



**City of Sherwood
PLANNING COMMISSION
SPECIAL MEETING
Masonic Hall, 60 NW Washington Street
Thursday, May 14, 1998
8:00 PM**

A G E N D A

- 1. Call to Order/Roll Call**

- 2. 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 May 5, 1998, the public hearing and record are closed) a request by Genstar for approval of a 47-lot subdivision. Tax Lot 100, Map 2S 1 31.

- 3. 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
Special Meeting Minutes
May 14, 1998

1. Call to Order/Roll Call

Chairman Whiteman called the meeting to order at 8:05 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

Note: Susan Claus did not participate in the discussion or vote on SUB 98-2.

SUB 98-2 Woodhaven Phase 7B Preliminary Plat (public hearing closed)

Chairman Whiteman announced that the purpose of the special meeting was to consider SUB 98-2 Woodhaven Phase 7B Preliminary Plat. He reviewed the information which was included in the packets and additional written testimony from:

- Robert & Lila Salisbury
- Robert J. Claus
- Phil Nachbar
- City Staff and the City Attorney

Chairman Whiteman asked if Staff wished to respond to the information in the packets.

Sue Engels referred the Commission to the May 12, 1998 memo from Derryck Dittman. She reviewed the response to the previous questions from the Commission:

- Is the park property which is located along Meinecke Road and the YMCA property still a part of the PUD, even after the property has been dedicated and under the ownership of the City? The answer to this question is no. It is within the boundaries of the PUD.
- Whose responsibility is it to bring the utilities across to Meinecke Road? The letter explains how things like this are usually handled when there is an intervening property. Typically, if the intervening property isn't developing, the property that it goes to get the utilities and can be reimbursed if the intervening property develops later.
- Is there a specific time line for completion of the PUD? In particular the section of the Code dealing with subdivisions, Section 2.202.04A(1) and (2) which refers to a 5 year time limit. The response was that there is no specific time limit for a PUD that is in progress. In the case

of Woodhaven which was approved in August 1994, it has been under continuous development with one or more phases since that date. The subdivision section of the Code does not apply to the PUD. The PUD became a PUD when the Final Development Plan received approval. This was August 1994.

- The question regarding the Letter of Understanding which was signed by the Salisburys, Phil Nachbar and Jon Bormet and the enforceability of this agreement is something the City Attorney was not prepared to deal with, at length, at this point. With regard to the Planning Commission, the Commission deals with the land use application in the normal manner and the letter does not require that the Commission do or not do anything that it ordinarily would or would not do in processing the plans for this phase.
- The purchase price for the park property is \$40,000 per acre which is paid in the form of system development charge credits.
- The applicant bonded \$87,000 for the Meinecke Road connection. A copy of the engineer's estimate and letter of credit from the bank was included in the packets.
- What if the bonded amount is not sufficient? Two letters from the applicant dated May 12, 1998 were included in the packets. The applicant has agreed to re-estimate the bond amount at such time the road alignment is known and adjust the letter of credit at that time.
- Are adequate utilities available to the Salisbury property? The Sanitary Sewer Plan Update of 1991 was included with the packets. Ahmad Qayoumi said the water is adequately sized to serve the Salisbury property. Subsequent development will be required to connect to the water line on Meinecke Road in order to loop the water system. She referred to the map of the sanitary sewer contained in the Sewer Master Plan. The sanitary sewer will serve the southern portion of the Salisbury property. As illustrated on the Sewer Plan Update, the entire City is divided into tributary areas. The Salisbury property is in areas F and G. the portion in area F can be served by the line from Woodhaven. The portion in area G must be served from Meinecke Road where there is adequate service at the edge of the high school property. The master plan update shows the Salisbury property was designed and intended to be served from two different directions.
- City Manager, Jon Bormet wrote a memo dated May 12, 1998 regarding the Letter of Understanding and the Salisbury property. This was included in the packets.
- A May 12, 1998 letter from Genstar was included in the packets regarding the cul-de-sac design of the preliminary plat.
- The packets also included written comments and materials from Robert J. Claus and Robert and Lila Salisbury.

Ms. Engels said she would answer any questions from the Commission.

Angela Weeks said it was her understanding that the applicant had bonded for part of the signalization at Meinecke Road. Ms. Engels said this was not correct. The condition which was attached to Phase 6 was to bond for the Meinecke Road connection. There is a condition in the overall conditions of approval for the PUD that the applicant will participate in the Meinecke Road signal. The two conditions are not connected. At this point, the only property owner to actually put money up for the signal is Wyndham Ridge or Centex Development.

