a fully paved cul-de-sac. It would also be less costly. He would request that Condition 3.N be eliminated.
 - Regarding the sound attenuation wall on Item I, he is not really sure what this refers to. Staff said this is in the general conditions of approval and would refer to Lots 719 and 720. Mr. Nachbar said these lots are already platted and are a part of 6C. Staff responded that it refers to the industrial area and would not be a part of this application.
- The application for Phase 7B was submitted and brought to the Commission in March 1998 and two months later, no action has been taken on the application. There have been a number of continuances. The original idea was to provide City Staff and the Commission time to study the issues. Unfortunately what has happened, the Commission has not received the extended information they would have liked. He understands the Staff position is that they haven’t identified where the connection (specifically talking about Condition 14B) will extend off of their property. If you read the condition, it states that prior to Phase 7 plat approval, the following items will be resolved to the satisfaction of the City. He makes this point because they are talking about the City’s approval, not necessarily the Planning Commission. The City has to feel that these two conditions are met to their satisfaction.
- The City has told the Commission tonight that with the connections made in Phase 7B, the three connections to the property adjoining Meinecke Road, the applicant has provided adequate connections to any option which may be developed off-site to the north.
- The connection that is going to happen to the north, as has been described tonight, is not going to happen as a result of the Transportation System Plan. The TSP will address the frontage road, so the actual connection could be a result of a number of things; if the property directly to the north comes in with an application, the City may choose to incorporate that as part of the connection directly to the north.
- Should the frontage road be put in earlier, that may become a connection. The point is, the applicant has done everything they can to ensure that road connection can be made. They have provided three possible connections to the north in which any one of these could serve as a direct connection to Meinecke Road.
- He restated Condition 14B.
- The applicant has provided a letter of credit and they have agreed to pay for this connection. The applicant has done everything they can do. It is now the Commission’s decision to determine whether this condition has been met to the satisfaction of the City. He did not believe it is the Commission’s decision to determine where the road should go off of their site. The City is advising the Commission that they believe the applicant has met this condition. He wanted to make this distinction.

- The actual road dimensions may change and they are set when the preliminary final plat is submitted. Once this is set, it determines whether it would be a collector or whether it would be a local street, as Mr. Franklin pointed out.
- City Staff is the representative of the decision-making body, the City Council. The City Council is the deciding body. The City Manager interprets the policy as set by the Council and instructs City Staff to implement the policy.

Chairman Whiteman said he did not agree that the City Staff becomes the “City”. Mr. Nachbar said in any legal agreement, when it refers to a “City”, the decision-making body would be the City Council.

Mr. Nachbar said Staff has done their job and Condition 14B has been met by the applicant. He continued:

- If, as Staff has indicated, the TSP will not determine the location of the connection, and it would be made by other methods, which typically has been when the next development entity comes into the City, the City looks at it and determines whether the appropriate connection should be made at that time, and if so, how.
- It does not appear that the Commission is going to get the exact decision they want, which is where is the road exactly going to go. The Commission may say where they would like to see the connection located, but that still may not be what the City or Council wants to see happen. That’s the politics of it.
- Remember, the applicant has met the conditions to the best of their ability. They have provided the connections in accordance with the PUD plan as approved by the City. They have provided for a letter of credit in the amount of the costs of construction of this road, as approved by the City Engineer. They have done everything in their capacity to meet this condition. Yet, somehow this condition is imposed on the applicant when they are unable to decide where the road should go off site. It is out of the applicant’s control.
- The other critical item is the location of the park. The condition states the City shall review and approve the incorporation of a park adjoining Meinecke Road. The City has told the Commission tonight that by virtue of the fact that the park is located and identified in the PUD as a park, that the applicant is required, under the general conditions, to dedicate it as a park to the City. This decision has been made to the satisfaction of the City and Staff has advised the Commission of this fact.
- The only thing the Commission can go by are the documents they have for review. The Commission is reviewing and approving the incorporation of a park to the best of their ability. The second step is, once this is approved, the applicant will dedicate this park to the City. When the property is in the City’s hands, it is out of the applicant and Commission control. It would be under City ownership and they may choose to use the park for something other than a park.
- City Staff has told the Commission tonight that this property has been set for a park. There may be other politics going on, but the City has represented to the Commission that this area is to be a park.
- There has been some contention that the applicant has gone out of sequence in terms of what they are developing. City Council has approved the new phasing plan which is Phase 7A

which has been approved and Phase 7B. He identified the areas on the map. In addition, Phase 8 has been separated into three sub-phases, 8A, 8B, and 8C, primarily so the applicant can piece the development together. They would like to create a higher density area for Phase 8C, so they could build houses in the \$120,000 to \$150,000 range. The City Council has approved the rephrasing. Staff confirmed this.

Mr. Nachbar said he would answer any questions.

Chairman Whiteman asked for Mr. Nachbar's opinion regarding whether the park property stays within the PUD or not. Mr. Nachbar said you have an adopted area which is the PUD. The park property would still be in the PUD boundary area. They took out 140 apartments where the YMCA site is located, but the YMCA site is still within the PUD.

There were no further questions of Mr. Nachbar.

Chairman Whiteman asked if there was anyone who wished to speak in favor of SUB 98-2 Woodhaven Phase 7B Preliminary Plat. There was no further proponent testimony. Chairman Whiteman asked if there was anyone who wished to speak in opposition of Woodhaven Phase 7B.

Robert James Claus, 22211 SW Pacific Highway, Sherwood, Oregon 97140, addressed the Commission. Mr. Claus said Phase 7A is on appeal to the City Council. As he would explain later, Phase 8A and 8B, would not be on their way to LUBA, if the Council and Staff had acted responsibly and in conformance with the law. It will be appealed by this time next week. He asked that the record for SUB 98-2 Woodhaven Phase 7B be left open for seven (7) days and continued from the Commission's vote tonight. He would explain why and that the Commission has been given a great deal of inaccurate information tonight, if not outright falsehoods. Phase 7A has been appealed to the City Council and for whatever reason, the Staff has not seen fit to schedule this for a hearing. He called LUBA about 8A and 8B and LUBA said Mr. Claus you know it is a very simple matter. You simply give us the fees, \$350.00, and we will hear it, but you have to have a Notice of Decision. You must have findings of fact and you must have a list of affected parties. Mr. Claus told LUBA that Staff was not going to issue a Notice of Decision. LUBA said Staff has to issue one, it is a requirement. He was sure Staff would get around to it, he didn't think they were that willing to avoid law, but of course, you just have to realize they are plying this PUD and you know they probably are. Finally, out of frustration because the City Council knew he was going to appeal it and instructed Derryck Dittman to write a letter and ask if he could appeal it to LUBA, he called Mr. Dittman and said, "I don't understand this, I haven't seen a copy of your letter which was going to be made available to me." He said it should have been made available to me. He wrote a letter and told the City Mr. Claus could appeal to LUBA.

Mr. Claus advised Mr. Dittman he had not received a Notice of Decision. Mr. Dittman said Mr. Claus would get one. Mr. Claus called back to LUBA again and told them he did not have a Notice of Decision, findings of fact or list of affected parties. LUBA told Mr. Claus he had to be wrong. The twenty one days does not start to run on 8A and 8B for Mr. Claus to file his appeal until he gets this, everyone in Oregon knows this. Mr. Claus called Mr. Turner at 1:15 PM, and

1:50 PM on May 4th. Mr. Turner informed Mr. Claus that he, in consultation with Ms. Engels, and Mr. Claus was hoping they dispute this, informed Mr. Claus that it was not a public decision that the Council voted on and he guessed Staff had to have some interpretation that the public had to be allowed to testify. At this point, Mr. Claus called LUBA back and they told Mr. Claus to write out what he thought the decision was, send it to LUBA and they would handle it, but please talk to the City Attorney. Mr. Claus called Derryck and he asked if somebody from the City told you that you would not get a Notice of Decision. Mr. Claus told him what Mr. Turner has said. Mr. Dittman said please let me handle this. About an hour later Mr. Claus got a phone call back from Mr. Dittman and he said you will receive a Notice of Decision, findings of fact and a list of impacted parties. Mr. Claus went over to City Hall today at approximately 4:00 PM and picked it up. The Notice of Decision must have occurred in a meeting he did not attend, because the findings of fact in that are without a doubt beyond anything he has ever seen. This will rest with another matter because he will use the minutes with LUBA and show them what is going on here.

Mr. Claus said it would be published now in the newspaper as it should have been and he will have a chance to appeal it. So if the Commission has any idea that Phase 7A is okay, perhaps Mr. Nachbar, although he was told Mr. Claus has appealed, didn't understand what Mr. Claus said. There may have been something in the English that didn't translate. Perhaps the Staff just doesn't want to tell the Commission they haven't scheduled it and perhaps they don't want to notify the Commission of the tremendous turmoil that has occurred over 8A and 8B. No building permits should have been issued, although it appears they started construction in 8A and 8B. He would like Mr. Nachbar to tell him the road construction along 8A and 8B is not occurring and he would like Mr. Nachbar to tell him they haven't had their building permits issued and they are not working because their appeal period has not run out, but again we are in Sherwood aren't we, not Oregon.

Mr. Claus said he wanted the Commission to get the exact date that Woodhaven was first okayed, that City Council okayed from the start and he wanted the Commission to look at the Code and see if there isn't an absolute five year limit on PUDs. He would suggest that the Commission has admitted open contention here whether the park is a park, whether it belongs to the City or whether it is school district property. Have Mr. Dittman tell the Commission whether the park is a part of the PUD. This is what should be done. Mr. Claus said we don't need any more accountants or architects giving us legal opinions. That's what City Attorneys are for.

Mr. Claus said the Commission needs to carefully note in their records that they have the City Manager telling them he is not sure if it is going to be a school district site or a park. He is not suggesting this is a change of land use, he thinks the Commission can come to their own conclusions. He tried to make it a little more graphic. There were 35 to 40 potential houses in that area. When these fellows blessed us and came to Sherwood, that was 5% of their total population it would have represented. They are trying to tell him this is not a significant change. The Commission is being told it is not a significant change. He pointed out they allege that when the YMCA was sold, it was sold. They had a public hearing. The Commission needs to read the Zoning Code on PUDs and show him where there was a special public benefit found in that public hearing. He would challenge them to show him the findings of fact. He would suggest

then, that hearing either was not a new petition or the hearing was illegal. They did not make the proper findings of fact to allow this PUD to go on.

Mr. Claus said the whole argument about the road in 7B is ridiculous. He would relate what Mr. Tuck did to him. If the Commission can't see the difference between what this Staff does when Mr. Bormet wants something, and when he doesn't, you aren't thinking about the matter. How can they tell you what a road is going to cost when they don't know where it is going to go. That's really good. A road costs you, of that kind, and you know this Mr. Franklin from your work, at least \$500.00 a foot for the road. Now they are going to tell us that tonight for the very first time they are seeing the connector through the Salisbury property. That's really original. These guys can draw maps better than anyone. He asked that the three maps be marked "A", "B" and "C" and be kept as a part of the record because they are clearly being used here as evidentiary treatment. They have been referred to repeatedly. He wanted the LUBA judges to look at these maps and the changes. It is going through the Salisbury property and of course, that's new, but that's a penalty to Bob Salisbury because he has suggested he is going to develop his property. We, additionally, do not know where the sewer is. This is really amazing. Here we are in Oregon, we don't know where the sewer is, we don't know where the road is going, but they've got to build because these poor fellows have been victimized by the City of Sherwood Staff.

