



**City of Sherwood
PLANNING COMMISSION
Masonic Hall, 60 NW Washington Street
Tuesday, May 19, 1998
7:00 PM**

A G E N D A

- 1. Call to Order/Roll Call**
- 2. Approval of Minutes - May 5, 1998** (will not be available until June 2, 1998 PC Mtg)
- 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. MLP 98-1 Andrews Partition:** (continued from May 5, 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.
 - B. MLP 98-2 Claus Partition (Columbia Street):** (continued from May 5, 1998) 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.
 - C. CUP 98-1 21st Century Kids Club:** a request by EKA Architects for a conditional use approval of an existing building for sports club activities to be located in the Sherwood Plaza Shopping Center. Tax Lot 201, Map 2S 1 29C.
 - D. SP 94-2 Revision II Sherwood Market Center Site Plan & SP 98-3 La Petite Academy Site Plan (Joint Application):** a request by Gramor Development for site plan modifications to the Sherwood Market Center and for approval of a 9,750 sf child care facility to be located in the Sherwood Market. Tax Lot 600, Map 2S 1 29B.
 - E. SP 98-6 Burger King Site Plan:** a request by Gramor Development for approval of a 3,460 sf fast food restaurant with drive thru to be located in the Sherwood Market Center. Tax Lot 600, Map 2S 1 29B.

- F. MLP 98-3 Salisbury Partition:** a request by Robert J. Claus for Robert and Lila Salisbury for approval to divide a 16.02 acre parcel into 2 lots. Tax Lot 1000, Map 2S 1 31A.
- 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 19, 1998

1. Call to Order/Roll Call

Chairman Whiteman called the meeting to order at 7:05 PM.

Commission Members present:

Susan Claus
Scott Franklin
Dave Heironimus
Keith Mays
Bill Whiteman

Staff:

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

Commission Members absent:

Angela Weeks

2. Minutes of May 5, 1998

Chairman Whiteman announced the minutes for May 5 would not be available until the June 2, 1998 Commission meeting.

3. Agenda Review

Chairman Whiteman asked if there were any comments regarding the agenda. He noted that the Commission received a letter asking for a continuance on Agenda Item 5F MLP 98-3 Salisbury Partition from Mark Cottle, who was representing a future owner of part of the property.

There were no other 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.

Bill Whiteman announced regarding MLP 98-1 Andrews Partition, he knows George Andrews the owner of the property. They have talked about a few things, but not this particular application. He has no bias on this application. He had discussions with Jim Claus regarding several items and his applications. He specifically asked Mr. Claus questions which he took to Staff for an answer. He did not feel there had been any conflict of interest in his conversations with Mr. Claus.

Susan Claus announced she would not be participating in Agenda Item 5B MLP 98-2 Claus Partition (Columbia Street).

There were no other Commissioner disclosures.

5A. MLP 98-1 Andrews Partition (continued from May 5, 1998)

Chairman Whiteman opened the public hearing and called for the Staff Report. Jason Tuck referred the Commission to the Staff Report dated April 21, 1998, a complete copy of which is contained in the Planning Commission's minutes book. He noted:

- The site is located at 19939 SW Cipole Road further described as Tax Lot 1000 of Map 2S 1 28A.
- The applicant has requested a minor land partition to divide an 8.68 acre parcel into two lots. The site is zoned General Industrial (GI) and the minimum lot size allowed is 20,000 square feet. The proposed partition is in conformance with the GI zone.
- On February 22, 1995 the Commission approved a site plan for the James King Site. This has a building located on a larger lot which is 5.73 acres and it is currently under construction.
- The findings and code criteria are listed in the Staff Report.
- The site is not served by the City sewer system. The existing development is utilizing a private sewage disposal facility which was approved by Washington County. The new parcel will need to connect to the City Sanitary Sewer System or utilize a private sewage disposal facility as approved by USA, prior to building permit issuance for future development on the site.
- The site is served by the City of Tualatin water system. The new parcel will need to connect to the City of Tualatin or City of Sherwood water system, if made available, prior to building permit issuance.
- The Commission had a copy of a letter from Nicoli Engineering dated May 19, 1998 and a copy of a letter from Mr. Waddill, who lives north of the subject parcel.
- This information in the letters refers to an access which is north of the subject site. Mr. Waddill had questions about whether it was a public easement. Three letters from adjacent property owners were received as well as Mr. Waddill's which state there is an easement for access and they are agreeable to this. This is the access easement to Cipole Road.

In conclusion, based on a review of the applicable Code provisions, agency comments, Staff review and property owners response, Staff recommends approval of MLP 98-1 Andrews Partition with the conditions contained in the Staff Report.

In response to Chairman Whiteman's question, Mr. Tuck said Staff sent a letter to the City of Tualatin regarding this application. The City of Tualatin responded that prior to building permit issuance the applicant will need to hook up to City water, either Sherwood or Tualatin. Mr. Tuck identified where the City of Sherwood water line extends. Chairman Whiteman asked if the City of Sherwood water extends to this property, would they be required to hook up to the City of Sherwood in lieu of continuing to use City of Tualatin water. Ms. Engels said she did not remember the details of the inter-governmental agreement with the City of Tualatin, but there is

some provision for making this transition. Staff could provide the details, but Staff believed the provision was made that the applicant would not pay the fees twice.

Chairman Whiteman asked if the applicant wished to provide testimony on MLP 98-1 Andrews Partition.

Leann Bennett, Metro West Realty, 16840 SW Parrett Mountain Road, Sherwood, Oregon 97140, addressed the Commission. Ms. Bennett represents the applicant, George Andrews. She noted:

- The application conforms to all of the applicable Code provisions.
- She hoped that the Commission would approve this application.
- The applicant did not have any problems with the conditions contained in the Staff Report.

Chairman Whiteman asked if there was anyone else who wished to speak on MLP 98-1 Andrews Partition.