Mr. Franklin asked for clarification regarding the bond amount for the road extension (600 feet) and whether the City had accepted the applicant's letter of credit as an accurate estimate. Ms. Engels said this was the estimate at the time, which was about one year ago. The applicant has agreed that if the estimate is not enough, the applicant will adjust the letter of credit. Mr. Turner clarified that the estimate did not include any utilities, it was just for the street and curb.

Mr. Franklin asked if this is what the City would normally require of the developer. If the bond remains at the current figure, then this money would be used to build the street portion and either the City or another developer would bring in the utilities. Ms. Engels said she would assume this was correct. Mr. Franklin asked if this was discussed with the PUD modification. Chairman Whiteman said he did not remember these specifics being discussed. At that time the discussion was specifically aimed at the property that was going to be used as park property. The property to the north and west would be served from the developed property rather from that roadway. Mr. Franklin said there was discussion regarding looped water lines through there. Chairman Whiteman said there is discussion now regarding looped water lines, but it did not speak to the cost of utilities.

Robert J. Claus called for a point of order. He asked Chairman Whiteman to read Condition 14B. Chairman Whiteman read, "Identify the location of the street that starts at Sunset Boulevard and goes through Phase 7 and ultimately connects with Meinecke Road. The applicant will pay all costs for the full length of the road. The applicant will provide a letter of credit in an amount sufficient to complete the collector street from Sunset Boulevard to Meinecke Road as part of the Phase 6 conditions." The condition does not specifically refer to utilities in this particular situation. Mr. Franklin said his concern was that the City is being consistent with the requirements for all applicants on other land use applications.

Mr. Franklin said whatever the final number is, Genstar has agreed to provide another letter of credit. He suggested the estimate information be provided by the applicant for the City Engineering Staff to verify the figures used. Ms. Engels said Ahmad Qayoumi, the Engineering Department, had reviewed the estimate. Mr. Franklin said if the City was going to accept a letter of credit, they should be able to verify that the cost figures are correct and that the City agrees with the estimates. Ms. Engels said the Staff could provide written documentation of this.

The Commission asked that the City Engineering Department provide a letter which states \$87,000 is an adequate figure and clarify what the improvements would include.

There were no further questions of the Commission to the City Staff.

Chairman Whiteman asked if the Commission wished to re-open the public hearing on SUB 98-2 Woodhaven Phase 7B Preliminary Plat.

The letter from Mr. Claus asks for an opportunity to respond to the additional written testimony. Chairman Whiteman said according to City Counsel, one way of allowing for this response would be to allow Mr. Claus time to respond in writing by a certain date without reopening the public hearing tonight. The Commission does have a responsibility to allow Mr. Claus to

respond. This can be done in two different ways; asking the response be in writing or allowing oral testimony tonight.

In response to Chairman Whiteman's question, Ms. Engels said the 120-day deadline for this application is June 12, 1998. The Commission had a procedural question on reopening the public hearing. Ms. Engels said she could get this information.

Chairman Whiteman recessed the meeting for a short break at 8:30 PM and reconvened the meeting at 8:35 PM.

Chairman Whiteman read from the Oregon Revised Statutes, "ORS 197.763(6a) Prior to the conclusion of the initial evidentiary hearing, any participant may request an opportunity to present additional evidence or testimony regarding the application." Chairman Whiteman advised this was done by leaving the record open for seven days after the May 5, 1998 hearing. Chairman Whiteman read, "ORS 197.763(6b) An opportunity shall be provided at the continued hearing for persons to present or rebut new evidence and testimony." "ORS 197.763(7) When a local governing body, planning commission, hearings body or hearings officer reopen the record to admit new evidence or testimony, any person may raise new issues which relate to the new evidence, testimony or criteria for the decision making which apply to the matter at issue." However, the only time the statutes state the Commission has to honor a request to allow new evidence after this point would be on their own motion.

Chairman Whiteman said it is up to the Commission as to how they wish to receive additional testimony for consideration.

Keith Mays moved the Planning Commission reopen the public hearing on SUB 98-2 Woodhaven Phase 7B Preliminary Plat. Seconded by Angela Weeks.

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

Chairman Whiteman announced the public hearing on SUB 98-2 had been reopened. He called for additional testimony.

Robert James Claus, 22211 SW Pacific Highway, Sherwood, Oregon 97140, addressed the Commission. He introduced for the record a Revised Notice of Decision for Tax Lot 300, Map 2S 1 30C, PUD 93-2, dated mailed March 28, 1994. This notice included a report on the highway and the affected properties. He said the Commission needed to reject this application and refer it back for new hearings where it can follow the law if there has been a change in boundary lines. It is either a park or a school or something, but if you read the document he placed in front of them, it can be one of two things; a park or it must be part of the PUD. The applicant and the City Manager are alleging it is a park.