Mr. Claus explained why we have the mess on Meinecke. They chose to go on Sunset. Those of you who were here, which is no one sitting on the Commission, in this capacity, will remember Mr. Claus railed about this going to the far end of town. The phrase he used is "the tail is going to wag the dog before this over with." Why did he say this, because now they are back to Meinecke. Salisbury doesn't have sewer unless he pays to bring it up. And then there is the question if you can pay enough to bring it up. Wetzel has no sewer and Boyd Myers has no sewer and wonder of wonders, we don't know where the road is going. Now they have the nerve to walk in here and say, "Look we wrote a PUD, we screwed up your entire General Plan, your Transportation Plan, your Sewer Plan, your Sanitary Sewer Plan, your Stormwater Plan, but it's not our fault we did it." Commissioners take a look at PUDs. It's like you, nobody asked you to step up there, you asked to go there. Nobody asked the City Council to run, they chose to run. So when certain flak comes their way, it is a problem. It's called if you don't like the heat stay out of the kitchen. These fellows chose to go away from our general plan, our zoning and put in a PUD and as they went down, what happened. We don't really know. I went to a Council meeting one night, Jon Bormet got up and said, after Larry Cole had pointed this out, a great deal of system development credits had apparently been given, God forbid I use the word illegally, to these good citizens. Turned out we bought parks that weren't parks. Why, because in Oregon, stupidly, we have a park plan and if the park plan doesn't say it is a park, it's not a park. Does this ring any bells. We have a 7 acre park, that has not gone through the Parks Commission, we don't know it's a park, but we gave these guys something like, a figure of \$1.2 million in those figures. I hope Mr. Nachbar gives us the exact amount. So in some way, they are certainly bound to buy this 7 acres. That is precisely how it happened. We weren't going to go back and ask for the \$1.2 million, which he thought they should have done. They should have turned it over to a class action lawyer and sued. To him, that's no better than theft. He has never been able to get away it in this town. He has always ended up giving to this town and he has never

received anything in the form of SDCs he should have. He has never received fair market price for anything, let alone something the law wouldn't allow him to have.

Mr. Claus said the Commission is hearing the applicant is dedicating the park. They are not any more dedicating the park than they dedicated the YMCA and that's an issue they should ask for the exact finding from the City Attorney how that park came into existence, if we are paying for it or not. He's going to talk about SDC credits, no, he's going to give us SDC credits we'd get back about 4 other acres. Now we get here and say, "You can't do this to me, we screwed up your basic infrastructure." Gee, that's interesting. Steve Weeks was sitting here, he's got no place to go. Salisbury has trouble. Myers has got trouble. Wetzel has trouble. We're trying to build a frontage road where no one ever existed. We've told LCDC we're going to come up with a new Transportation Plan. They are objecting because we're trying to throw this frontage road out as if its a bit and piece, check with Steve Oulman, in case you have any questions. The Commission is sitting here tonight being told, "You can't stop us from building." Let me tell you why they tried to rephrase this. Because they have made some very serious mistakes in the way they approached this town and they are now asking the Staff to bail them out.

Mr. Claus said he wanted completely as the record both A and B because they will be appealed together, so these records will be appealed together and I want them as a part of the same thing because I do not do this as an isolated issue. Now we have a PUD that completely violates the General Plan and the zoning and tonight you heard somebody say we are going to come back and ask for density increases. They are going to say we're not exceeding the all over density we could have got if we added up all of our land and multiplied. That's not what the Code says. It says you take a PUD, you lay your density down and you live with it. You try to change the density in that PUD, you've got a different PUD. The nice thing about this is these people flip from subdivision language back to PUD language and the Commission is supposed to say, well read your book. We made an agreement and I circulate this with you, with Mr. Salisbury, the City Manager and Mr. Nachbar. Read it. It is self explanatory. He distributed a copy of the Letter of Understanding which was signed on 5-27-97, by Phil Nachbar and Jon Bormet and on 6-4-97 by Robert Salisbury. It speaks for what is says and it is part of the record. We were to get an infrastructure and sewer. There is currently no sewer to the extreme corner of Salisbury's property that is served or will serve next to the school. The Commission has a situation that is absolutely contrary to Oregon law. We give up so much in Oregon to have the rules. We give up the right to do what they can do in Ohio, go out in a farm district and put in a subdivision. We do all kinds of things. But supposedly because we give that up, we live in a planned community where we will have sewer, water and note, no one will let the last developer in use up all of the water and all of the sewer. You don't see how much of a hardship you can work on the next person. They are supposedly part of the community. And yet you hear tonight one person after another has told you in these hearings they are not served by things, the Staff admitting it. They are telling you they don't know where the road is going to go. Mr. Nachbar is saying that is not his problem. You bet it is his problem. He's the one that did the PUD. He's the one that came with this PUD, we didn't ask him to, it's just like you folks. I appreciate you giving up your time. I'm not quite as happy about my wife giving up her time, but I appreciate it, if you're interested, then do it. But I also will tell you, you chose to be up there. That's very analogous to this PUD. We didn't beg them by going up to Canada and say, "Oh, please come down and save

us poor Oregonians.” They came here and said this is the most profitable thing we can do. And they proceeded to do it. They are now back saying, “It’s true that everything has worked out very good for us.” Lots are up to \$50,000, \$65,000, maybe even as high as \$75,000. That all of these things that you made us do, they have these great engineers from OTAK, they were going to save us. They were going to put in water system, they were going to put in a sewer system and they were going to put in. Now I bring this to your attention because it is remarkable when this Staff doesn’t have a need for a developer, what they can do when they don’t like their subdivision. He made a reference to Mr. Heironimus. You live in the Centex subdivision. Have you noticed how that last phase is stopped. Have you ever wondered where the stop work order came from. Have you ever wondered how the City can issue stop work order after stop work order over there because there wasn’t adequate water pressure, adequate sewer for Shannon and the other people up slope. Can you ever wonder how they can sit for months while all these poor souls were just rushing in lots in the middle of the winter. These guys were going like crazy when Centex was sitting because this Staff decided their engineering was not proper. Roy Priest came here and threw himself on your mercy and flopped down and said we made a great engineering mistake, we didn’t put in the right drain lines. They went back and they paid thousands of dollars to put them in for their neighbors. The Commission is not seeing the same attitude here and this is a PUD. And they are saying to you, “We’re victimized by the City.” That really gets to me. Let me tell you how it works in Oregon. The citizens elect City Council and they appoint you, you’re a governing body. You’re given distinct charges by them. You are ordered to look at the black letter law and then you’re ordered to do a finding of fact on the black letter law. You’re supposed to look at that PUD, you’re supposed to see if they met it. You’re not supposed to have some planner run up and say, “Oh, there’s a wavy road here and there’s a wavy road there. It’s all right, just turn it over to us.” They changed our street, plan, they did, nobody else. The Staff didn’t change it because they are not empowered in this state to change it. What happens is, we all met and I will tell you this, I did not see one person sitting up there that was there when we wrote that general plan. We spent hours and days writing it. We put in our streets, our sewers and you know we forgot our stormwater plan and you know what, the Federal government came out here and said if you don’t have a stormwater plan somebody is going to go to jail. So we went back to work and we got a stormwater plan. You know we did it for a whole town and we said now we have a stormwater plan. And these folks came into town and said we don’t like what the citizens did and their committees and what the Council voted on, we want a PUD. And the City should straighten this out, that’s the Staff.

Mr. Claus said, “I’m telling you, the problem we have in this town tonight is Jon Bormet.” Jon Bormet is an administrator that works for the City Council. When he wants Act III, he can say, “I don’t care if there’s 50 or 200 spaces, one exit or one exit is enough.” He can say anything he wants that violates the black letter law and they are going to come in here and start telling you it is a good idea. When I get up and say it is not a good idea, because as I told LCDC, I didn’t move here in spite of the law, I moved here because of it. They can raise absolute cane, letter of the black letter law with you. When you have to have a variance, you get a variance. Now Act III didn’t have to have a variance because they wanted it. I’m telling you that you have the same disease going on here tonight. They need this for revenue to keep people employed and they don’t care what it does to the rest of us. You have a job, it is a simple one. Read the black letter law and if they can’t give you the black letter law, stop it. If you don’t which based on past

history I don't think you will, I'm going to appeal it to City Council, there's another \$1,500.00, I'm going to sue over civil rights violations because that fee is preposterous, and if City Council doesn't do something about it, I'm going to take it to LUBA. Does that mean I am opposed to these fellows building in this town, no. I develop property now and then, get more of a kick out of redeveloping existing property, I don't have anything against developers. I have something against somebody that comes into my town and starts telling me when they leave here with millions of dollars that it is our fault that they can't live off our laws. Now I'm sure Mr. Nachbar is going to have a lot of nice things to say, but it is obvious I'm making this record, because I hope he does. It's like your last minutes, some statements were made in there that were blatantly false. I'll use that because you couldn't make a finding of fact with an inaccurate public record. And all I'm asking you tonight is to ask some questions. Derryck has been around Oregon for a long time, is the park part of the PUD. Ask him why they're required to finish that road. Start asking him questions because I would really like not to pay the \$1,500.00 to go to Council and the \$350.00 to go to LUBA. But if I can't get it done I will. Because we're sitting on the other side of the highway, a whole bunch of other property owners are and we are all sitting here, held hostage by these people. They are not the victims, they are victimizing the other land owners. And it's time it is stopped. We can't get sewer, we are going to have trouble with the water, we don't know where the roads are, we have Mr. Borner going out and telling people, "Go along with the frontage roads and I will change your zoning." This has turned into a zoo and you wonder why everybody is getting hot. We're sitting there and there is nothing we can do except pay increased property taxes because you won't make these people give us an infrastructure and I'm frankly really insulted when I hear somebody get up here and say, "We're the victim." I'll tell you, nobody asked them to come here and nobody asked them to do a PUD. I'll tell you in talking to LUBA, they said to me, "You know the thing that is the hardest to put up with is five years ago you started screaming at Sherwood. Put the plan in place and force people to do it." You're going to have a wonderful town. You're going to have me surrounded by a fine wildlife refuge system. You're going to have things no other town in the area has, don't be in a hurry. Don't be in a hurry. Take it a step at a time. Don't give your land away. You know we went from nearly being bankrupt five years ago to being one of the wealthiest towns in Oregon. We got that through SDCs and I will tell you I was the only one testifying in favor of increasing those fees so this town would have a sustainable living environment. And I'm here tonight saying I don't know why I did it. I seriously don't know why I did it. All the money has done is go back into the wrong people's pocket, it hasn't built the roads, it hasn't built the sewer, we've had people taking advantage of us and then have the nerve to come here and say we are being victimized. Somebody is being victimized all right, the elected officials, the citizens and the land owners and it's not in that order.