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

- Staff has a little bit of a dilemma in terms of the conditions of approval.
- We have now been told by Jon Bormet, in a meeting, that on any partitions there is a strict policy decision in this town to calculate the acreage, even if this is contrary to Oregon law, you are to find out what the costs are to put the improvements in, and you are pay your proportional costs and this is to be recorded on the deed.
- He has absolutely no objection with doing this, if you are going to do it and you are willing to face the legal consequences. He will have objections later, but he is simply making a point. Are all road improvements in to the site and is it a public road. Are all water improvements in there and are all sanitary sewer and storm water in there.
- The Commission has in front of them a mandatory policy from the City Manager. There is the question whether this is legal and whether it conforms to Oregon law, given the fact that all partitions are now told that if there is any substandard infrastructure, they will pay their proportional share.
- Immediately there is a water question on this partition. He does not see how in good conscience the Commission can let this come in from Tualatin without putting a restriction on this deed which states if at any time in the future this goes out they have to pay their proportional share based on this new formula.
- Obviously, he is not trying to stop this partition. He wanted as a matter of public record that if what is being used on other partitions is not being used here. There is no suggestion of it.
- In fact, you have a planner who is now telling us there is some agreement with the City of Tualatin that we don't see and she doesn't know about and is apparently incapable of bringing it to a meeting or including it in the packets. This is not what the Commission has in front of them on other partitions.

- As the discussion goes on tonight, the Commission will find that they have every reason to ask Staff, “Is the infrastructure complete. If not, have you done your fair share, or the City Manager’s new formula.”
- As Planning Commissioners, you cannot create policy. If the City Manager hands you policy and is willing to say it is policy, and we have heard it is policy, there was an attorney there percipient with his saying it was policy. The Commission has no option but implementing it or forwarding it to City Council.
- He finds it amazing that somebody that calls themself our Planning Director or Development Director, telling you they can’t produce the agreement and they don’t know what it says. And you have two people calling themselves planners telling you that even though this application was circulated to all of the other departments in the City, they don’t know what needs to be done out there.
- To him it is a simple question. You go back and say, “You tell us what infrastructure needs to be put in. You put your proportionality formula on it or you back away from it.”
- I think trip generations is the only way to do these kinds of fees. I don’t think anything else will stand up in court, but since our City Manager thinks they are going to it and is instructing the Staff to operate on that, I think the Commission either needs to reject it entirely or send it up to Council.
- This is not a fair play issue, it is a consistency issue and you certainly spent enough time in the last meeting to know what this issue is. It is extremely serious.
- The Commission does not know what part of the infrastructure is in, you don’t know what costs are going to be, you don’t know what the water agreement is with Tualatin and there is nothing you know, because they have not given you the information.
- It is certainly in the building next door and he would suggest Ms. Engels pull one of her usual “get up and go get it” and bring it back for you to review it.

Chairman Whiteman asked if the existing sewer system is a private septic system. Mr. Tuck said this was correct and it was reviewed by Washington County.

Chairman Whiteman said he would be interested to see what the agreement with the City of Tualatin states in terms of serving water to properties outside the City of Tualatin and what kind of agreement they have to do this. This agreement should be added to the record.

Mr. Turner said the roadway is a way of necessity that is running in front of the subject property. It is termed a public easement, but in the documents the Commission have before them, it is identified as a way of necessity. Essentially it is a private drive type of situation. The private drive continues beyond the subject property.

Susan Claus asked what the profile of the road was that leads to the new building. Mr. Tuck said it is a gravel road now. Ms. Claus asked if they would need to require some type of maintenance agreement.

Ms. Bennett said the road itself is owned by the individual property owners up to the Andrews Parcel. Andrews owns the majority of the road and then there is a very small triangle piece at

Cipole, with two owners and Mr. Waddill owns about a ten foot strip. Only about 30-40 feet would be out of the control of Mr. Andrews.

Chairman Whiteman asked Mr. Andrews if there was any agreement for keeping this road up.

George Andrews, 22195 SW 65th Avenue, Tualatin, Oregon 97062, addressed the Commission. Mr. Andrews said there was no original agreement. For the last three or four years, he has maintained it personally and he would certainly enter into an agreement to continue this. There are two homes beyond his site. The building being built now will be industrial. It is about 250-300 feet from Cipole Road.

Ms. Bennett said Cipole is industrial. Mr. Andrews did pay \$100,000 to have the water line from the City of Tualatin brought to the front of his property and it does go right beyond the partition.

Mr. Andrews was not aware of any partial pay back for this. Several years ago, the Sherwood City Council was not interested in bringing water out to this site. In fact, they said they wouldn't, and that is why the City of Sherwood and City of Tualatin entered into the inter-governmental agreement. The line he put in goes beyond where he needed to go because the City of Sherwood required that he extend it on past and it is a 12-inch line.

Mr. Tuck identified where the sanitary sewer lines are located in reference to this site. Hooking into these lines would probably come with later development. Staff has included conditions to adequately connect to sewer, water and storm prior to future development and any street improvements are required as well.

In response to Mr. Franklin's question regarding connection to the sewer, Mr. Turner said if it is more than 150 feet away and the parcel is large enough, they could do a septic system.

Chairman Whiteman asked if there was any further testimony on MLP 98-1 Andrews Partition. There being none, Chairman Whiteman closed the public hearing on MLP 98-1 for discussion by the Commission.

Susan Claus said if the applicant paid \$100,000 for the water line, it does not make any sense that there was no partial pay back. She wondered if it would be appropriate to include something which states the applicant would not be responsible for another set of fees if another line comes up there. Chairman Whiteman said he had the same questions regarding fees. This is why he would like to see the inter-governmental agreement attached to the record.

Chairman Whiteman said after the Commission reviews the agreement they could make a statement for the record that states should the City of Sherwood come to the point that they require this applicant to hook up to City of Sherwood water, because of the cost of installing the water line in the first place and because the City of Sherwood had no desire to serve them, the applicant should not be charged duplicate fees. Mr. Turner said this would be something from the City Council. Chairman Whiteman said it is important that something be included in the record. Ms. Engels said the Commission could refer this to the City Council after their review of

the inter-governmental agreement. The City could adopt some type of resolution for the record. The Commission agreed with this recommendation.

Susan Claus asked if the City had a policy for recorded maintenance on private roadways. Ms. Engels said frequently joint maintenance agreements have been required if there is a common driveway or road that is private. Ms. Claus said her concern is because this is an industrial use.

Chairman Whiteman suggested adding a condition which states an agreement will be reached for a shared maintenance agreement of the roadway. Ms. Engels said she would caution on this because in the past a minor land partition was approved and one of the conditions was stated in such a way that the applicant had to get a joint maintenance agreement in order to record the final plat. The neighbors would not agree to this.

Mr. Franklin said the Commission could not force adjacent property owners to sign this type of agreement, but the Commission could require this partition or the properties within this partition to enter into a joint maintenance agreement.

The Commission discussed the issue of a joint maintenance agreement. Mr. Andrews said he would agree to maintain the roadway.