Chairman Whiteman said the information Mr. Claus had was included in the Commission packets.

Mr. Claus said it is indisputable that the boundary lines of the PUD for Woodhaven have changed. He referred the Commission to the Woodhaven PUD map. There is no question this is not the same PUD and there is no question there was no special public benefit found in the hearing and there is no question when this boundary line changed it has been changed completely at the will of the City Staff. It does not conform to the Code.

Chairman Whiteman said the letter provided by Mr. Claus does not purport to be the entire boundary of Woodhaven. It does purport that the portion which is angled is included. Mr. Claus said you clearly have a boundary of the PUD which includes the proposed park property. The City Manager has said the park property is out of the PUD. Mr. Claus said you don't have a PUD any more, or you have changed the boundary lines or it is a park. If you read the documents, it can be only two things, it either has to be housing, this is a finding of fact, or it has to be a park.

Mr. Claus said Mr. Dittman's letter of May 12, 1998 does not state in a lawful word. It says, "Parts of the letter that were signed by Jon Bormet, Mr. Nachbar and the Salisburys could be interpreted as a binding contract."

Mr. Claus presented a letter prepared by Conrad Claus dated May 14, 1998. The letter certainly, at the least, questions Mr. Bormet's veracity and it certainly draws up the fact, because of Mr. Dittman he draws this to the Commission's attention, repeatedly, that the Letter of Understanding was drawn by Mr. Bormet. In Mr. Bormet's memo, he does not suggest anyone else is the author. Why Mr. Bormet put himself in the position of being an intermediary is quite interesting. Why he became the signatory is quite interesting. All of this is irrelevant. Mr. Bormet does not deny that he is the person that drafted this letter. The law is very clear on that. There is ambiguity. His innocuous document clearly says that they (City) will bring the utilities up there (Salisbury property).

Mr. Claus said the Commission has another dilemma. If it is not their property (City) and it is a park, the Commission can't require him to do it. The Commission either has to tell them take it back to housing and agree to pay for it or take it out and the City has to pay for it. If the City has to pay for it, it is not a PUD. It has been our contention from the beginning that the Staff has repeatedly failed to follow the code. There has never been, after the YMCA was pulled out of here, any special public interest found in any public hearing.

Mr. Claus said he would draw to the Commission's attention, because it was not put into the record, Derryck Dittman's letter which confirms that Mr. Claus had the absolute right to take 8A and 8B to LUBA. Mr. Dittman is now bound over to LUBA as a party for the City.

Mr. Claus said Woodhaven is a PUD, it went in as a PUD. In spite of what the Woodhaven applicant states, there were enormous concessions made to them. You have a 600 foot road held at one-half of the cost that the City's Transportation Plan says the cheapest road could cost in 1991, bonded in 1998. We bonded \$88,000. If you look carefully, AKS Engineering has supplied the Commission with information that the costs of the road will probably not be less than \$500 a foot and it may be as high as \$800, depending on the construction standards. This is

not taking into consideration any extraordinary charges for the utility or the sanitary sewer line. Their information about the Meinecke sanitary sewer line, which has been brought up before, is that it is eighteen feet plus, deep and it will be enormously expensive to bring up to the property. You have all of these changes and interestingly, you have the Staff submitting a document showing that the PUD will run that line up.

Mr. Claus said he wanted to bring another matter to the Commission's attention and put it into the record because this is becoming extremely serious and he does not know how this is happening. He went to a meeting last night and he was told during the meeting, he asked when you put together this budget for the new Transportation Plan, what cost figures did you use. The response was 1998 cost figures. He objected to this. If these are 1998 cost figures, they need to realize that miraculously a Staff member, less than one year ago, put a figure together for Meinecke of \$88 or \$147, or some absurd cost per foot. If he could build on Columbia that cheap, he would build streets all over. The problem is that the Staff is then turning around and he is submitting this for evidence, and saying that the Meinecke Road alignment, which will be an ODOT expense, incidentally they have the money, is \$2,700,000 and they are saying that the overpass will be \$450,000 and the Meinecke local improvement will be another \$2,000,000. If you look at the maps, that's \$5,000,000. If you look at the road costs you are going to have grave doubts about how you cost this. PUDs have special rules on costs and special rules on things. We have gone overboard to rebate SDC credits and TIFs. We are now at an interesting point that a park is being bought....when you take a look at these figures they don't calculate with anything he has ever seen before in this town, other than talking to someone who knows the cost of construction. The City Engineer doesn't get these bonds from Woodhaven. He submitted the document that is claimed by City Staff and he would want to use this in a public hearing. Chairman Whiteman said the record should show that Mr. Claus gave the Commission papers entitled, "TSP Focus Group meeting, May 13, 1998, the agenda and items that were included with the agenda, as well as projected construction costs for the financial investment of the Plan through the year 2017."