Chairman Whiteman asked if there were any questions of Mr. Claus.

Angela Weeks said Mr. Claus said the Code book states the PUD has a five year period. She did not find it. Mr. Claus said she would have to look because it is in a different section, it is in the plat section. He said if his memory serves him, they passed City Council and the 21 days in 1994. So he said the reason all of these delays may really mean something, it may be obligatory for the Commission to bring this back very shortly to a complete new public hearing. He was sure the Staff would find a reason why that five years does not mean anything. We've had a

history of horseback lawyers. The PUD has changed so much, it is ridiculous. Look at the maps. You don't have the same thing. This should be called "Leggo" City planning. You've got all the pieces there, you just move them around so that they are not recognizable.

Ms. Weeks asked if the statement was correct that a PUD has a five year time period. Mr. Tuck said Staff would review this, but at this time they are dealing with Woodhaven Phase 7B. Chairman Whiteman said this is under Subdivision and Land Partitions and does not speak to PUDs. Mr. Claus said this would be another question to ask the City Attorney.

Chairman Whiteman said Mr. Claus asked that the record remain open for seven days.

Chairman Whiteman asked if there was anyone else who wished to speak in opposition to Woodhaven Phase 7B.

Steve Weeks, 27420 SW 207th, Sherwood, Oregon 97140, addressed the Commission. Mr. Weeks noted:

- We came back here in March and one of the problems he had with it is the Meinecke Road connection. When we first approved this, we had a road coming out to Meinecke Road from Woodhaven.
- They want a frontage road, which he is opposed to. They being the City Staff.
- The frontage road, what this does, I think that has been brought on, if you really looked underneath the carpet, you are probably going to see Woodhaven underneath there. The reason for it is Meinecke Road signalization. This is his belief and he really can't back it up with a whole lot, but it is another reason to postpone it and find out why or if it can be done.
- He made reference to Mr. Heironimus who lives in the Centex subdivision.
- He did not think they are going to see a stop light on Meinecke Road and 99W. Because they are changing the design of the frontage roads that puts people out onto a frontage road and not onto Meinecke Road. So the warrants for the light probably won't be met, at least not in the near future and they will be long gone by then.
- He was not saying Woodhaven would not contribute to the alignment, but he did not know if they would contribute to the high cost of the light. The Commission should look at this too.
- The Kittelson report of 1994, indicated that Woodhaven, at that time they were called Steeplechase, would contribute to these things. At the time we had a road drawn out from Woodhaven onto Meinecke Road and it was through this so called "new park area."
- If you look at the plan as a development, it is an area all by itself. It is a city by itself, without anything commercial involved in it.
- If there is a catastrophic problem in that community, how many areas do they get have to come out at, Sunset.

Chairman Whiteman asked if there were any questions of Mr. Weeks. There were none.

Chairman Whiteman asked if there was anyone else who had any comments in opposition to Woodhaven Phase 7B.

Susan Claus, 22211 SW Pacific Highway, Sherwood, Oregon 97140, addressed the Commission. She had some comments and clarifications. She noted:

- She has been on the Planning Commission since Woodhaven started, from the very beginning, she was at the first meeting. There was a two hearing process in March of 1997 where some changes were made and there were some points she wanted to clarify:
 - There was never any discussion of three different points on the north end of Phase 7B from which the collector road could go.
 - The middle road being proposed was never part of the discussion. She referenced the map which was distributed to the Commission tonight.
 - It was supposed to be a local connection for the north site which is the Salisbury property and now it has somehow been put in place as a possible collector connection to Meinecke. This was never part of the previous hearings.
 - When Chairman Whiteman talked about the map that exists that we haven't seen in any of the materials provided for these hearings, there is a dotted line along that east side where the park is and one of the alternate locations for that collector road.
 - The other one was the left side where you could see where it stopped at Woodhaven. She referenced the area on the map.
 - One of the issues with the Planning Commission when this was originally passed was at the point of Phase 7, it was not clarified 7A or 7B, that the road be punched through.
 - Now they are hearing it is not necessary for the road to be punched through at Phase 7, but just that we identify where that connection is. This is another iteration from what has happened since the time that it was approved.
 - Part of the problem that goes along with that is that when Woodhaven as identified in the modified conditions as having to pay the entire cost for the full length of the road, if the road is going on the east side where the park property is, that land is already there, it's already available and we shouldn't have had to give the applicant SDC credits for it because when the original Woodhaven came in, there was a road there and that land was going to be dedicated for roadway purposes anyway.
 - If they are going to turn around and call that entire site park land and then put a road through that, then I think we've overpaid them because there is still the contribution of the land itself that is in question.
 - If the road doesn't go on the east side, then you've got two other adjoining property owners that need to come up with some land for the west side collector. The City does not have a policy for condemning to get the road punched through, they are going to wait until those properties develop and we don't know when that would happen. And we are going to hope that upon development they would dedicate that land for the roadway purposes, if we did a west side collector road there.
 - In any event, if there is a determination made by the Commission that the road go on the east or west side, then there are cost issues associated with that which Woodhaven should be directly responsible for. Even though it is a collector street, it is not, they don't get the full payment back, they get the payment of the difference between a local street and a collector street. There are some costs associated with this.

- When the applicant states they have bonded for this road, we don't know what the calculations were and we don't know the details of that. The Commission and Council both need to be assured that if for some reason the road doesn't get punched through in Phase 7, that we have those costs covered and we have a plan at least in effect for those adjoining property owners that that land be dedicated for the roadway purposes.
- The other problem which has not really been addressed, when these were tot lots, Woodhaven had several homeowners associations and when they were in the tot lot sequence, they were going to be paying for the maintenance. She did not know with that park supposedly still being dedicated as part of the Woodhaven, we don't know where the profile, first of all where the park is and we don't know who is going to be paying for the maintenance.
- If the City owns the park and it is still within the Woodhaven PUD and it is still part of the reason that we granted a PUD status, it seems like the homeowners should be maintaining that park. And as a result, the homeowners need to be involved in this process.
- There are questions if the School District is going to do something with it.
- There have been conversations back and forth with the YMCA site, if it was pulled out of the PUD and if the park will be pulled out of the boundary of the PUD upon dedication to the City. Both of these things are major changes and maybe the two hearing process should be held again, as it calls for in the Code.
- In general, the infrastructure issues regarding the sewers, you can see at the point of Meinecke Road at the northwest corner of the park, when that used to be two rows of houses with a street in the middle, you knew that the utilities were going up to that corner to service the next property. The City is maintaining with this being dedicated as a park, that that frontage doesn't have to be serviced by utilities because it is going to be park, the water and the sewer, they are not servicing Woodhaven. That is a big change to that adjoining property owner. This needs to be clarified and it needs to be one of those things that it is part of the infrastructure and is another major change.
- Even if this was passed in March 1997, that was never disclosed. The assumption was that those services would still be brought up there.
- Overall, it seems like they have hit a threshold where Staff is saying let's not identify that road, to the Commission, historically, that was a big concern, as well as for the Council, where the road was to be identified and also to be punched through. When they find out what the clarifications are to the questions which have been asked tonight, it may be appropriate to have the Commission look at everything, make their best recommendation and then the Commission send this to City Council and let Council say we don't want to decide the road at this time, we don't want to decide the park at this time. It will be the Council which says we have made these decisions with the record as it is.
- The appeal fees are extraordinary. If the Commission sends this to the Council, then you would not have the burden on the interested parties trying to pony up the money to have that appeal done.
- It is important that the record remain open for seven days.

Chairman Whiteman asked if Ms. Claus was suggesting the Commission send this to the Council without any recommendation. Ms. Claus said go through the process, take your best shot, provide the logic, and send it to the Council. If the Council is just relying on the minutes, there are specific issues which need to be addressed and specific responses and then the Council would not need to go through all of the testimony. She would recommend the Council have a public hearing on this.

Chairman Whiteman asked Staff if this was something they could recommend. Ms. Engels said the Commission could recommend this and the Council would make the decision whether or not to hold a public hearing on this. Ms. Claus said this is entirely within the scope of the Commission. There are important enough infrastructure questions that it wouldn't hurt to have Council review this.

Chairman Whiteman asked if there way anyone else who wished to speak regarding Woodhaven Phase 7B.

Joe Broadhurst, 395 N. Sherwood Boulevard, Sherwood, Oregon 97140, addressed the Commission. Mr. Broadhurst asked if there was a way to get the dollar amount on the letter of credit applied towards the future improvements to connect to Meinecke Road so they could get a feel for if there is enough money or what additional amount would be needed.

Ms. Weeks asked Mr. Claus, since he was very well versed on land issues, if the park property becomes the property of the City and the City chooses to use it as a park or sell it to the school district, is it his opinion that it continues to be a park of the PUD or does it become exempt from the PUD.

Mr. Claus said the Commission had heard the perfect dilemma that has been presented. If you go back over the applicant's history, they have an extremely checkered history with the City. They get very upset when you say this and they were extremely enraged in the first hearing with him because of some things he said about them. In Canada, you don't have PUDs because of exactly this situation. The courts have found that in effect they are buying zoning. They say it doesn't do you any good to have rigorous planning, it's just buying it, so they have abolished it. He was afraid of, in Canada you have no Constitution, no Bill of Rights, the language of the takings up there is a 37 Supreme Court decision and as unfavorable as it may be, the Supreme Court of Canada in effect said the Crown can make a man into a woman and we're not sure about the reverse, in terms of takings. What does this mean. It means they come down and they really know how to play the game. When we started out with them, they were going to do all of these things. They were going to maintain these tot lots and it was amazing what they said in these first hearings. They were going to build Sunset and they were going to put in all of this open space. Then it turned out we, the people that lived here, were paying through SDCs and David Bantz came to a meeting and Mr. Claus had been telling the City Council this had happened. He said this is not a PUD, there is not a homeowners association, there are no legitimate funds out there for what they are doing. They are not playing by any of the rules they said they would. They are very good at saying they are playing by the rules. You turn your back and it was zip. They go to the Staff and end run us every time. Mr. Bantz and he wanted the payment for a

water bill for maintaining Sunset Boulevard. He said either give me the money or we are not going to water that. Mr. Claus said they put in this water and they put in this high maintenance City to sell that. They put themselves over there so they were not a part of Sherwood, they did not want to associate with us. That's why Villa got cut off. And Mayor Hitchcock asked what are you telling me, they aren't putting the money in there. I said there is no homeowners association. None of what they are doing out there are they really doing. These guys understand the PUD game, they are slick. There is nothing wrong with being this slick. I'd like to work on a team like this and have my bonus paid on a percentage take you take out of the City, but I live here and it is a little disconcerting. I don't think Woodhaven, Centex or anybody ought to not pay their fair share. The problem is getting their fair share. Then all of a sudden Hitchcock and the Council then got into action and that was the first big argument with the last City Manager. And finally they were forced, as I understand it, to start doing homeowners associations. Start paying for some of this incredible infrastructure they are putting in. Why? At the time they presented the astronomical water bill to the City, it would have had to come out of a parks maintenance budget and if you understand the parks maintenance budget is like \$28,000. Stella Olsen Park looks like it looks for a reason, we don't put any money into it. These guys were asking for all of that to be paid to them. The City Council swung into action.