With regard to the testimony regarding the proportional share of infrastructure costs, Chairman Whiteman said there are some differences with this partition. First, they are not dealing with an unimproved public thoroughfare that breaches the parcel, they are dealing with a private sewer system and a water source that is not under the control of the City of Sherwood. The testimony regarding continuity of how partitions are treated by the Commission is something they should pay attention to.

Chairman Whiteman moved the Planning Commission approve MLP 98-1 Andrews Partition based on public testimony and recommendations of Staff, and adding Condition #9 that a written agreement for road maintenance for the private drive to the industrial site be attached as a condition. Seconded by Scott Franklin.

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

5B. MLP 98-2 Columbia Street (Claus) Partition (continued from May 5, 1998)

Chairman Whiteman advised that the public hearing remained open. He asked Staff if they had any comments regarding the additional written information from Jerry Hart, the applicant's attorney and Derryck Dittman, City Attorney. Chairman Whiteman said the applicant's attorney is suggesting that the method by which the City Staff conditioned 43% of the improvements to Columbia Street was not correct based on the City Code.

Mr. Turner said the City decided 43% would be the fair estimate of the road and water improvements for this particular application. The City Attorney responded that the City can require the applicant to pay for improvements on a minor land partition as long as this is done at the time of building permit issuance. Mr. Dittman's letter said the City could impose a condition

on this minor land partition at this time to do so. Ms. Engels said the critical issue here is if the City passes up the opportunity to place conditions at the time of subdivision or partitioning, then when you get to the building permit level there is much less leverage the City has available. Part of the history for this street and other areas in the City, is the City has missed opportunities to impose the conditions on providing public improvements. She discussed the limited ability of the City to get public improvements when you get to the building permit level. Mr. Dittman's letter states that yes, when you get to this level of the Code, there is less you can do and that is why these conditions are imposed at the time of partitioning or subdividing.

Mr. Turner said Staff and the applicant did meet, but a resolution had not been reached. The City feels that the 43% based on square footage is basically the fair share and is proportional to what they could build with this partition. The applicant proposed a number of alternatives, but the City is recommending keeping 43% of the improvement costs as a condition.

Mr. Mays asked if it was fair to do square footage versus number of units. Ms. Engels said the City does not know what will be built on this partition. Mr. Franklin said the City could calculate it based on the maximum number of units. Ms. Engels said that could potentially be more than 43% of the costs.

Mr. Franklin asked about the Capital Improvement Plan for South Sherwood Boulevard and whether it was appropriate to go back and charge a developer for something relative to capital improvement charges. He referenced the May 12, 1998 memo from Staff. Mr. Turner said Columbia Street is not part of the capital improvement project for South Sherwood Boulevard. Ms. Engels said no monies for Columbia Street were collected when people paid for the building permit fees into the systems development charges. SDCs are for arterials and collector streets. This is what the Transportation Plan is based on. Columbia Street was included in the plans so that the City could calculate the estimated costs for improving the road. Mr. Turner said the CIP for South Sherwood Boulevard will be financed in part by a \$25,000 grant, but the total project is estimated to be \$1 million. This would be financed through the capital improvement budget.

Chairman Whiteman asked for clarification regarding the fire hydrant at the end of Columbia Street. Mr. Turner said there is no condition which states a fire hydrant needs to be done. TVFRD said the applicant needed to meet the fire safety requirements which probably includes a fire hydrant. The fire hydrant would take an 8-inch line. All of the homes on Columbia are now being served by a 2-inch water line. There is not enough capacity to serve any new development at the end of Columbia Street.

Chairman Whiteman asked for clarification regarding the sewer. Ms. Engels said there is a sewer manhole 106 feet from the property line for this partition. All the other units on Columbia Street are on this line. She thought the applicant said he was told capacity did not exist, but Staff was not told this. Mr. Turner referred to the map. There are two sewer lines, an existing 6-inch line and a 12-inch line. The Engineering Department advised that all the homes on Columbia Street hook into the 6-inch line. Apparently, there is not enough capacity in this 6-inch line for additional connections.

Mr. Turner said he wanted to reiterate that some of the lines shown on the map have problems.

Chairman Whiteman asked about the use of SDCs for enlarging this water line. Ms. Engels said it would depend on whether the SDCs were based on certain planned improvements and were collected on this basis. The Staff knows the SDCs were based on the City's Water Master Plan, but she is fairly confident that it did not include improvements on Columbia Street for local service. Staff could check the 1991 Water Master Plan to see if an upgrade of the water line on Columbia Street were part of the calculations.

Chairman Whiteman asked if the applicant were required to pay whatever percentage of the street, does this mean that Columbia Street would be improved or would the money just be set aside. Mr. Turner said the City would have an interest in improving the street. The balance of the money would probably have to come from the City for these improvements.

Ms. Engels discussed what the developer would have to do with a substandard street if he wished to develop at the end of the street and the City was in no position or had no plans to improve the street. Mr. Franklin said it boils down to who goes in the area first to do the development. Ms. Engels said the previous application was an example of this type of situation where the property owner paid for the improvements and services.

Chairman Whiteman asked if the applicant wished to provide further testimony on MLP 98-2 Columbia Street Partition.

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

- In spite of how Ms. Engels repeatedly tried prejudice this hearing, that's not the situation. This is an old subdivision. There have been four new units built along Columbia Street during her administration.
- Jon Bormet said in front of a percipient witness, Jerry Hart, that they had made a mistake. And because they, the City, made a mistake, even though I gave them an easement to allow the City to run the sewer, I was not going to get away without paying for the other people's mistakes.
- Ms. Engels is characterizing this completely inaccurately. This happened on her watch. The City let people go in when they knew they were overburdening a water line and they let them tap into a sewer line even though we were making it possible for a new sewer line to be run in a subdivision that was nearly 40 years old. This is an old part of downtown.
- This is not an area of town that was not developed. So don't let her characterize this as some raw land development, because it is inaccurate. An attempt to characterize this as the under development is typical of what is going on here. It is inaccurate.
- The Commission has a very difficult task and they have an exceedingly disingenuous Staff. They have a Staff that will meet in a meeting and openly make a statement and come before the Commission and absolutely proceed to recant that statement when they can't do it.
- Jon Bormet says that unless the street is built with all improvements, we cannot build on the back of the lot. It is that simple.