Mr. Claus said he called the Chairperson of the Parks Board, Jim Maddock. He talked to him about this park. He made reference to a part of the minutes regarding the comments that Mr. Bormet made about the SDCs that originally went to Woodhaven. He asked if Mr. Nachbar could correct any of the numbers he would be discussing. Apparently, there were procedural difficulties in a large amount of SDCs that were given for open space. They took the wetlands and floodplains that went through Woodhaven and they gave SDC credits as part of the park funds for those back to the developer. They have about \$10,000 in SDCs and TIFs per house. When you build a house, you pay those to the City. If the developer has done something which is deemed a part of the public infrastructure, part of the general plan, the money then gets credited back from the contractor to the developer. In effect, money that the City was supposed to get in the City for this, they deemed they got the service and they paid it to the original developer. Obviously, you could be the developer and the contractor. But Woodhaven is by and large a developer. What occurred is apparently there was a misunderstanding. Nobody is alleging criminal conduct or fraud, but this may be a case like the IRS where if you hit a particular threshold, if you withhold 25% of you taxes, the IRS can determine it to be criminal fraud, if there was no intent involved and there may be similar applications in this law. Apparently, fairly

large amounts of money went over to take these open spaces back to Genstar or Woodhaven. When Larry Cole came to the City, he was very concerned about it and when Mr. Claus asked him, he said it was illegal. He said those are dedicated funds. Mr. Claus said, but we had public hearings. Mr. Cole said you don't have public hearings, you have to have specifically put that in the parks plan, it had to be specifically, so that money could be spent. Mr. Cole put an immediate stop to this. Mr. Cole was the interim City Manager prior to Mr. Bormet. Mr. Bormet came along and they had a long work session and as to the reason they asked the question about the park, is that the park was a deal where it was calculated to be worth \$150,000 per acre. This may or may not be accurate. In order to offset some of these SDCs, as Mr. Claus understands it, the deal was made that the City would pay \$40,000 an acre for the park property in SDC credits. This means when Genstar builds the houses out there, they are going to get back \$40,000 times seven or \$280,000. Genstar feels they gave the City \$110,000 times seven or \$880,000 and that squares up the money earlier which was given to them. Whether Mr. Claus agrees or disagrees with this, he certainly has serious questions on the prime value of money, the way it was given, that is a fair market compensation. The City Council can okay a negotiation for this, but then it has to be okayed by the Parks Board through a public hearing and then taken and adopted. This has not been done. Jim Maddock says this has not been done. Mr. Bormet came in, they discussed this, they thought it was a good idea, there was no public hearing to adopt it as formal park, even though this was part of the PUD. The PUD was to have open space and parks. It turns out they had open space that were not parks, the City gave them money illegally and no one has disputed this. Now all of sudden they are taking the park, they are taking it out of the PUD, but it is still park that is credited to the PUD because they are selling it below market. Mr. Claus asked Mr. Maddock to explain it to him because if Larry Cole was right in the degree to which he made this serious, this may be an action of (inaudible). That is when Mr. Maddock said let me make a point to you, it has not had a public hearing, we have level of services we have some things, but as far as he was concerned they can proceed. Mr. Claus asked him to explain and asked why can the City get \$25,000 an acre for parks and all of a sudden they are giving \$40,000 an acre.

Mr. Claus said the City is moving very rapidly to accommodate a developer. They have road costs that frankly all of them must be embarrassed by. He disagrees that all costs would imply the utilities and the reason is quite simple, if you go there and try to put a road in and then you go back to put in the utilities, it is very expensive. Assume the best of all worlds, you are not going to get the road in for \$300 per foot. Notice on the bottom of the letter, plus a \$200,000 pump station. No initials, but it is on the letter of credit right in the file.

Mr. Claus said all he is asking the Commission to do is, he is not asking the Commission to stop them, he is asking why don't they go back and find out what really is going on here and why don't they give them the same treatment they are giving other people in this town like Centex and him. Let's get some numbers and know really what they are doing. He is sorry, it is not worth staffing City Hall and putting massive building permits out for the rest of the people to have to pay for this later. This was a PUD, they got wonderful advantages, he is terribly happy our Canadian friends and Junke Yoshida made a lot of money, but the City let them make that money with a PUD and we don't have a PUD now. The Commission has one document after another in front of them. Why can't the Commission just say, you changed the balance of the PUD, we

reject it, that's a final decision, they would have 21 days to appeal it to City Council and by then 7A will be up, 8A and 8B will be up and they will be bringing the full group of people to play and the worst that can happen is the City Council can say Mr. Claus is wrong and they will get a chance for LUBA to look at it. There are so many irregularities in front of the Commission and Mr. Claus is frankly embarrassed when a Staff member gets up and doesn't really tell you what Mr. Dittman's letter said.