Mr. Claus said in his opinion, from what he has heard from Bormet, but I'm not sure, and that's the trouble, your factual base for making a decision is never there any more in this town. Bormet implied because of the PUD money that had been given for this open space in back of the houses that was not part of the park plan, they worked out a discount rate on that 7 acres and that the City was going to give them money back for that, about \$40,000 an acre. He tried to get the specifics in writing and could not. And at that point it would become their PUD to make up for what they haven't done. If that's true, then they have to put money in the homeowners association for the upkeep of it. I think they sense that and that is why they are saying, no it is out of the PUD, because if it is in the PUD, then we can make an argument they should have to bring the water from Meinecke up towards the corner and the intersection. I think they realize they are dancing about another \$300,000 they are going to get out of paying that they should have paid.

Mr. Claus said in his opinion, the park is part of the PUD, they should have to bring the road through it, it should not be severed and they clearly should have to pay for the upkeep and for the City because they have burdened Stella Olsen Park and everything which we are paying for, the general citizens are paying for. He has heard the City Manager say flat out we are going to give it to the high school. If you give it to the high school, it can't be part of the PUD and you can't assess it. If that is the case, then we are going to take them to LUBA and they don't have a PUD. So you see, I am sort of saying I hope it really isn't part of the PUD because if it is not, we've been scammed all this time about this being a PUD. His opinion is yes, it is in the PUD and they have to pay to maintain it, they can't take it out, they can't give it to the City and if the school district tries to buy it, they are going to have to go in there and find a comparable park and pay in the future for the maintenance of this. I don't think that's what Jon Bormet wants because I think he has suddenly found out he bit something and every time I think about it (he related a joke), and this is what this park has turned into, it is getting kicked every which way because it is obviously a make or break for them. And I think what the Commission should do is have as a

finding of fact and force the Staff to write it up as part of their PUD they will pay to maintain it, they will pay to put the road in it, they will put the road in it and they will bring the utilities up to that road intersection with a main trunk line. I think they are going to run right to the City with attorneys and I think they are going to fight you, but I think it is going to solve our problems. Because the problem is obvious the moment that is their park, they have to maintain it and they have to bring the utilities up to the adjacent properties. I hope the Commission treats it as part of the PUD and they have to run the road through, they have to put into the homeowners association and they have to bring the trunk sewer line from Meinecke up to that and you should put the road on the side next to Salisbury so that they have to finish all of Meinecke when they put the sewer in. They are going to get their SDCs back, but at that point at least Meinecke is finished and those of us that have been held hostage can see daylight.

Susan Claus said they have another precedent in town where they dedicated park land, but the homeowners association is paying for the upkeep and that is over at Langer Park and this happened at about the same time as Woodhaven. They pay for the improvement and the upkeep, but they have dedicated this to the City and there is a recorded maintenance agreement on file with the homeowners association. Even though the apartments are across the street, it is only those single family homes that are participating in that park upkeep. The City started on this pattern and now it is confusing because we don't know if it is being continued.

Mr. Mays asked what was the benefit to the City to have the land dedicated versus declaring it a park. Chairman Whiteman said actually the City is buying it, the City is acquiring it. Mr. Mays asked what is the benefit of the City acquiring it versus the developer declaring it a park and through the homeowners association taking care of the maintenance. Chairman Whiteman said they could declare it a private park.

Mr. Claus said they cannot, based on what they have done, restrict any of these parks to Woodhaven's use. In the initial public hearings, it was made absolutely clear that they paid for the parks, but they would be there for the public. It is why those trials and the like went through there. It is exactly like they did with Langer. You have to remember, we do not have a large City budget here and as we add these parks, they have to meet that in order to meet the standard of living, we have a certain number of parks when we had 2500 people, we try to keep those parks as the population expanded, but we didn't have an increased parks budget. So what we have done is demand people like Langers and Moderns Homes to put it in and put it in the homeowners to pay for it. Why, the reason is because every time you wanted to increase the tax base here, with the exception of the library and the police, we have turned it down. In response to this, they took a low cost way of doing it, i.e., putting the burden on the residents who want to come here and live here. There has never been a suggestion ever with any of these, that they can exclude other people. In fact, he can't understand why the City hasn't forced a park there because the initial mistake was made of treating these as greenways and giving them SDCs as if they were parks. Larry Cole came to the City after Jim Rapp left, and the first thing he said is that it is illegal to give money for parks unless they are dedicated and shown on the Parks Plan. It has to go through the Parks Commission. All we are asking these fellows to do is to come back to what they told us they were going to do five years ago. Give us the parks, pay to keep them up so the quality of life here doesn't go down because they came here. This was a very nice

town five years ago. I don't think they have done anything to improve it. Let's get this back on track and make everybody pay their fair share.

Chairman Whiteman asked if there were any further comments. There were none. Chairman Whiteman asked if the applicant wished to provide rebuttal testimony.

Phil Nachbar, Genstar Land Company NW, 11515 SW Durham Road, E-9, Tigard, Oregon 97224, addressed the Commission. He said the Commission has certainly heard an earful tonight. He was not sure if the Commission had actually thought about all these issues that were raised being relevant to the approval of this particular subdivision, what they actually have to do with it or not. He was not sure the Commission could specifically say. He noted:

- There are a lot of issues which Mr. Claus has brought up that are issues with the way things have been run in the City. Maybe the forum for this type of discussion is before the City Council and not the Planning Commission. The Commission does not set policy, the Council sets policy.
- He was not going to address many of Mr. Claus's issues because they are not relevant whatsoever.
- With regard to the Sunset construction, the complaint was made that they were already starting work on a project that they have not gotten approval for. This is absolutely not true.
- The Sunset improvements are part of Phase 1D and have nothing to do with Phase 8.
- Phase 1D goes up to Pinehurst. These are full street improvements, including sidewalks. They are changing the design to minimum of 45 MPH on that road, so they are cutting down the slope and expanding the width of the roadway and putting in sidewalks and street lights and relocation of utilities.

Mike Peebles, OTAK, said there is a stripping pile that was placed on future open space area for Phase 8 that is in no way connected to the Phase 8 construction, public improvements or building permits. The construction is within the right-of-way of Sunset. There is some stockpile of stripping material on private property. They are not constructing anything outside of the right-of-way.

Mr. Nachbar continued:

- All of the accusations that have been made are pretty irrelevant. You have to ask why is someone doing this. He did not know if any of the Commission had formulated answers to that question, but about one year ago the same thing happened where Mr. Claus filed an appeal, basically an unsubstantiated appeal, and it was dropped. The reason he did it, essentially, was to gain a negotiating position so that he could negotiate with the City and Genstar regarding the agreement which was distributed to the Commission tonight.
- He believed that Mr. Claus was representing the Salisburys on the property that they are now developing. He has been told this.
- It seems very obvious to him that the reason Mr. Claus is essentially trying to stop the development is to be in a position with an appeal so he can come back to the City and

Genstar and say look, if you want me to drop this appeal, you have to do this. It is very simple.

- You have seen a rash of issues thrown at you and really the most important ones are, are you making planning decisions. It is not what the City had a policy in place five years ago regarding SDCs, that is not the issue here. The issue is not whether the City has prepared an adequate master plan for water, sewers or streets. How could they, the developer, possibly mess up a City's street plan. The City is ultimately responsible for approval of that, not an applicant or developer. If there is dissatisfaction on any of these points, the proper forum is to take it right to City Council and say we don't see a master plan here, we have a problem with what you are doing or the development is occurring too fast, we want you to slow down. That's not a Planning Commission arena, but it is being posed as one in order to create an effective position to create an appeal.
- The Commission may not agree with this.
- As a company, they have done an excellent job in providing a development which is a safe and enjoyable place to live and he believes they have contributed to the public good in Sherwood. They have built probably more than three miles of paved bike trails and are continuing to add on to this bike trail system.
- They have created a plan which they feel is in the benefit of the City. When the City came to them said they wanted a YMCA on the corner and asked if we would cooperate and sell that land to them. We cooperated with the City and said yes. Was it in our economic interest to do this, I don't believe so.
- We have been a cooperative participant in development in the City. Any way you look at it there are pluses and minuses and there is a lot of negotiation that does take place when you are developing a large scale project like Woodhaven.
- There was some mention about maintenance, whether they are responsible for maintenance of open space areas, those areas that are dedicated. The City has asked them to create a homeowners association to maintain open spaces. The trails, the few tot lots that they have, we have done that and the residents are paying for that. Is it appropriate for residents of a local area to pay for the maintenance of the community park, he did not know, but would they want to live in an area where they would be paying for a community wide park. He did not believe so. If the Commission wanted to include this as a condition of approval, they could do that, but the Commission should really ask themselves the same question, is this a fair and equitable way to do business. Is this something that is fair to the citizens and the development.
- It is disconcerting to hear the kind of comments that have been made. In light of the work ethic that they have as a company, and him, personally, as he is trying to carry out a development which he would be proud to live in. He can honestly say to the Commission if they walk or drive through the Woodhaven development or any other developments in Sherwood, he believed they would agree in terms of the ways things look and the quality of the homes being built, the architectural standards and street scape and street trees, you don't see this elsewhere in Sherwood. You are beginning to, but you don't in general see this. They have gone well beyond the call of duty to create a quality development and he can say this without any reservations.

Ms. Weeks said the Commission is called the Planning Commission and it is their duty to do what is best as planning for the community. This is their job. Mr. Nachbar said he understands this.

Chairman Whiteman asked if there were any further questions of Mr. Nachbar.

Mr. Claus said for the record, Robert James Claus, he would have to make several statements. He cautioned the Commission about the misstatements Mr. Nachbar is capable of. He is very glad he brought it up. He noted:

- I believe you have an illegal survey now on the Salisbury property. You have called a survey and your yellow tag is off the line. This is illegal.

Mr. Nachbar asked Chairman Whiteman why Mr. Claus was being allowed to provide rebuttal testimony and if this was typical. Chairman Whiteman said the public hearing is still open.

Mr. Claus said if Mr. Nachbar wanted to say something to wait his turn. What Mr. Nachbar misrepresented is the original dispute between Mr. Salisbury and this group started over a boundary line dispute. They alleged they owned what he said was part of his property. They settled with Mr. Salisbury and they surveyed it and failed to move the stakes and yet recorded the survey. He was putting them on notice of that. This started over a boundary line dispute. They are not telling the Commission what brought Salisbury out. They claimed some of his property and he had to get an attorney to get it back.