- There are percipient witnesses here and he hoped they would try to contradict him. Because while at this point it is not perjurous, it lends towards prejuditioning his hearing.
- He cannot build without putting that street in.
- He argued that they could put in up to eight units. They could split these lots and put in six. Mr. Dittman had said, and again in front of his attorney, that they could put in three units and three units only. He cannot put in three lots and two duplexes and another duplex for six units. Mr. Dittman confirmed this today with Jerry Hart.
- Mr. Claus was not sure this was correct. Mr. Dittman is the City's legal counsel and the Commission is being told that Mr. Claus can build only three houses.
- When Mr. Claus and Mr. Hart met with Greg Turner, Jason Tuck and Jon Bormet, they were saying the same thing. Mr. Dittman said due to the nature of the private driveway, the applicant can build three units and three units only.
- It is true Mr. Claus could put a duplex on one lot and a house on the other lot and leave the house vacant, but he can put in three units.
- He referenced a Grants Pass case where they tried to say to someone you have more acreage than someone else. There is no nexus between the acreage and his share of the improvements. The nexus lies between the trip generation.
- Every time we try to do TIFs or charges, we do trip generations. What are you saying, you are saying that we have 25% of the trips. There are nine dwelling units there today and he is trying to add three. Mr. Dittman said I can only add three and he repeated this again to Jerry Hart. Mr. Claus does not agree with this.
- He resents people coming in here and saying, but I will find some way to beat Derryck Dittman. Mr. Dittman had a pretty poor batting record against me. But this is not the point.
- Mr. Dittman's whole language is three dwelling units. I can't put three on one lot because of the density requirements. You would need to put two on one lot, one on one lot and one lot would sit vacant. But it is three units.
- If the Commission looks carefully at the report from the City Attorney, according to the City Attorney, the trip generations we will have is not 43%, it is 25%. He referenced the last line of the report.
- The City has completed a complete engineering drawing of the street. Now that the City has finished the engineering and put their stamp on it, if we try to build there, this is the system we are going to be required to build.
- Right now the City is trying to bid on South Sherwood Boulevard and Columbia Street is part of it. It is more than a one year grant and the State of Oregon has been told that their sole contribution to Sherwood Boulevard is \$25,000. We will investigate this because we are not sure this is correct.
- The City has completely engineered Columbia Street and when his son, Thomas, shows the Commission the drawings, you will see why that is serious.
- The minimum that we are going to be paying to put this in is well over 57% of the costs of Columbia Street.
- The Commission has the engineering plan that the City wants for Columbia. It is the City's engineering plan and they put it out for bids. It is conceded that they can cut Columbia Street out, but this is alternate bidding and the first thing they have to cut out is the underground utilities.

- They are going to determine if the water and sewer plan anticipated putting these in and if it did as part of the SDCs the City is double-dipping, At this point, we can't tell you because we didn't know until today that Columbia had been completely engineered, totally engineered.
- He reviewed parts of the Staff Report because it is inaccurate.
- Item A finding, is creating a new right-of-way because the easement going into these lots they have to pay for. They have agreed to put in about 150 feet of street on their partition. They are creating an additional street and right-of-way and they want credit for it.
- Item 6.303.01 Generally, Staff comments are not accurate. Holmgren has sidewalks in front of the two houses he built and Columbia was partially paved until the City tore it up when they put in the sewer line that we gave the easement for. There were sidewalks and pavement there, the City tore it up. We gave the sewer line easement and it does not serve the area.
- Now the City thinks they have found somebody to pay for their screw-ups, when in fact, that sewer line is part of the mandatory capital project because it does not serve that area. They do not connect into it and no one is connected into that sewer. Please do your homework before you come in and start talking about capital budgets.
- The sewer is not part of the Strangs Subdivision. It does not serve this subdivision, it serves the downtown. The City tore the asphalt up to put it in there.
- So we are supposed to give a water line and sewer line to serve nine people in order to get three houses service. And we get the privilege of paying 43% of that, plus paying for 150 feet of our own driveway, sewer water, and storm water. What this really boils down to is that we are paying about 76% of that cost. This is not 43% and the reason this is never done this way is precisely for this reason. There is no nexus between what we are doing and what we are paying for. The only nexus is trip generation.
- Why am I paying to hook nine houses up to services because the City could tear the street up and put in a general sewer and not fix it right. Mr. Bormet has it right, they made a big mistake.
- When Staff states that the subject site is not served by a water system, that's not correct. There is a pipe from one of the duplexes right next to our property, but it is not adequate. It is not adequate because when the City let Holbrook and Pense build, they didn't do their engineering.
- Item E, Staff comments. Would the City please take a look at West Division Street before they say they have access to adjoining land. West Division was abandoned as a public right-of-way, it is an emergency right-of-way. We've been told when we tried to use it to build, they would not let us use West Division Street as a street to put a house on.
- What is very, very clear is that the City screwed up. They ran a sewer line and we gave them the easement. If we hadn't given them the easement the asphalt would not have been torn off of the road and we would not have a gravel road and we would not have Jon Bormet telling us it is a substandard road.
- Mr. Dittman says we can have three lots. We told Jon Bormet fine, we'll put three lots back there and put on deed restrictions. Mr. Bormet said well, in effect, I don't trust lawyers. So Derryck is wrong and our lawyer is wrong. We said, secondarily, we can't pay 43% of the costs because there are a lot of hidden costs in this street and 43% of this cost is going to be paying other people's money in addition to the fact we are going to have nearly the same

expenditure on our street for our sewer, water and storm water each lot has got. So we are not paying 43% starting out.

- The Commission needs to look at the engineering the City has sent out for bid.
- Is there a \$25,000 grant or is Sherwood Boulevard an on-going two or three year program where there are all kinds of funds dedicated to it.
- If the sewer line we ran there is part of the main system, we should get a credit for it. He would like \$15,000 credit for the sewer easement we gave the City. He would like to make sure we pay our share because our street is going to be built to City standards. If you want to say the private driveway serving these three lots shall be built at 24 feet and it shall be at City street curb and gutter standards, fine, we said we would go along with this. It can be a condition, but then we want all of the costs that are involved totaled in that 43%.
- Not only is this unfair, it is bad policy. We are supposedly putting in as much density as we can put in. Mr. Dittman has decided under a very narrow interpretation of the law, to cut the density in half. But these are policy decisions beyond any applicant's consideration.

Mr. Claus said all he is asking the Commission to do is we went to Mr. Bormet in good faith and were told you will put the street in or you won't be able to build. You have a street the City tore up to put in part of their capital program and they can't even tell you what it is. Miraculously, with all of these facilities, we are supposed to pay 43% of the rest of this because, I think the words you mentioned to my lawyer were, "We were going to make money on this." This is the makings of the kind of thing that nobody can let stand because there are too many extremely important policy decisions going on here. The Commission is not getting all of the information from Staff. When a Staff is this non-neutral, if they were certified planners and they pulled these things of not disclosing information, I would have an ethics complaint filed against every one of them.