Mr. Claus related what Mr. Dittman's letter stated about the letter of understanding and the proposed park property. All he is asking the Commission to do is to stop it and find out what they should pay and what they should do and get to the issue if this is still a PUD. He cannot find any special benefit at all any place in the record. Why is it the Commission's duty to do this. Why are they pushing development in this town. Because we don't have money in a tax base to pay our Staff. He knows among government officials that there is a terrible tendency to believe that voters don't run the town. But ultimately we do. He has been here every time they tried to raise the tax base. They have the same tax base they had when he moved here. This is the reason we have all this big Staff hired with these SDC overrides. That's going to go away, it is going to be gone. The building is going to slow down very markedly because there is not the space. Let's go back now and get the City's infrastructure in place, let's get our SDCs in place and let's not see how much damage we can inflict on the remaining property owners. Look at the documents because the Commission clearly has grounds to turn this PUD down tonight.

Chairman Whiteman asked if there was anyone else who wished to speak.

Phil Nachbar, Genstar Land Company NW, 11515 SW Durham Road, E-9, Tigard, Oregon 97224, addressed the Commission. Mr. Nachbar said one comment about SDCs is that he does not think they are relevant to the Commission's decision tonight. He said they took a great amount of time preparing their schedule for approvable SDCs to the City because they documented what they were requesting. The City reviewed this schedule against their own parks and open space plan to ensure that, in fact, it met the requirements of the plan. That is, they were shown as a budgetable item within the plan. The comment was made that you don't get SDCs for that which you are not budgeted for, which means items which cannot be paid for by the citizens. That is an accurate statement. In other words, when they submitted the listed SDCs they met the requirement that they were within the plan and they were within the budget as shown in the plan. This was reviewed by the City and was also reviewed with respect to the City's systems development ordinance. The items were approvable under the ordinance. It took probably six months to go through. Mr. Bormet did a thorough and comprehensive job of this. The issue of the SDCs is not an issue for the Commission to decide the planning merits of Phase 7B tonight.

Mr. Nachbar said with respect to the park being in or out of the PUD, the way he reads the map is that the park is in the PUD. The park is in the PUD on the Modified Development Plan. It is written and shown as a park. To the best of their knowledge, it will be used as a park. To the best of the Commission's knowledge and what has been presented to them on the plan, is that it is supposed to be a park. You can read into it what may happen with it once the City takes ownership. This was alluded to in the City Attorney's letter. You could do a lot of speculation

as to what might happen. It is now represented as a park. They are obligated to dedicate it as a park and they are doing this.

Mr. Nachbar said there was not much else to say on the issue of Phase 7B. He said they have made an effort to provide engineering information to the City. The City specifically asked them for information on the sewer and water to serve the Salisbury property. This information was provided to the City. The City Engineer reviewed this and he concurred. There were some exchanges of this information as to whether it was correct. His understanding was that the City Manager was aware of this and he gave Mr. Claus the opportunity, on behalf of the Salisburys, to review this information as per the letter of agreement. The letter of agreement has a number of items on it which the City had to meet. There are very few items in the letter of agreement which Genstar had any control over. They shared the information. The City Attorney has said that he does not feel that the Planning Commission should do anything different in making its decision with respect to this letter of understanding. He did say it may or may not be binding. He also makes the statement that the Planning Commission should not be doing anything other than it normally would do in reviewing a plat with respect to this letter. He reviewed the items contained in the letter of understanding, all of which have been done. With regard to the Meinecke Road connection, Staff has stated this is still being reviewed and the decision for Meinecke is not part of the Transportation System Plan. Ms. Engels said this at the last meeting. Mr. Nachbar said no one has said the Salisburys would not be included in this decision. Genstar has agreed to install a fence between the Salisbury property and Woodhaven. Before they finish the construction of Phase 7B they will do this. With respect to the utilities, he believes they have met the end of this letter. There is the question whether the letter is something the Commission should consider.

Mr. Nachbar said he would answer any questions.

Chairman Whiteman asked if there was anyone else who wished to speak regarding SUB 98-2 Woodhaven Phase 7B Preliminary Plat.