Mr. Claus said he does not represent the Salsiburys. And it is a lie that I filed anything with LUBA. This is a lie. You read that letter and you won't see my name on there. It is very important because...Chairman Whiteman asked Mr. Claus when he filed anything with LUBA, what does this refer to. Mr. Claus said Mr. Nachbar said they used a bargaining position and that I represented the Salsiburys, in order to get a superior bargaining position I used an administrative process. Look at the record. He said we had trouble with Salsibury, we wanted something, in order to get that something, we filed, I (Mr. Claus) filed an appeal with LUBA. Chairman Whiteman said he did not think Mr. Nachbar said LUBA, he said Mr. Claus filed an appeal. Mr. Claus said that's right and he was referring to the document the Commission have in front of them. Mr. Claus had nothing to do with that document. This was settled by an attorney and by Salisbury. He called this to the Commission's attention because it is the fine line Mr. Nachbar keeps trying to tell them about. There was a boundary line dispute. Mr. Salisbury said I have a survey, there have been lines there for forty years, they said we pulled the chains the other way and we can claim your property and he would have to get an attorney. Then he said I'm going to stop your subdivision because you are trying to develop my property and I'm not going to let you. Sin of all sins, the man didn't want them developing his property and selling it. For that, he filed a legal action and Mr. Claus had nothing to do with it. Mr. Claus said he did not represent the Salsiburys and he resented the implication. As to the YMCA, they sold it for \$150,000 an acre. Still the highest price anyone has paid yet in this town to date for that zoning. Why is the statement we are so cooperative when there was money changed hands and there was a lot of it. Then he turns around and talks about the park on Meinecke when we have

administrative records that because of the budgetary situation in this town we have forced people to put in a park and for those people to pay for it. Why have we done that, because Stella is a regional park. That's what the rest of us have paid for, for years.

Mr. Claus said he did not like reminding the Commission of this, in order to finish out Stella Olsen Park, his family gave the land to finish it out. We didn't pull this bologna of finding how much we could sell it for, we gave it to them. That's dedication in my words. We still do not know what the applicant has sold the park property for and what we forgave in terms of SDCs. In an environment like that, please don't have anybody tell you let's be fair. Let's do what we have done with everybody else like Clarence Langer. Let's make them put the park in, let's make them maintain it, let's make them put in the road and if they don't want to do it, let them go to City Council. Because Mr. Nachbar is right, I would like him to follow the administrative process, that's all I'm asking. But I'm getting sick of this thing, "we gave". When we put in Murdock, we put it in, it was our expense. We didn't come back and say, "You now owe us \$150,000, which the City did." We put it in. That's what you call dedicating and gifting. You don't call dedicating and gifting paying \$150,000. He's not talking about the \$1.5 or \$1.2 million in SDC credits. He's talking about money of the exchanges and then he gets up here and talks about fairness. When you start to tell Mr. Claus that he has filed lawsuits, that he is bargaining for a position, that I represent somebody, and they are all lies, he will get up and tell you from that day on that guy better follow the rules. It has gone as far as it is going to go. They trespassed on that man's land and they settled with him because they knew what the results would have been in a court of law. That settlement is in front of the Commission and they made a broad settlement. These people went out with a 75 year old man and totally agreed to be responsible and come here tonight and act like it doesn't exist, and accuse me in a lie of doing these things. Enough is enough with these guys. Let's have a road, let's have Meinecke built, let's have our sewer brought up there and let's get a park. We paid for Stella for years. Stella Olsen Park is a regional park and it is there because some of the citizens like myself and my family and those people decided to give it to you. Gift, we're not asking for SDCs or reduced money or time to get out of our obligations.

Chairman Whiteman asked if there were any further comments. Hearing none, Chairman Whiteman closed the public hearing on SUB 98-2 Woodhaven Phase 7B Preliminary Plat and the record would be left open for 7 days for additional written comments.

Chairman Whiteman said the Commission could discuss this and decide if they wanted to have a special meeting to deal specifically with this application prior to the May 19 Regular Commission meeting.

Chairman Whiteman said while the record is open, he would like, with the consent of the Commission, to have Staff ask the City Attorney for an opinion on the following items:

- If the proposed park property is owned by the City, does it remain a part of the PUD.
- If the YMCA is owned by the City, does it remain a part of the PUD.
- Do the boundaries of the PUD still include these two properties.

- Who has responsibility to bring the utilities (sewer, water, storm sewer) on Meinecke to the boundary of a road that may or may not cross that proposed park property, if it is owned by someone other than the developer. Is there any responsibility for anyone to bring these utilities.
- What is the time line for the PUD, is five years applicable as per Section 7.301.03 Subdivisions. Does this apply to the PUD. If not, is there somewhere else in the Code that is applicable to a time line. Is there a specific time line for PUDs.
- What is the official start date of the Woodhaven PUD.
- What amount of SDC charges did the City forgive or what was the purchase price of the proposed park property.
- What is the dollar amount bonded for by the applicant for the Meinecke road connection. If the amount is not sufficient, who would be responsible for payment of the improvements. (Staff question)
- There have been statements about not providing utilities to the Salisbury property. The question of utilities from Meinecke Road will help address that. If utilities are brought up West Villa Road to the south line, albeit the low point of that property and the low point of the Salisbury property appears to be in the southeast corner about 6 feet lower than the sewer stub.
- Clarification from Staff that Engineering Staff feels there are adequate utilities on Meinecke and that the utilities that are being stubbed upon West Villa Road are adequate depth or can be of adequate depth, to serve the lower half of the property.
- Does the City Attorney feel the Letter of Understanding is a binding contract or agreement and perhaps its relationship to Planning Commission approval.

Mr. Franklin said if you look at Item #1 of the Letter of Understanding, 7B does provide utilities to the south property line. What needs to be determined is if they are deep enough to serve the property. They have received response back from the Engineering Staff that they feel the extension of utilities are adequate. There was a letter from AKS Engineering which addressed this. Ms. Weeks said there was another question on the letter.

Chairman Whiteman moved the Planning Commission continue SUB 98-2 Woodhaven Phase 7B Preliminary Plat to a special meeting on May 14, 1998 at 8:00 PM, to receive a response to the Commission's questions. The public hearing is closed and the record will be left open for seven days for additional written comments. Seconded by Keith Mays.

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

Susan Claus did not participate or vote on this application.

Chairman Whiteman recessed the meeting for a 5 minute break and reconvened the meeting at 9:25 PM.

5B. MLP 98-1 Andrews Partition

Chairman Whiteman said Staff is recommending this application be continued to the next Commission meeting.

Scott Franklin moved the Planning Commission continue MLP 98-1 Andrews Partition to the May 19, 1998 Regular Commission meeting. Seconded by Keith Mays.

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

Susan Claus did not vote on this application.

5C. MLP 98-2 Columbia Street Partition (Claus)

Chairman Whiteman opened the public hearing and called for the Staff Report. Jason Tuck referred the Commission to the Staff Report dated May 5, 1998, a complete copy of which is contained in the Planning Commission's minutes book. He reviewed the Staff Report and specifically noted:

- The applicant/owner is Robert James Claus and the property is located at the west end of Columbia Street, Tax Lot 6800, Map 2S 1 32BC.
- The applicant is requesting a minor land partition to divide a 0.80 acre parcel into three lots being 10,000 sf, 11,401 sf, and 13,265 sf.
- The site is zoned Medium Density Residential (MDRH) and the preliminary partition plat is in conformance with the standards of the MDRH zone.
- He reviewed the required findings for minor land partition approval.
- Columbia Street is currently unimproved and inadequate for future development. The street currently consists of a gravel drive without sidewalks, curbs or gutters. Based on Code Section 6.303.01, Columbia Street shall be improved to an acceptable level as determined by the City at the time of development. The fair share of the improvements to Columbia Street has been determined to be 43% based upon the anticipated impact of the future development on the subject site. This percentage has been determined by comparing the subject site area in relation to the existing surrounding sites which currently utilize Columbia Street. The subject site is 34,848 sf in size whereas the surrounding parcels on Columbia Street combined are approximately 45,694 sf. Any future development on the created parcels will be required to pay 43% of the improvement costs to Columbia Street which has been determined to be the fair share of the required street improvements.
- The new parcels will need to connect to the City sanitary sewer, water and storm water prior to building permit issuance for future development on the site.
- The owner is required to provide adequate fire protection to the future development prior to building permit issuance.

In conclusion, based on a review of the applicable Code provisions, agency comments and Staff review, Staff recommends approval of MLP 98-2 Columbia Street Partition with the conditions contained in the Staff Report.

Chairman Whiteman asked if there were questions of the Staff.

In response to Mr. Heironimus' question, Mr. Tuck said there are 9 units which use Columbia Street, consisting of duplexes and single family units. Ms. Weeks asked why Columbia Street

was never improved. Ms. Engels said there are other streets in Sherwood that do not have the needed improvements and Staff was not sure why these street improvements were not done. Mr. Claus said the duplexes were built in the 1940's.

Chairman Whiteman said the public hearing is open for MLP 98-2 Columbia Street Partition and asked if the applicant wished to provide testimony.

Robert James Claus, 22211 SW Pacific Highway, Sherwood, Oregon 97140, addressed the Commission. The lots in front of the property are the Strang Subdivision which was done in 1940. There is a long, tortured history in this subdivision. The houses all built on Sherwood Boulevard towards the railroad tracks were built within the last three years. SDCs were collected for them. All of the properties on the other side, including the two duplexes owned by Dr. Saxton are at least 1940-45 vintage. Originally, Mr. Claus owned with partners, the parcel on the front. They sold this and they tried to dedicate parts of it to the City. The City responded in what he considered an inappropriate way. The lot in the back can take 11 units right now and it can be built the way it sits. It is a legal lot. The City is not going to stop him from building. He is going to have Mr. Hart get him a building permit and if this young man (Jason Tuck) tries to tell him he can't have it, you've got yourself a major lawsuit. It is a legal lot that has existed precisely the same as the other lots. It is very serious, in his opinion that Jason does not explain this. This brings out a major flaw in his logic. Some time ago, Dr. Saxton called Mr. Claus and said, "I can't understand what is going on, I just got a notification that I might have to move part of my garage and I might not have to." He showed me the notification and I called the City Engineer, Ahmad, and he said we (the City) are going to put a road in there this summer. I asked Ahmad if he remembered, and I'm sure you don't, that before we built those lots that we made a deal with the City and gave them an easement to correct a failed sewer line across the Strang Subdivision and down Columbia. He had the same problem with Staff, inadequate research. I told Ahmad, I assume you allowed Mr. Holbrook who rebuilt those two houses to tap into that line. Ahmad could not give me a straight answer. I asked what about the water line. When those guys went in there why no fire plug. Ahmad said oh, I have a worse message for you than that. We can't serve your back lot because the two inch waterline is overburdened. I said let's do something sensible. You have a big mess over there. So I'm going to have to bring the sewer up from Sherwood Boulevard and he identified the area on the map, about 180 feet. If the City is going to pave that, put in curbs and gutters, why don't I try to come up with a plan in back to pay my fair share. We've got a Staff that has allowed developers to overburden both the sewer and the water and not put in a storm water system. They had the chance with Holbrook, he put in two houses. They could have put in a storm drain in the sewer in the street, they could have put the sewer line in and they could have given him a rebate, but they didn't do it. All of a sudden I draw this to Ahmad's attention. What in God's name are you going to pave that street for when you haven't done your homework. Wrong mistake. Guess what, now I'm not the blessed Woodhaven and I'm not supplying the money to run a Staff of 55 people. I am somebody Staff has got to stop because I am questioning their logic and I could tell from that moment on that I was going to pay. My son is one of those bright college students who said oh Dad this will be fun, the Staff is going to be reasonable. I told him I would show him about that Staff.