Mr. Claus said all of a sudden he is supposed to pay all of the costs for these improvements because he does not like a particular development in this town and has been willing to take it to LUBA. That is what this is about. This is not about this development. This is about showing me who runs Sherwood and it is showing the Commission how to make decisions.

Chairman Whiteman asked if there was any further testimony on MLP 98-2 Columbia Street (Claus) Partition.

Thomas Claus, 22211 SW Pacific Highway, Sherwood, OR 97140, addressed the Commission. Mr. Claus identified the parcel on the map. He noted that Mr. Bormet was in the audience.

- In January 1998, they received a communication from Dr. Saxton, a property owner on Columbia Street. Dr. Saxton had received a letter from the City stating that his garages were in danger of being taken down or something to that effect. The City was planning some capital improvements in that area.
- Thomas met with Ahmad Qayoumi. Ahmad showed him a map of what the City was planning for Columbia Street. This was late January or early February of 1998.

- He showed the Commission a highlighted map with a note written by Ahmad saying cul-de-sac. Ahmad said good you are going to be developing out there. We didn't know what was out there, that way we will run the street right up to you. This is very significant.
- He submitted the application on February 18, 1998. On March 11, 1998, he received an incomplete letter from the City detailing certain items that needed to be completed for the application to be deemed complete.
- On April 7, 1998, he completed these items and received a letter from the City stating the application was being scheduled for public hearing at the Commission.
- At the May 5, 1998, Commission meeting the public hearing was held and it was continued to tonight. They were directed to have a meeting with the City Staff and see if they could come to a consensus.
- On Monday, May 18, 1998, the meeting was finally scheduled. One of the parties that was to be at the meeting was Ahmad Qayoumi. The meeting was moved back to 11:30 AM so that Ahmad could attend.
- At the May 18 meeting, Jason Tuck, Greg Turner and Jon Bormet were in attendance. Ahmad was not at the meeting. During the meeting, the City basically reiterated their position pursuant to the Staff recommendations presented to the Commission, that is they are to pay 43% of the street costs, they are to pay all of the water costs to have their property served, they are to pay all of the sewer costs to have their property served and they are to pay for fire protection, i.e., put in the fire hydrant at the end of the street.
- The rationale given for this was given as ours was the last development and everyone already there is doing okay with the current utilities, we should have to pay for all of the utilities since we would be the ones requiring them.
- The other properties, nine of them, are being serviced by a 2-inch water line. We are being required to put in an 8-inch water line and are being required to pay for all of the costs.

Mr. Turner said at the meeting they stated it was the entire cost, but he did call the Claus's attorney and tell him it was in effect 43% of the water costs.

Mr. Thomas Claus continued:

- They found out today that there is a capital improvement project on-going for Columbia Street which Staff failed to mention to them.
- He passed out information on this capital improvement project. The bids for this capital improvement project are required to be in at 10:00 AM on June 2, 1998. The completion date for this project is October 30, 1998, less than 6 months away.
- He distributed highlighted maps to the Commission. The blue represents the water line and orange represents the sanitary sewer. If you notice on the capital improvement project, these are to be extended all the way to their property line. If you look at the street as it abuts to their property, you will notice that it is not a cul-de-sac any more. That means somewhere between when we came in at the end of January and when these plans were drawn on April 30, 1998, engineering was in communication on these and changed the preliminary layout.
- Staff was fully aware that these plans were in process and of what was being done there. The applicant was never told just what the extent of these plans were.

- We were told that the City was looking at doing Columbia Street. We were not told that this was being looked at being done as part of a larger capital improvement project for South Sherwood Boulevard or that there was State grant money involved.
- The Commission has clear proof that the City intends to provide the applicant with adequate water, sewer and road if they don't do anything.
- Why should the applicant have to pay for all of the water line. If you look at this CIP project, you will find that every residence on Columbia Street will drop off of the 2-inch water line and connect to an 8-inch water line.
- The 2-inch water line will be completely abandoned. This is part of the CIP project.
- There will be a storm sewer brought up Columbia Street with two catch basins. There will be aprons given to the property owners there.
- What happened in the meeting will shed a little light as to why the applicant is being required to pay all of the water costs or 43% of the street costs and all of the sewer costs to serve their property, when in fact the project is already underway to do this and was budgeted for.
- At the meeting, after Robert Claus left, Jerry Hart, Thomas Claus, Jason Tuck, Greg Turner and Jon Bormet remained. Mr. Bormet said Thomas, your father is not a developer. He hasn't done real developments before. This is a real development. We need somebody in there who knows how to do these kinds of developments. We need somebody like Centex or Otak. I think this is where the heart of this matter comes from.
- Mr. Bormet does not like Robert Claus. He made this clear in the meeting.
- Mr. Hart will explain the legalities of this.
- If we don't go forward with this partition, the City is going to put in the street anyway and we won't have to pay anything. We will just wait for the utilities to be brought to us.
- Ms. Engels commented about the 43% and developers compelling the City to put improvements in. There is no compulsion here. The City has a capital project which has been put out for bids. In less than two weeks the bids will be opened and in less than six months this project is to be completed.
- The applicant has to tell the Commission about what the City is planning to do in their right-of-way. The City also said this is not part of this capital improvement project.
- The applicant is dealing with a lot of antagonism.

Robert J. Claus said the Commission had a letter in their packets accusing him of threatening someone physically. He wanted to make a very clear point to Mr. Bormet and to the Commission. He has a professional reputation and has a fairly good national practice. He has pursued government agencies in claims courts and administratively for as much as eight years. While it is true that he had a very good reputation as an athlete and has had his sons participate in athletics, no one has ever accused him of self-help until tonight. The people that are refusing to allow administrative remedies are this Staff and Mr. Bormet. The Commission has a Woodhaven situation coming up and the 120-days is running. They can thank the Staff for this. If the Commission forces people to self-help, it is that kind of behavior that does it. It is not someone making a threat who has no record in his life of ever using physical threats, who has followed the administrative and judicial process to an end. What would bring about a letter of that order is when a man took the chance to attack me in front of one of my sons, to make statements that I can't build. I've built more projects that that man has seen in Montgomery and I have never been sued over one of my projects. I've built clustered housing and I've put in

subdivisions in this state and there is no litigation over them. And all of sudden this has turned into (inaudible) in the Commission packets. But he (Bormet) is still “oh so willing to work with us.” He started at the meeting that you will pay 43% and he ended that meeting and said you will pay 43% and he deliberately withheld the information the Commission has in front of them as did his engineer, who is not licensed, but unfortunately wants to be licensed.