Bob Salisbury, 1765 NW Meinecke Road, Sherwood, Oregon 97140, addressed the Commission. Mr. Salisbury said the sewer map nor any of the maps have ever had utilities on them so they can see what the grade was. The sewer is way down the hill from his property. They can go back and if they lower it, the grade of this sewer, they can serve his whole place. Conrad Claus went to the City and asked Mr. Bormet to see the grade maps for the sewer and he talked with Ahmad. Ahmad said Mr. Bormet never told him about it. Conrad told Mr. Salisbury about this and said he could not get the grade maps. The City said they would put a map out with the grades on it for the sewer. Mr. Salisbury has never seen this map, specifically with the sewer on it, that comes up from the south side. There are water line lines back there. There is plenty of grade to do it and to work with. It is bad enough. This should have been taken care of so that anybody could have engineered off of there and seen what was going on. We never got the grades. If they lower the grade just a little bit on the southeast corner they could serve his property.

Chairman Whiteman asked if there was anyone else who wished to speak regarding SUB 98-2 Woodhaven Phase 7B Preliminary Plat.

Joe Broadhurst, 395 N. Sherwood Boulevard, Sherwood, Oregon 97140, addressed the Commission. Mr. Broadhurst said they should keep in mind that Centex put up money for the Meinecke Road intersection as they developed and not after they developed. They need money for the connector road and they need money to move the services up Meinecke Road. This is \$500,000 to \$1,000,000. We need it before the developer is gone.

Chairman Whiteman asked if there was any further testimony.

Robert J. Claus, 22211 SW Pacific Highway, Sherwood, Oregon 97140, addressed the Commission. He said he wanted to get to a very simple point. Mr. Nachbar very carefully chooses his words and now he must tell the Commission two things. Oregon is not an estoppel and latches state. That is an equitable concept which says I have relied upon your word and changed position and you are now estopped from telling me that I have done wrong. And latches is an equitable concept where you say you have waited too long to act. He is putting this in the record because he will pursue this matter of the SDCs for very obvious reasons. It is not Mr. Bormet's use of the SDCs they are quarreling with. Mr. Bormet was brought up short by Mr. Cole's report and it is Mr. Rapp's use of the SDCs they are objecting to. They are maintaining neither the statute of limitations nor anything this City has done can this developer rely on. When you take money illegally, contracts take three positions, they are legal, illegal or void or voidable. The contract when they took the money back was illegal and is void on its face. The issue about the park, which is a land use decision for which they are getting credit, will also go to LUBA and they will ask for the records to be searched and they will ask the appropriate agencies to determine if there has been waste, fraud and abuse of public funds. This is horrendous if this kind of money was taken away from us illegally. He does not care about a multi-national corporation telling him they were careful. We will, for the record, introduce testimony later, with Centex, where similar credits were not taken.

Mr. Claus said the Commission has an admission of fact that the park has changed. That means you have a change of use and the Commission has never found a special interest to the City. You have boundary change, it is admitted and it is part of the record. Tonight you have someone saying you had a change of use of the park. You have not followed the PUD plan. There had to be a public interest found. He referred to Mr. Dittman's letter. Understand, he works for the City and he advocates for the City. If he could have said that letter can't be used, you would have heard it. If the Commission wants to use this letter, they are free to use this letter of understanding. Mr. Dittman is getting honest in his old age and he is arguing public interest.

Mr. Claus does now know where Mr. Nachbar keeps thinking he has had this wonderful contact with OTAK. He wanted to put into the record to prove to the level of work they will work with us. There is a yellow tag, yellow cap survey, it is not, after the legal settlement, in the right place on Mr. Salisbury's property. It is technically illegal to record a survey when you do not have the yellow caps in the right place. He will give an affidavit to anyone, he has been pleading with OTAK for weeks to move it. As of tonight, it has not been moved. If they will not move a cap that a crew could go out and move, do you seriously believe they are cooperating with us on the engineering. He submitted the Commission has a letter from AKS Engineering saying it is

physically possible to serve the Salisbury property with sewer. Then they go on to give you horrendous costs. When you begin to move that up Meinecke, every three feet you move that you are going to fill a twenty yard dump truck up with dirt and you are going to bring $\frac{3}{4}$ minus back in there and fill it. This is big bucks to move that sewer line. They are not hearing anything from OTAK. They have proposed alternatives and they don't get them. The things they keep getting back from them is well if we got enough money and we are willing to pay most of their bills, we can certainly build on Salisburys. No one has ever sat down in a meeting. No one has even given them elevations or anything.