Mr. Claus identified on the map where they would have to put in 179 feet of City standard road. They have a 50 foot right-of-way. If they have to put this in, but more than that, he has to run water and sewer, not from where Mr. Holbrook should have done and I should be paying my SDCs, oh no, this Staff is going to make me dig a 12 foot trench 400 feet. They are going to make me put in a waterline and then they are going to make me put in a storm sewer, so I can serve, by their count, 9 houses with my 3 houses. I told Thomas, we are not going to save a penny, we are going to end up putting in as much street, just as costly as there is here, but I want to show you just how these people think. We're going to add an additional benefit. It's going to be a private street that the owners of these 3 houses will have to pay for the maintenance. Immediately the lot prices go down. That's why Woodhaven squawks about homeowners because everything you have to pay for, rather than the City pay for it, the price declines on your lots. So it is a gimme for the City and more than that, I am now told what I have to do is pay and pay for their mistakes.

Mr. Claus said he proposes, if Mr. Hart can work out the proper agreement, and if you count on 179 feet of road, sewer and water line in this 200 feet, and you let us get a contract that I know I am going to be paid, because I have come to very much distrust the City, there's an account, I'll pay 43% of the entire street systems and I will still force my future buyers, our future buyers, so if you have learned a little lesson about trying to work with the City, to pay for the upkeep of the road that fronts on their property. I offered this same thing over some Chestnut trees and somebody tried to tell me I wasn't being fair. The Chestnut trees aren't there any more. I will add this in (he identified the area on the map), we are going to have put fire plugs, which they didn't do and never should have allowed Holbrook to build without, and I will bring the water, sewer and storm water, but I want all of this added in the cost and I will pay 43% of it. Even though we are less than one-third. I want to tell you something else about his logic, because it is really cute. This is a storm water facility that you bought. Now how did the City buy it, well it was one of those little things where they went to Carriage Park and said, you don't have any place to put your storm water, why don't you run it on Mr. Claus's property. Then they went to another subdivision and said why don't you run it on Mr. Claus's property. When they got sued over it, they were shocked to find out trespass was illegal. It was a mess and I think it was Mr. Rapp that learned trespassing is not a good idea. So the City was forced to buy this for storm water. If he is going to go on square footage, why doesn't he take all of these square footages and have me pay that share of the costs, for all of the roads and all of the sewers. It would be one-third and it would be less than one-third. Since I want to find out just how reasonable you folks are before I do what I'm going to do back there and I'm going to walk in with a writ and get my building permit, and you can smile about that one if you like. I am going to make you the deal and tell you that I am going to pay more than our fair share provided he can work out an exact deal with Dittman, not this man, and then we're going to pay for all of the roads and we're going to clean that whole thing up right. You put the street in on Columbia, you put in the water, sewer and sanitary sewer and then you go and say you connect now to this new sewer line so that we don't have to tear that street up later and have bumps, ruts and a mess in it. I am going to want to put in a 28 foot street, not because I don't think there is a 50 foot right-of-way here, but because obviously with this few traffic and a private street you don't need a 32 foot street, you could easily get along with a 24 foot street and that's really what the City should be asking for.

We should minimize everything back there because it doesn't go any place. You can't have this open to children because it is a storm water facility. You don't want a public street back there.

Mr. Claus referred to Murdock, he had to explain to the last City Manager when they bought that property that storm water facilities are attractive nuisances and you gain liability by it and you do not encourage children to play in them. So you don't want a public street back there into your storm water sewer. You want access. We'd give you public access to go in and fix it. I won't pay 43% of Columbia under any circumstances because I don't have to. I have a buildable lot and if you want to test that one, we'll test it just like we did about the Chestnut trees and you are going to have a whole bunch of houses that Mr. Bormet is going to call unattractive slums and all of the things that he does about the less expensive houses. There is really 179 feet of sewer, water, storm water on our place, then there is 180 feet on Columbia. We have to run the storm water because they didn't get Pense to do it and they didn't get Holbrook to do it. We have to run the fire plugs. We have to run the storm, we have to let people like Dr. Saxton hook into the sewer. It's going to be a real major project and 43% is no place near my fair share of that. 30% is a lot closer because I'm going to take the burden off of the City of upkeeping that up. It is going to be their obligation, but I am more than willing to write right in their an easement for the City to get down and maintain a storm water facility. It is not a park and you're not going to get me involved in a wrongful death suit that I helped you put some kids down there. If somebody goes to jail for drowning a kid in one of these storm water facilities, it's not going to be me. I'm not going to lead a legal liability of your tail like that, but I would cooperate for legal maintenance and upkeep of that storm water facility down a private road and I will see to it that they have access.

Mr. Claus said if it does not get very reasonable on the costs, he cautioned the Commission, he was going to build something else there. They are not going to stop him, any more than they did Holbrook or Pense and you are going to live with what you get. Believe me, when every Council member is asking why I built that there, I am going to say, "Because Jason Tuck, tried to stick it to me and the little boy found out that the planning rules are a lot more sophisticated that he thinks they are."

Mr. Tuck said he never told Mr. Claus to build something illegal there. I did not tell you to build anything. Mr. Claus said, "Jason, you know your role in life is not telling anybody what to do or trying to find some way to take their property and that's exactly what you are doing here is trying to take the property." By the time I pay 43% of what would amount to \$125,000, I wouldn't have any of those lots left for sale, it would be an illegal takings and the reason the courts don't ask me to do that is because I don't have to in Oregon. If you fail to put in a fire hydrant when you needed one or if you fail to put in a storm water system when you should have, if you fail to get people to put in the sewer system, you don't wait until the last guy in and tell him it's your problem. And that is exactly what you are trying to do. I don't have anything to do with Columbia, I've got my own responsibility on these grounds, equal square footage of roads, sewer, water and storm water that they are going to have on Columbia. Why should I pay for something when I have the same identical obligations for three lots that six have got on Columbia. I didn't build Dr. Saxton's duplexes, I didn't build the one next to him, I didn't build Holbrooks housing and I didn't build Pense's. There are six houses right there and I'm going to put three at the back

with 180 feet of street. I have to pay for that street in order to build those. I have to put in the water, I have to put in the sewer. What you are suggesting is that I pay for that and then pay 43% up front which is really going to amount to 75% of the costs and I'm not going to do it.

Mr. Tuck said so what you are saying is you have an issue with the 43%. Maybe your proposal comes out to a lesser percentage, but we will definitely take a look at that, if that is your issue. That is no problem. Mr. Claus said he was not listening at all. What I am going to do is put an offer on the table that is overly fair. That if you don't take it, I am going to build on that lot legally and not do anything. Listen to what's being said, it is what you failed to tell them. It is a legal lot, you're the ones who made the mistake on the two inch waterline and the sewer, not me and I don't have to improve that street, if all I'm going to do is build on that one lot. It is buildable just like it was for Holbrook and you tried to tell Holbrook he couldn't build and the answer to that was you now have two houses. You tried to tell Pense he couldn't build and the answer to that was you now have three more. When it is a legal lot and it is a legal lot at the end, I can build on it. I will build on it. But because I doubt you will be able to really come to a fair share, I am willing to even go a little overboard.

Chairman Whiteman said the Staff Report says with the sanitary services provided within Columbia Street and did I hear you say it is not adequate to serve. Mr. Claus said what happened is there was a line that came across like this, he identified the area on the map, and it was overburdened, and it was leaking. USA said this line had to be replaced. They had a five foot easement. So they came to me and again this was in one of my weak moments, so I said okay you have a big problem, what's your problem. They said we need an easement and we need to straighten it out so we can get to Columbia off the railroad tracks. We talked and said well it is the City of Sherwood and we are helping them and you know this is our town, so Susie and I said we would give it to them. I thought at least I am helping this a little bit because it is a new sewer line. When I talked to Ahmad, he said you can't tie into that sewer line, that particular one is overburdened, you have to go all the way out to Sherwood Boulevard. When they put it in they had to get some easements and all kinds of things, it lowered the price of some of the lots, I took about a \$10,000 hit on the lot immediately, on both sides and said it is still all right, I don't mind contributing \$20,000 if it straightens out this mess. When I talked to Ahmad and said I want to go in, I said that is a main line, he said it is overburdened and said you have to go to Sherwood Boulevard. I suspect it is me, I'm not Woodhaven. The line off Sherwood Boulevard is a trunk line, 18 or 12 inches. I said so what you are really telling me is that after we gave you land, lost value on our property, sold down so you could put in the sewer line and work out all of this and allow people like Saxton and everybody to hook up to the line, we now can't do it. All I can do is give you property.

Mr. Claus said they have no memory. It doesn't matter what you give them. The next time you come in, if you raise hell with Bormet's projects, you are going to be the number one victim. He's going to find some way to stick it to you and his Staff is going to have that attitude clear through. So I said fine, it looks like I have to run a 200 foot sewer line so that I can get service for my neighbors. I have to run a new water line and it is going to have to be a big one because it's got to have a fire plug. There's a question, maybe a six inch line will do it, they are arguing about that to give you some idea of the argument and they are not going to put in an entire storm

water system. Add to this, by the way, Ahmad was just going to pave over the street when I first talked to him without putting any of these things in and it would have been a nightmare for me. To me, I've already paid for this line, twice. I know there is an institutional memory about we gave them that easement for nothing. We literally gave them the easement and lost the value on our property. We sold that lot to Holbrook next to it for \$20,000. Joe will remember the time when it was \$15,000 under the lowest lots we could find and I had to do that because of the sewer line and I took the same hit for Pense. And that was because, oh I wanted to cooperate with the City under its new regime. Now I'm back with the new regime and all of a sudden oh, provided I redo their sloppy work, I can only pay for it. It is unbelievable.

Mr. Claus said the Staff stayed up at night saying, "Let's get even. We've got a shot at it." It doesn't make any sense. This is where the water goes on Sherwood Boulevard, is right down into that detention area, but of all things, we don't want to put a line over there because it would only save about \$5,000. Ms. Weeks asked if that property was purchased from you by the City. Mr. Claus said for a storm water facility precisely and only to be used as a storm water facility because without it they could not meet their regional detention storm water master plan. He identified where the access is for this facility. He discussed how Gregory Park thought they could use his property for a dumping ground and they served 27 people over there and they had the theater boycotted the next week. Then they talked to their attorneys and the following week they were all back. It turned out even they understood.