Mr. Claus said we were legally entitled to that information. More than that, professionally we were entitled to that information. It should have been forthcoming to Mr. Jenke of AKS Engineering. He would suggest there is someone who wants to go extra legal in all of his procedures and it is not me. I have a professional reputation to adhere to. I am not the one that tries to find every sneaky, underhanded way to withhold information from a Planning Commission, and not give an applicant information and then turn around and say oh, I am so holy. When that man gets up here, there is one thing you can count on, if his mouth is moving you are not going to hear all of the facts you want. I was going to spend \$2,000 to try to work with this group and try to develop this property and they withheld the information from us and an engineer. The engineer went in and got the as-builts and never once received this. I am going to follow the administrative process. I will go to City Council next and probably end up in court. If somebody is going to attack me, at least attack me for following the American process and not seeing how many unprofessional and unethical ways they can find to take due process of law away to equal treatment by withholding my access to administrative things. I am not the one who has the jumbo appeal fee.

Mr. Claus said all of sudden he (Bormet) decides who can build and who can own land here and his Staff backs him up on it. This man cannot follow the black letter law and neither can his Staff. The Commission did not get all of the information from the City, they got it from the applicant. Over three lots, I am going to have a legal bill that would shock you. This man tells me I can't build and who should build and tells my son I am incompetent. Who should build, Centex and Otak, who is Genstar's engineers. This is what this is about. I knew it was going to get down to personal, libelous attacks. Now you are going to get the charges of putting a twelve unit subdivision and you are going to get the benefit of three lots. These folks don't want me to go to LUBA. Why was an appeal that was filed weeks ago not able to make the 120-day deadline.

Chairman Whiteman asked if there was any further testimony.

Jerry Hart, 330 N. Evans, McMinnville, Oregon 97128, addressed the Commission. Mr. Hart discussed some of the legal issues. Mr. Dittman's letter dated May 15, 1998 concludes with the statement, “Further the conditions must meet the Dolan case tests of having the required rough proportionality to the impact of the approval and nexus between the condition and the partition.” It is important to remember the City came up with the 43% proposal. The proposal has always been, this representation was made at the last Planning Commission hearing and the May 18 meeting with City Staff, that the plan is for three single family residences. His client has indicated the willingness to be tied to this. He talked with Mr. Dittman today and his analysis of the City ordinances is when you have a private drive that you can only have three (inaudible). This will be another restriction on the number of lots which go in. Basically, his client's point is

very well taken, in essence he is being asked for three lots, there will be twelve lots that will benefit from all of his work and he is being asked to pay 43% of the costs of all these improvements. The 43% does not bear any rough proportionality to what is actually going on here. In essence, the proposal is three lots would be 25% of the total uses that would occur. The 43% is based upon square footage which really does not bear any relationship to the proposal the applicant has and is quite clearly a violation of the Oregon Court of Appeals decision in the case of Schultz v. Grants Pass which interpreted the Dolan case.

Mr. Hart related the points of the Grants Pass case where the Court said you have to make your decision on, what you have to base your exaction on is what the actual proposal is, not what could happen in the future. It quite clear from the Grants Pass case and Court of Appeals interpretation of the U.S. Supreme Court decision in Dolan v. Tigard, that the 43% number is an unconstitutional taking and it is an exaction which goes beyond the rough proportionality test.

Mr. Hart said in the final analysis the Commission is making a policy decision. It is a decision that must be consistent with each developer. If they are making a policy decision based upon a percentage, the issue is whether or not you can reach that point. He could discuss all of the merits of this. He is focusing on the policy issues the Commission has to make and to put those in the context of the constitutional requirement which came out of the Dolan and Grants Pass cases. If the City is going to be requiring an exaction, the most they would be left with is 25% of the improvements.

Chairman Whiteman asked for clarification whether the applicant has agreed to there only being three living units on the partitioned lots. With regard to the sewer connection on Columbia Street, does the applicant agree to put in the 8-inch line to the 12-inch line from the property line.

Mr. Hart said he would have to defer to his client on the details. Mr. Claus said he agreed to run the 8-inch line to the 12-inch line provided that it is not open or it does not connect to other properties at the time because if it does, then all of a sudden I am starting to pay tremendous costs for other people's sewer.

Chairman Whiteman said if the Commission found or recommended to the City Council that a zone of benefit be created with these utility lines that Mr. Claus is required to put in, whether it be the 8-inch water line or the 8-inch sewer line that any time anybody else connected into this, they would pay a fair share back to him for that connection. Mr. Hart and Mr. Claus said this would be reasonable.

Chairman Whiteman asked if they are suggesting to the Commission that the method by creating an assessment number for the street improvements they are talking about curbs, gutters, storm drainage and asphalt, and does not include sidewalks. Mr. Franklin said typically street improvements deal with the street, curbs, sidewalk, water, sanitary and storm water. Chairman Whiteman asked if the 43% includes curbs, gutters, asphalt, storm sewer and catch basins. Mr. Turner said he believed so. Mr. Claus said it only includes the 200 feet not his private drive.

Chairman Whiteman said the applicant is suggesting if you use a weighted factor to determine the applicant's fair share, that it be based on living units compared to the living units on the street that would use that. The applicant would have three living units compared to the nine existing units. Mr. Hart said you have to base it upon living units.

Chairman Whiteman asked if there was any further testimony, either proponent or opponent, on MLP 98-2 Columbia Street (Claus) Partition. There being no further testimony, Chairman Whiteman closed the public hearing on MLP 98-2.

Chairman Whiteman asked for Staff response regarding the private drive where Staff earlier said the applicant could build six units and the applicant is saying the City Attorney said he could build three units.

Ms. Engels said Mr. Hart was referring to a memo from Mr. Dittman to her dated August 20, 1996. Previously, Staff assumed if you had a minor land partition and created three lots, you had to have three 25 foot abutments to the street or a total of 75 feet. Mr. Dittman researched the Code and responded with the memo saying you could have one common 25 foot easement that was shared. The memo says three lots, not units, could access the street via the easement. This is what the memo states. It did not occur to her to furnish this memo to the Commission. If you create four parcels, you have a subdivision and public improvements would be required. If three parcels are created, what can be done on them depends on the zoning. In this case, the zoning allows single family or duplex units. In the applicant's application, they state their intention is to build either single family or duplexes. Mr. Hart has represented that he has gotten something verbal from Mr. Dittman saying something about being limited to three units. Ms. Engels said she has not seen or heard anything in this regard. Staff would need to see something in writing relative to this.