Mr. Claus said Mr. Nachbar admits that they proceeded to do their drawings, they violated the roads. He tried to fob off the engineering because that is very quickly going to get down to they haven't done it. We can't get what we need and when we went out there and did it, the costs are prohibitive. This is what AKS's letter states. Read the letters. It is a nightmare to talk about this. We stopped immediately. The Commission has a violation of admission of that document. Why is it so hard for everyone to understand. Properties can literally be locked up when you let someone run a PUD and they go to the wrong end of town, they move away from properties and they come back towards them. As they get back towards them, the errors that were made on parks and SDCs start to catch up with them. The Commission has an incident which they need to look into very deeply. Suppose they wanted to pay for that park \$40,000 an acre, that's \$280,000 and suppose they found out that in bringing the trunk line up Meinecke to serve everyone would cost them \$1,500 a foot. You might ask your engineer. 300 feet is \$450,000. Isn't that interesting that all of a sudden we might have saved them a quarter of a million dollars by letting them negotiate that park to us. We might have just done them the favor of all times. Mr. Claus said he is suggesting that this has happened too often with these folks. You can go on and on about the things that have not been done and you can go on and on about the profits that have been transported out of this town. If Meinecke is \$5,000,000, do you seriously suppose they won't walk away from the last part of this subdivision and say do it as a subdivision. In all due deference to these folks, they are the largest tobacco company in Canada. They are the British American Tobacco Company. If you think they are down here not to make money, you are wrong. If any of the things he has told the Commission tonight start triggering things about this, the Commission needs to charge their responsibility by sending this to City Council and say we reject this thing for boundary line changes.

Phil Nachbar, Genstar, 11515 SW Durham Road, E-9, Tigard, Oregon 97224, addressed the Commission. Mr. Nachbar said the City Engineer reviewed the engineering calculations for water, sewer and storm drains to the Salisbury property. With respect to the boundary issue, it seems pretty clear that the PUD as shown includes the park property in the boundary. What happens after the park is dedicated is pretty much a moot issue. It doesn't seem to have any bearing whatsoever. The cost of the park is what the City and Genstar agreed to exchange. Is this a planning decision or should it have any bearing on the decision of whether this PUD meets the planning requirements. Should what they got reimbursed be a planning issue. The amount that was settled on is no question below market value, but this is nevertheless a decision that was made between the City Administrator and Genstar. There are limits in the Parks Master Plan, what he recalls there is an amount which the City agrees to which is \$4,000 per any wetlands property and \$25,000 for open space. This is a figure which is included within the parks and

open space plan. This is the amount that they were going to get credited for those portions which were eligible. This is a City-generated issue. The park is a separate issue which was based on a decision that was negotiated. Genstar did not feel it was right for them to charge market value for the park in light of the entire PUD and requirements that were imposed and the overall conditions of the PUD. They felt it was important for them to provide this park to the City. The SDC ordinance provides for the use of market value. They did not insist upon market value. This is a fact. Nevertheless, is how much they paid a planning issue.

Mr. Nachbar said they have done a thorough job in providing the Commission with information and the Commission needs to make their decision. There have been some claims that people feel Genstar should be providing utilities through the park up to Meinecke. He would remind the Commission this is something that has never been done before in their development where they are providing utilities beyond an area they are developing. Genstar is required to build a road connection to Meinecke Road. This is clear and they agreed to this. It is in the plat conditions that Genstar has to build a pedestrian pathway across the Cedar Creek ravine. They agreed to do this. No where in the conditions does it state Genstar has to extend water and sewer, sidewalks or whatever, through a park to Meinecke Road. It is fairly straightforward what their conditions are. If the City felt they were supposed to put in utilities, this would have been negotiated and they would have been told to put those utilities in there. This is not part of their agreement or part of the general conditions of approval.

Chairman Whiteman asked if there was any further testimony on SUB 98-2 Woodhaven Phase 7B Preliminary Plat. There being no further comments, Chairman Whiteman closed the public hearing on SUB 98-2 for deliberations by the Commission.

Chairman Whiteman said based on a lot of things, primarily because there are some policy questions which arise in this decision that are unique as to what happens to the park property, what happens as far as the sewer on Meinecke is concerned and also the fact that if the Commission agreed the roadway should run along the easterly boundary of the Salisbury property and westerly boundary of the park connecting Woodhaven to Meinecke Road, if any of these things were to be projected, they would be appealed to the City Council. If we run a road across the west side of the park property, the Staff is going to ask the City Council to hear it again, because the City Manager is opposed to this. It was his feeling that because there are policy matters and precedents that are established here, the Commission would best serve the community and the time line by passing this application directly to the City Council and asking them to hear it and make a decision with no recommendation from the Commission. He thought this was going to end there regardless and it was his opinion that this is where it belongs. There are some policy questions that need to be decided by the policy makers and the Commission is not a policy making board, they are an advisory board.