Dave Heironimus said in his short tenure on the Commission, you hear different testimony, and one thing he would ask any future, again it is a free country and you can do whatever you want, but it is not very constructive to resort to personal attacks on people, whether they are with the City, the Staff and the audience or anyone else. We are all volunteers. He would prefer if Mr. Claus stated what the problem is, what the facts are to support your solution to it, because you are all over the map and it is so hard to keep up with what point you are trying to make. I'm sorry if I offended you, but.

Mr. Claus said the first remark is try to understand this, I have a civil rights complaint I have filed against the City, I'm waiting ninety days. It is obvious I am weighting the records. That's the nice thing about administrative records, in case you don't know, is the judge really likes you to put in everything you can because after 30 days it is deemed to be true and they carry the burden of proving it themselves. So, I'm sorry that I am jumping around and I'm sorry that I've filed a civil rights complaint and I'm sorry that you don't think that I should.

Mr. Heironimus said he did not say that. He did not see how a personal attack on somebody would help your cause on the record.

Mr. Claus said depending on whether it is a personal attack or the suggestion of failure to do due process without equal treatment. What I have suggested here tonight is that this is a blatant attempt to force me to do something no one else in this town has to do. It is a violation of 14th Amendment due process and equal treatment and it clearly invokes 42 US 1983 and 1988. The simple fact of the matter is there is no justification for this. I have a buildable lot. I am now being forced to pay for things that the law doesn't require me to pay for and I am forced to sit

here with smirks while people talk to people, I am supposed to sit here and have somebody get up and say I have used the administrative processes illegally when it is a straight falsehood and he knows it is privileged communication and he makes the statement. If I don't dispute it immediately it is deemed to be true and it was put in the record for that reason. And that's why I asked him to dispute what I said because I would have got up and I would have said some other things. This thing is more serious than you think it is. I'm sitting here tonight. I have already suffered financially to try to help Columbia Street. It is a matter I can prove in a court of law. No one asked me if we had given easements. No one asked me if we had been paid. No one asked me what our street was going to cost. He simply sat down and found a way to make me pay my fair share. I didn't hear Woodhaven use that word once tonight in percentages. I would like to see the same percentage on Meinecke applied to Woodhaven. Are you beginning to understand why I'm a little upset.

Mr. Heironimus said he understood what Mr. Claus was trying to say, I guess, just make your points, we are all intelligent enough to understand your point and if Staff failed to do something that they were required to do, just state it, don't take an hour to say it.

Mr. Claus said with all due deference to you, that's why I have an attorney here tonight because he is going to say it legally and he is going to say it succinctly and then we're going to do it. I do understand how to protect my rights in front of this Commission. And while you may not like what I do, let me correct you so I understand. I have a very substantial list of clients that use me to exhaust administrative remedies and reach finality. Now, they may not know what they are doing, God forbid some of these corporations that hold a percentage of our retail market are pretty big pools, but you might pay a little attention listening to this record tonight before you correct me. You have a record put in front of you tonight that questions the entire finding of facts you made last time and I'm telling you that I'm questioning your getting the truth told to you. So you may not like what I am doing, you may not like the forum I'm doing it in, but as long as I am here, it is obligatory for your to listen to my rantings and ravings. And you don't need to vote on them, you can vote against them, I don't really care about that. What I do care about is that I preserve enough of a record if I have to go up I have something to work with and it has occurred to me that after the last two meetings that you were going to have to move it out of these administrative forums into another administrative forum so that we could get back to what the law forces. I am sure Derryck and Staff will say I'm wrong, and I'm sure you don't appreciate it. But I would back up and tell you this, since it is an absolute right for me to do that. If you don't like it on the Planning Commission, nobody asked you to put your name in.

Thomas Claus, 22211 SW Pacific Highway, Sherwood, Oregon 97140, addressed the Commission. Mr. Claus said he helped write the application. He noted:

- This application started in February with a call to Ahmad. They said they were looking at doing something on Columbia Street. Ahmad said Columbia Street, we're looking at doing some road work out there, why don't you give me a little time and we'll get our references together and we can sit down and talk about it.

- We had a meeting and discovered on the first plan, they had a cul-de-sac put at the end of Columbia Street. The 0.8 acres was not to be developed without curb cut and taking out the cul-de-sac and putting in a through street.
- He, personally, likes Ahmad. He is a very competent engineer at what he does, but he has been saddled, frankly, with other people's mistakes.
- They had a meeting and looked at the utilities. Ahmad said it is a weird thing, but we seem to only have one waterline running through that street. There has been some recent development there (Tax Lots 5501 and 5600 on the map). As it sat before they were developed with a two inch waterline that wasn't sufficient to serve those houses, so there has to be something else there, we're missing something. Ahmad was going to look at this and get back to them.
- The next week, they found out there was only a two inch waterline that was overburdened before the two tax lots came in. Now we have a grossly overburdened waterline and no storm water. Tax Lots 5501 and 5600 put in dry wells rather than putting in a storm water line.
- He and Ahmad discussed this and we said well why don't we just come in with a partition. It is a simple matter. A partition is merely altering the form, but not the substance of ownership. The Columbia Street property, their 0.80 acres, does not have any improvements on it right now. At the end of the partitioning process, there won't be any improvements on it. And if you need to have some infrastructure put in, you can do it with the building permit.
- Apparently, City Staff has something different in mind and they want to put this on the partitioning. A partition is altering the form and not the substance of ownership. He referred to the map. These pieces are larger than the minimum lot size required.
- The Strang Subdivision came in before this and this Columbia parcel is the paragon, the perfect example of what happens after something like Woodhaven gets done. If Woodhaven is not properly looked at and not properly planned, this is what happens afterwards. Utilities are not placed to the adjacent property owners. They are the last ones there. There is no one there that is going to development after them.
- On Columbia Street, there is a sum total of seven lots fronting on it, two of them are duplexes. The City Staff would like to assign to them a percentage of Columbia Street based on their square footage. But is this fair, probably not, because you have in excess there nine units, talking about putting an additional three on it. They calculated it the most favorable way possible for the City. He has no problem with this, but actually he does have a problem with it.
- Mr. Hart will discuss the legal ramifications of what is going on here.
- He wanted to stress, briefly, this is merely drawing some imaginary lines on a piece of property. It is not a subdivision and it is not a PUD. It is not taking these down to a minimum lot size. It is still oversized lots. They are still going to be burdened for putting the road in to these lots when they are developed. A road, that as his father mentioned, we are going to be required to maintain. The City won't be required to maintain it.
- Half the length of Columbia, half the again the length of existing Columbia, we are going to be putting in another road that we, and we alone, or the property owners, are going to be required to maintain.
- This, in my opinion, is an absolute example of when a situation like you have before you with Woodhaven is let to get out of control.

Chairman Whiteman said it seems that the only condition you are concerned about has to do with the participation in 43% of the improvements on Columbia Street.

Thomas Claus said that is probably the most nonsensical provision that they can talk about, but really there is more of a problem because there are existing parcels there which are served by a two inch waterline. A waterline that is overburdened for the existing use as it sits. So whether or not we do, or do not go in, when the City comes in this summer to repave Columbia, they are going to have to put in a new waterline anyway to put a fire plug at the end of the street. They do not have one there now, right. Mr. Tuck said Staff could verify this. Mr. Claus said just take my word for it and call me wrong later. What they are arguing about now is over a six or eight line was what he last heard. But they are talking about over burdening the remaining piece for something that should have been done with the first seven lots. They are talking about the unreasonableness and the unfairness.

Chairman Whiteman said they are talking about imaginary lines so now they are talking in the future when the lines become non-imaginary and become real and something begins to happen within the boundaries of some of those imaginary lines and they need to hook up to the City water system that would cause the developer of that parcel to pay for going all the way back to where. Thomas Claus said when the City comes in, they are going to have to bring the fire plug in to the existing Columbia Street right now, the City may argue that it doesn't have to come to the end of Columbia Street, but it has to come some distance down Columbia Street because there are no existing fire plugs to service those end lots. As we are sitting right now, we're going to have to pull the utilities from the lot line all the way back. What we talking about now is how much of the existing infrastructure we have to pay for when the existing infrastructure should have been put in with the subdivision that went before them.

Chairman Whiteman said he hears Mr. Claus saying it is his belief that all the utilities should be brought to the property line and that's the point where you should have to pay to hook them up to. Mr. Claus said, ideally, that would be the situation and if you read the City Code, that is what you have to look at because any developments that go forward now have to make sure that adjacent property owners have adequate services. So, obviously, the requirement to pull them from the street is not adequate service. This is a legal question that Mr. Hart could respond to.

Chairman Whiteman asked Mr. Claus what they wanted the Commission to do. Mr. Claus said ultimately what he would like to see done is he would like to see the conditions, if found legal, to be put on the building permit, not the parcel. Chairman Whiteman said this is what it states. Mr. Claus said these are being put on the parceling itself. They are not to run with the individual building permits so that if somebody comes in here with that 13,265 sf lot and says we want to put in a duplex versus a person who comes in to Lot 2 at 11,000 sf and says we want to put in a single family home, Lot 2 is still going to be unfairly burdened.

Chairman Whiteman read from the Staff Report regarding the sanitary sewer system connection prior to building permit issuance for future development of the site. It does not talk about now. Mr. Claus said right, but right now it is running with the parceling because it is a condition of approval. Mr. Franklin said what the condition states is a lot is buildable, but only if they are the

ones to build the duplex and go up Columbia to bring in the utilities. If the City is doing a project, capital improvement project, what level of participation is this. Is that wholly funded by bonds or SDCs or is it funded by the property around it. This is the question.

Thomas Claus said the parcel is being treated as a subdivision, i.e., you are saying you are going to have to bring in the road and these prior to the building permit.