Mr. Franklin said a better question would be how many lots can be served by the single access easement. Ms. Engels said three lots could be served. Mr. Franklin said what they are dealing with is easement versus a private drive. Ms. Engels said three parcels can be created with that access easement. It is not easy to restrict use of property and she would need to check this with Mr. Dittman.

Chairman Whiteman asked if the Commission approved this partition, at what point would the assessment be made. Ms. Engels said the 43% or whatever assessment has been proposed that prior to the issuance of a building permit these improvements would need to be in place. They could not get a building permit if these improvements were not in place.

Chairman Whiteman asked if Staff agreed with the applicant that it is the City's intent to have other connections put on to the 8-inch water line if it were made in this area. Ms. Engels said this question would need to be deferred to Mr. Bormet.

Chairman Whiteman asked if the code and fire department say you have to have a fire hydrant within 500 feet of the property and the one at the corner of Sherwood Boulevard and Columbia Street meets this requirement, where is the City getting the requirement to have a hydrant at the

end of Columbia Street. Mr. Bormet said he did not think the determination to put in a fire hydrant had been made. Chairman Whiteman asked why they were running an 8-inch line. Mr. Bormet said simply to serve the lots at the end of Columbia Street. Chairman Whiteman asked if it would be the intention to do away with the 2-inch line and connect the existing homes to it. Mr. Bormet said he thought this was right. This is why the City talked with Mr. Hart and why the City switched the water line from 100% back to the 43%.

Chairman Whiteman asked for a response from Staff if the Commission recommended to the Council to create a zone of benefit and rather than 43%, it would charge those connections to hook up and pay back a proportion of the costs. The question is what is the percentage level of participation they think is fair, if in fact, we get in writing that there are going to be three living units on these partitions. What would Staff's feeling be in creating a zone of benefit by ordinance. Mr. Bormet said his feeling is that in effect what the Staff is suggesting is a zone of benefit. What Staff has said is the City as an entity will pick up the share for the existing taxpayers in that zone of benefit, and that the City will then, in effect, be partners with the developer in that zone of benefit.

Chairman Whiteman asked if there was any discussion with Staff and Mr. Hart in regard to the costs of the 8-inch sewer line running out and connecting to the manhole and allocating out any of the costs of that. Mr. Bormet said he thought Staff simply asked the applicant if they would run it into the existing line. The 100% is for the sanitary because the City does not think.....Chairman Whiteman said according to this 106 feet from that property line to the manhole.

In response to Chairman Whiteman's question, Mr. Bormet said it goes back to why they have it in the capital plan. The plans the City has set out are running virtually concurrently with this plan. It is the City's hope and the City is willing to put money up to fix the street in partnership with Mr. Claus. That's why they are being run at the same time.

With regard to the 43% would the Staff recommendation be different if they knew what was being built on the lots, Mr. Bormet said he would need to get some legal advice as to where this goes. The City has been assessing a lot of water lines and rather than going to a unit by unit, they have really gone more by acreage because you really cannot calculate how many units are going to be built. In this case if they calculated tomorrow and one of those houses is replaced with a duplex you get into a formula change. So what they tried to do is deal with the acreage and be acreage neutral to everyone. If there is a rationale that says we are only going to build three houses, this would be something the City would look at. There is a difference between three dwelling units and three lots.

Chairman Whiteman said it would appear there are some clarification issues which need to be brought to the Commission , in particular:

- What is allowable on the private drive, in this particular situation. Can the applicant have more than three units on the parcels. How would this be restricted to the three units.

With regard to the previous easement, Mr. Bormet said he would assume there was value or no value given when this deal was made. No one has suggested there was any promise of any future considerations being made as a part of this deal when that property was developed. This is not really relevant to what the Commission has in front of them.

Mr. Bormet suggested the City Attorney and Mr. Hart get together and if there is going to be an agreement, actually structure this for the Commission's review. If there is an agreement, it should be in writing from all parties. The City has bids out and does not intend to do the project this summer unless the whole project is being done.

Mr. Franklin said they are talking about allowable living units and allowable access off the private drive.

Thomas Claus asked for a point of order, if the bids that have been put out are not done by October 30, 1998 it is not done period. Chairman Whiteman said based on what the Commission has heard from Staff, at this particular time the point is not well taken.

Chairman Whiteman moved the Planning Commission continue MLP 98-2 Columbia Street (Claus) Partition to the June 16, 1998 Regular Commission meeting for the purpose of getting legal counsel opinion in regard to the accessibility off the private drive. Seconded by Dave Heironimus.

Vote for Passage of Motion: 4-Yes, 0-No, 0-Abstain

Susan Claus did not participate in the discussion or vote on this matter.

Chairman Whiteman recessed the meeting for a short break at 9:35 and reconvened the meeting at 9:40 PM.

5C. CUP 98-1 21st Century Kids Club Conditional Use Permit

Chairman Whiteman opened the public hearing and called for the Staff Report. Jason Tuck referred the Commission to the Staff Report dated May 19, 1998, a complete copy of which is contained in the Planning Commission's minutes book. He noted:

- The site is located in the Sherwood Plaza Shopping Center and is zoned Retail Commercial (RC). The proposed use requires a conditional use within the current zoning.
- The applicant is requesting conditional use approval to operate a sports club within the Retail Commercial zone. The day care and preschool uses are permitted outright.
- The facility will include classrooms, an extensive jungle gym and a large gymnasium space.
- The required findings are contained in the Staff Report.

In conclusion, based review of applicable code provisions, agency comments and staff review, Staff recommends approval of CUP 98-1 21st Century Kids Club with the conditions contained in the Staff Report.

Greg Turner said staff looked at the parking as if it was for a retail use and compared it to the proposed use. The proposed use falls within the required parking standards.

Chairman Whiteman asked if the applicant wished to provide testimony.

Bob Klas, EKA Architects & Planners, PC, 6775 SW 111th Avenue, Suite 20, Beaverton, OR 97008, addressed the Commission. Mr. Klas said the General Manager for the 21st Century Kids Club organization and operator of the local club were also in attendance. He noted:

- He thanked the Staff for their timeliness and response in regard to this application.
- They applied for an interior improvement permit last winter and found out a conditional use permit would be required for some of these activities under 2.109.03(I) of the Development Code.
- The conditional use in this case would be specifically for sports leagues. They would like to make spaces available for basketball and perhaps indoor soccer.
- They fully concur with the Staff comments and recommendations.
- No new additions are being constructed to the existing facility.
- There is another similar facility at 158th and Walker Road.