Scott Franklin said he would add that the discussion about bringing the road up, it is generally construed that the road improvements would include streets and utilities. There is also the question of having nothing from the City verifying the true costs of the road. The City Council needs to make a determination whether the road is something you drive on or whether it includes all of the utilities. Further, with regard to utilities, based on the Sanitary Master Plan, there are

two different basins there. The basins are defined by topography. This PUD is providing sewer, storm and water to the south boundary and based on the letters they have been discussing would meet that at least from a horizontal alignment standpoint. The vertical alignment may be a different story. However, on the north side, adjacent to Meinecke, based on the Sanitary Master Plan it goes to a different basin. Typically basin switching and sanitary sewers is not practiced that often. If the system in the southerly half of that has capacity to serve the north half, then one could possibly argue, make it deep and they would pay the costs over and above what it would take to do it in a normal way. This may be an option that the City may want to consider. But those basin lines were drawn there for a reason. The downstream systems were put in based on those basin lines. If we start adding carry outside that basin that would need to be looked at to make sure it doesn't hurt the downstream capacity. There is also the potential obligation to bring utilities up to Meinecke.

Mr. Franklin said there is a question in his mind whether this is a park or not. If that is developed through the PUD, the letter the Commission received from Mr. Dittman does not do much with regard to the improvements required on Meinecke Road.

Mr. Franklin said with regard to the park versus the school property or whatever, the plan they have before them is that it is being dedicated for a park. There is nothing which states it is going to be dedicated as a park and then switched over to the school district. He did not know if the Commission can hold the applicant hostage for something that the City may do later. If the City chooses to do something with that property at a later date, the issue should be taken up with the City, not necessarily the applicant. Based on what he is hearing from the previous public hearings on Woodhaven that park was put there as a result of negotiations to eliminate the tot lots. The park was put there for that and it should probably be a park. What the City does with it after it is dedicated is not the applicant's responsibility.

Keith Mays said if it was intended to be a park, it would be reasonable that there should be access and a road should be on the west or east side of it. The developer has done some very good things in the Woodhaven development and it would seem unreasonable for the developer not to want to make the connection for the residents when they have the ability to do so. The Salisbury property was never developed. It will develop years down the road. It is a tract community. It would be a big blemish if it wasn't connected to the rest of the City.

Angela Weeks said one thing she had a lot of concerns about in dealing with the park area is the Commission is getting conflicting stories from every direction. Even though this may not be a Commission decision, there is still too much controversy on this whole section of the development. There is too much two-sided information being received. The Commission does not have the ability to make a sound decision based on the information received. The Commission needs to do what it best for the City. She agreed that this should be sent to City Council.

Chairman Whiteman said he was thoroughly convinced that regardless of which way the Commission goes, it is going to end up at the City Council. To save money and time for all

parties, the whole project would be best served by just sending it to Council and let them deal with it.

Chairman Whiteman said if the Commission sends this to the Council it would be asking them to have a public hearing on the application. Anything the Commission does, considering the potential for an appeal, it would not meet the 120-day deadline.

Ms. Engels explained the 120-day deadline. State statutes require a land use application to be deemed complete or incomplete within 30 days. Once deemed complete, the City has 120-days to process the application, unless it is an expedited land use decision or limited land use decision. The 120-days includes all levels of local approval, including the appeal. If the 120-day deadline is not met, the only party that can do something about this is the applicant. The applicant can choose to take it to court if it exceeds the 120-day deadline. The Council could ask the applicant to extend this time period or the applicant could waive the 120-days for a period of time.

Dave Heironimus said he concurred with the previous comments of the Commission. If the application is sent to City Council, there are some policy issues that need to be decided. From what he has heard, there are some major points with regards to the letter of credit amount being sufficient to put in the road, the park, whether utilities should be brought along it and where will the connector road be located. These are questions for the Council to determine.

Mr. Franklin said the applicant has offered, in writing, to revise the amount of the letter of credit if necessary. With regard to the \$88,000 figure, there are policy questions whether or not this includes utilities. There should be some acknowledgment from the City that yes, we do in fact accept that number for the road improvements.

Chairman Whiteman asked Mr. Nachbar if he was in the position to comment regarding extending the 120-day deadline.

Mr. Nachbar said Genstar may be willing to extend the 120-day deadline depending upon the entire circumstances. At this point, he was not willing to make such a commitment.

Bill Whiteman moved because there appears to be certain policy decisions that need to be made in the question of SUB 98-2 Woodhaven Phase 7B Preliminary Plat, that the Commission refer SUB 98-2 to the Sherwood City Council, requesting that they hold a public hearing as to the conditions for the preliminary plat of Phase 7B Woodhaven PUD. This application is being sent to the Council without a recommendation from the Commission. Seconded by Angela Weeks.

Chairman Whiteman said under the current rules of the City of Sherwood, if the Commission made a decision on this application and it was appealed, the same thing would need to occur. The City of Sherwood does not have a method just to hear an appeal based on the record which the Commission has created.

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

There being no further business to discuss, the meeting was adjourned at 9:50 PM.

Respectfully submitted,

Planning Department