Jerry Hart, 330 N. Evans, McMinnville, Oregon 97128, addressed the Commission. Mr. Hart said he is an attorney and Mr. Claus asked him to attend the meeting. He said considering the fact it is almost 10:30 PM, it would be helpful if they would proceed to the next stage and work through finding a resolution fairly quickly on this project. He noted:

- Mr. Claus has a very powerful personality and we all understand some of the dynamics.
- What the applicant is trying to do is put in three nice lots at the end of Columbia Street and do it in an economical fashion that makes sense and also in a fashion that gives a little bit of consideration to what has happened in the past. Jim Claus spoke to this about the easement he gave some time ago.
- What Mr. Claus wants to do would be a credit to the City of Sherwood. The site is very level that looks down into a kind of an area that has a wetland and some poplar trees and it would be a nice place for three single family residences.
- This is property which has been zoned Medium High Density Residential, which he understands can accept eleven units to the acre. Under the zoning it would be about eight units on this property.
- He did not think the City could require him to do any improvements whatsoever to Columbia Street if he went in and asked for a building permit to put an 8-plex in. He would be required to provide adequate sewer and water, but what would happen is he could put in an 8-plex in back there, under the current zoning, no questions asked. This is what Mr. Claus talked about.
- The proposal from the City is, quite frankly, getting into the Dolan v. City of Tigard situation. This is an example. The Dolan case talked about there is a two prong test. The first one is there has to be an “essential nexus” between the proposed development and the conditions. What you have here is the situation where the essential nexus simply does not exist. This goes back to the current zoning and what he could do with that property. He could build on this property without improving the street. The only reason the City is able to hook out and try to get him to improve the street is because he is asking for a partition. He does not have to ask for a partition to build on that property. He could do it in other ways. And because of that, because of the fact that under the present zoning he is able to build there and City can't require improvements to the street, the essential nexus which is the first prong of the Dolan test, isn't met.
- In response to Chairman Whiteman's questions, he referenced the Schultz v. City of Grant Pass case which is an Oregon Court of Appeals case trying to interpret Dolan and they go into the history and say, “We must first determine whether the essential nexus is between a legitimate stated percent permit conditioning exacted by the City. If we find a nexus exists, we must decide the required degree of connection between the exactions and the proposed

impact of the proposed development.” What the nexus is, is what is the connection. Is there a rational reasonable connection with what the condition is and what the proposal is.

- There is no nexus here because Mr. Claus can go ahead and build there without a partition. Because he can build without a partition, the City really doesn't have a means to require him to improve the street.
- The second part of the Dolan test is whether there is a rough proportionality. The U.S. Supreme Court says that there is no precise mathematical calculations required that the City must make some sort of individualized determination that the required dedication is related both in major and density impact of the proposed development. You need to come up with some kind of formula or some kind of basis for the exaction. And a requirement that a developer do something offsite, such as improving the street, is an exaction. A later Oregon case which answered that point clearly is a Clackamas County case decided by the courts. When you require a developer to do something offsite, which is improve the road, that is an exaction, just as if you were requiring the dedication of land inside of the proposed subdivision.
- He is suggesting that 43% has no basis in reality. It is based upon the square footage of the land, 43% of the square land when you add Jim's property and the lots on Columbia, rather than having anything at all to do with usage. As an example, you could put eight units on that property or you could put one unit on that property and it would still be 43% of the total end. The 43% has no relation at all to the use or proposed use of the land.
- A formula has to be developed based on the usage and not on the square footage. The square footage has no relevance to anything. It absolutely does not make sense.
- What Jim has proposed is 43% of the total costs of all of the improvements, from Sherwood Boulevard all the way to the back of his property. Under their proposal they are going to be putting in what amounts to a City street for 179 feet.

The Commission asked what the width of the street would be.

Thomas Claus said a City street to that standard. Mr. Tuck asked if they were talking about on their property or Columbia Street. Mr. Hart said on their property. Mr. Tuck said on their property it is not a street, it is a private driveway. Mr. Tuck said there is a 25 foot easement. Chairman Whiteman said there is no distinction on the documents how wide that private driveway has to be.

Mr. Hart said his understanding has always been that Mr. Claus is going to develop it basically the same width that Columbia Street is developed. Chairman Whiteman said this is not what it shows. Mr. Hart asked Thomas Claus if he was correct in this. Thomas Claus said the reason the Commission does not know, is because it was not required to be put into the partitioning packet. It is only required to say there has to be an easement there to service those lots. And it is going to be to City standards.

Mr. Hart said a reasonable solution to this would be that the City should improve Columbia, if that is what they want, up to his client's property and then his client would develop it all the way back. It would be consistent and a nice addition to the City. To all appearances it would be the same width, same construction and should be constructed at the same time the City makes the

improvements. This is what they are talking about when working out an agreement with the City that would provide for that very thing so that there would be money in the pot, both from him and the City, to construct that road all the way from Sherwood Boulevard to the back of his property. This seems like a very fair solution and it also gives consideration to the fact the City did screw up and the fact that Jim did give the City a valuable commodity a few years back when he gave that easement. Also, Jim or the subsequent owners of that property would be required to maintain the road from the property line on back because it would be a private street. It would look the same as the public street, however, it would be required of those three property owners that they would improve. The City would be getting a fairly good deal from them in that respect.

Chairman Whiteman asked Mr. Hart what the applicant wanted the Commission to do with the application; send it back to Staff to negotiate something, or find a condition, it is still not clear.

Mr. Hart said the Commission could do it in a couple of different ways. The Commission could make the decision to send it back for negotiation. The Commission could approve it with a different set of conditions and include a condition that the applicant would go ahead and construct the private drive or road up to City standards and it would tie in to Columbia public right-of-way at the boundary. This would be at the discretion of the Commission. They would end up with the same result. This would be the quickest and most reasonable solution.

Chairman Whiteman asked Mr. Claus why they had a street running back there instead of a cul-de-sac and three partitions off of a cul-de-sac. The Staff Report also discusses allowing enough space for a fire truck to turn around when the property is developed. Mr. Claus said it is expediency basically. Mr. Hart said he did not know if a cul-de-sac would work. Mr. Franklin said you could dedicate additional right-of-way on an existing street. Mr. Claus said if you try to do this, this would send them into a subdivision which is an entirely different situation. This is simply a partition. If you move it into a subdivision you have different requirements.

Mr. Hart said a subdivision would have a different set of requirements. In the final analysis there has to be. His client is not going to take any action to develop that property until such time an agreement has been reached between he and the City.

Chairman Whiteman said they have talked about things that are of great concern to the applicant, specifically having to do with utilities, but there are some other requirements which have to be met with this development. He referenced the required improvements wherein the owner is required to provide adequate fire protection. Mr. Tuck said this encompasses everything. There are no fire hydrants on Columbia Street. The nearest fire hydrant is on S. Sherwood Boulevard. Mr. Franklin said the fire hydrant would not have to go all the way to end of the Columbia Street, it would have to be within 500 feet of the furthest portion of the building as the hose travels.

Mr. Franklin said he has a problem with the existing two inch waterline in there and it is a little disconcerting they are allowing additional building to occur, if, in fact, that waterline is under charged. He would also question whether it could be developed with eight or nine units at this time outright if adequate water pressure could be provided.

Chairman Whiteman said the request is the Commission place a condition on the application that says the City will provide utilities up to the property line and the applicant would hook up to them. They do not speak to the proportion of what the cost would be on the street improvements. Or the Commission could send this back to Staff for further consideration and negotiation.

Thomas Claus said they would like to see the utilities. They want to see the City take the utilities, when they do the improvement this summer, up to the property line. All this would do would be to put the remaining burden for the road and the utilities on the applicant to service their property. The City has to put a fire plug at the end of Columbia Street anyway. Chairman Whiteman said he did not think the City did. Mr. Hart said within 500 feet so it could be on the corner of Sherwood and Columbia. Mr. Claus said right, but they have to put one in there somewhere. Where they put it is a matter of their taste. The City does have to upsize the waterline and they have to place a fire plug there. It is not because of the applicant that the City has to do these things. It is because of the existing lots there that the City has to do these things. It should have been done when the lots were brought in. Thomas would like to see the utilities brought to property line and the applicant would take them from there.

Chairman Whiteman asked if the Commission had any further questions of the applicant. There were none.

Chairman Whiteman asked if there was anyone else who wished to testify regarding MLP 98-2 Columbia Street Partition. There being no opponent or further testimony, Chairman Whiteman closed the public hearing for discussion by the Commission.

Ms. Engels said Staff has been referred to in a rather generic sense and most of it happened prior to current Staff. She explained what she did know happened there. There is one aspect with what has happened on South Sherwood and Columbia Street that the current Staff did get involved with. There was a proposed minor land partition on the corner lot on Columbia and South Sherwood. The Staff Report was written in such a manner to require some public improvements as a condition of that minor land partition. The applicant had a legal size duplex lot, so they did not have to partition, they wished to partition. If the applicant decided not to partition and build a duplex the problem is several-fold. The City has limited opportunities to require improvements. By and large, the building permit counter is not the place for public improvement exactions. The City has checked out what is possible for them to require of the minor land partition. The City cannot require the building of improvements at the land partition level, but City can flag the parcel and require that certain things are in place before the lots can be developed. If you don't do that, you get what you currently have on Columbia Street. The applicant is asking the Commission to repeat history and Staff is suggesting that we don't do that.

Ms. Engels said the suggestion that you could come in to the building counter and get a permit for a multi-family is ludicrous. Anything over a duplex requires a site plan. The Commission has reviewed many of them before and they have passed on conditions that require public improvements in relation to the site plan. So it is not true that you could go straight to the building counter to get a permit from the City.

Ms. Engels said Staff could analyze and work through calculations. The specific complaint was the proportionality of the street improvements. On the applicant's application under what could be built on the property, they mentioned that it could be three single family or duplexes. They were talking about six units. It is probably not unreasonable to attempt to exact what the land potentially could add to the street in terms of traffic.

Ms. Engels said the Commission has questions and it would be advisable for Staff to research the specific issues involved. In the case of the two inch waterline, she knows that some of the houses built along Columbia are serviced directly from South Sherwood. They had to bore under South Sherwood to get the water from the other side. Her guess is that the two inch waterline is very old. Staff could research exactly where everybody gets their water. One of the things the Commission has urged Staff to do is to make sure they didn't have the situation which has occurred there, where what you have in essence is a subdivision created by successive minor land partitions with no public improvements. This is not the way to develop.

Chairman Whiteman asked what the City's plan was for Columbia, if there had not been an application made for this partition and how was this going to be paid for. Staff would review this issue.

Ms. Engels said private driveways are not public improvements. Mr. Franklin said the point brought up about the sanitary sewer needs some consideration. They have provided the easement and this need to be given some consideration. Ms. Engels said Staff would verify what has happened.

Angela Weeks said she would be interested in knowing if any funds have been collected from other property owners for the improvements such as SDC charges. If the City has already planned for capital improvements, this property owner should not be penalized for the whole improvement in that area. She asked if the Commission could be provided a better map or a more detailed map to review at the next meeting.

Chairman Whiteman moved the Planning Commission continue MLP 98-2 Columbia Street Partition to the May 19, 1998 Commission meeting for further consideration and negotiation with the applicant with regard to the question of utility accessibility and how it is paid for. Seconded by Angela Weeks.

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

Susan Claus did not participate or vote on this application.

6. Community Comments

There were no community comments.

7. Other Business

Chairman Whiteman announced the Commission will hold a special meeting on Thursday, May 14, 1998 at 8:00 PM with one application, SUB 98-2 Woodhaven Phase 7B. The next regular

Commission meeting would be May 19, 1998, 7:00 PM. Both meetings will be held at the Masonic Hall.

The TSP Focus Group will meet on Wednesday, May 13, 1998.

Susan Claus said Title 3 will be before Metro on the maps on Thursday, May 7, 1998. Ms. Engels said this information would be reviewed at about 2:30 PM. The Title 3 Open House was very well attended.

There being no further business to discuss, the meeting was adjourned at 11:05 PM.

Respectfully submitted,

Planning Department