Chairman Whiteman said he looked at the facility and was totally impressed with what he saw.

Chairman Whiteman asked if there was anyone who wished to speak in favor or in opposition to this application. There being no further testimony, Chairman Whiteman closed the public hearing on CUP 98-1 21st Century Kids Club for discussion by the Commission.

Susan Claus said this was a great use for a building which has been vacant for some time. The Commission concurred.

Bill Whiteman moved based on public testimony and the staff report, the Planning Commission approved CUP 98-1 21st Century Kids Club with the conditions as listed in the Staff Report. Seconded by Susan Claus.

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

5D. SP 94-2 Revision II Sherwood Market Center & SP 98-3 La Petite Academy Site Plan (Joint Application)

Chairman Whiteman opened the public hearing and called for the Staff Report. Jason Tuck referred the Commission to the Staff Report dated May 19, 1998, a complete copy of which is contained in the Planning Commission's minutes book. He noted:

- The site is located on the southeast corner of Tualatin-Sherwood Road and Langer Drive, Tax Lot 600, Map 2S 1 29B. The site consists of 13.9 acres.
- The site is zoned Retail Commercial (RC) and the proposed use is permitted outright.

- The request is for a revision to the previously approved site plan for the Market Center. Two previously approved anchor stores are being replaced with two building pads and one future pad.
- La Petite Academy is proposed a 9,500 sf child care facility and 15,247 sf fenced playground area.
- Building #8 is planned for a Burger King restaurant.
- The proposal includes a 130 off street parking stalls and the parking will be shared between the three proposed pads.
- The required findings are listed in the Staff Report.
- Pride Disposal commented on a possible new waste disposal facility. He identified the area on the map. The applicant has proposed to move the waste disposal facility.
- Regarding Condition #2C, Staff is recommending rewording this condition to, "Provide information regarding sight distance for the intersection of the existing access driveway to Langer Drive to the satisfaction of the City Engineering Department."
- The applicant will address Condition #4.

In conclusion, based on a review of applicable code provisions, agency comments and staff review, Staff recommends approval of SP 94-2 Rev II Sherwood Market Center and SP 98-3 La Petite Academy Site Plan with the conditions as modified.

Chairman Whiteman asked if the applicant wished to provide testimony.

Seana Perkins, Westlake Consultants, 15115 SW Sequoia Parkway, Suite 150, Tigard, Oregon 97224, addressed the Commission. Pamela Vann and Troy Kent from Westlake were in attendance. Westlake represents the applicant Gramor Development. Dean Sorsensen, Gramor Development and Ray Cates, representing La Petite Academy, were also in attendance. Ms. Perkins noted:

- Westlake prepared the application narrative. The site is 13.9 acres and the application deals with the eastern most portion of the site as identified on the map.
- The site is located at Tualatin-Sherwood Road and Highway 99W. The site is already developed with 26 retail spaces which include Albertsons, Washington Mutual Bank and BP Gasoline Station.
- The original application was approved by the City under City File SP 94-2. She discussed the original plans for two anchor stores.
- Due to changes in the market, the applicant is requesting a site plan modification to replace the two approved anchor stores as shown on the original site plan.
- A site plan review for La Petite Academy is a part of this application. The child care facility is a timely need for the City of Sherwood due to the increased growth in residential uses.
- Representative of La Petite would answer any questions regarding the use.
- The application meets the zoning standards as outlined in the Staff Report.
- The subject property will be serviced by sewer, water and storm drainage. All existing landscaping will be continued through this modification process.

- A traffic study was conducted by Kittelson & Associates that no additional off-site transportation improvements would be required with full build-out of the site.
- The applicant has worked directly with Pride Disposal for the location of the solid waste enclosure. She identified the proposal location on the map.
- With regard to Condition 2C, they have done the calculations on Langer Drive that have shown the actual drive is constructed to be 25 MPH. The applicant would like to latitude to work with the City Engineer to come to some solution.
- The accessway to Langer Drive has already been improved.

Troy Kent, Westlake Consultants, 15115 SW Sequoia Parkway, Tigard, Oregon 97224, addressed the Commission. Mr. Kent said the road itself is not the issue, it is the curvature of that one portion of Langer Drive that has restricted the speed limit. There is a standard, AASHTO design standard, which is used for designing roads and highways. It delineates guidelines for safety improvements or the safety of improvements. Based on that, it identifies the minimum curvatures and associated speeds. They have taken the existing improvements and identified what the curvature is and found out that the speed limit that is safe on that curve is closer to 20-25 MPH for the inside lanes. If they had to design for 35 MPH, there are a couple of factors that come into play. If this curve was designed or built for 35 MPH radius, it would be a lot wider and someone would not have to look as far behind them to see on-coming traffic. The 35 MPH sight distance looking around a 25 MPH corner or a curve results in an excessive distance to have to look. If the applicant has to do this for this application, there is an obstruction on the southeast corner of the La Petite building. The specific amount is still yet to be determined. They have done preliminary calculations based on an approximation.

Chairman Whiteman asked if the only adjustment that would need to be made or the only area that the 35 MPH sight distance might affect would be the corner of the proposal La Petite Academy. Mr. Kent said this was correct. The fence that is proposed to be installed there is chain link and is not sight obscuring.

Mr. Franklin asked if there was any structure in the playground area which might block the line of sight. Mr. Kent said he would defer this question to Ray Cates of La Petite.

Ray Cates, La Petite Academy, 8717 W. 110th Street, Suite 300, Overland Park, Kansas 66210, addressed the Commission. Mr. Cates identified on the map where the playground area would have any affect on the sight distance. They have a six foot area around any play equipment so from the line of the rubber surface area it would be another six feet to any equipment in the area. The space is somewhat open so they can have good supervision of the children in this area. The equipment would be a climbing platform and slide.

Seana Perkins, Westlake Consultants, entered some of the preliminary calculations into the record. The applicant requests approval of the site plan modifications and La Petite Academy Site Plan. Other than the conditions discussed, the applicant has no problems with the other conditions.

Chairman Whiteman asked about the limited amount of bike racks in the shopping center. Ms. Perkins said the bicycle parking area for the site would be at the La Petite Academy.

Mr. Heironimus asked about speed bumps being installed. Mr. Turner said Staff did not discuss this with the applicant, but there may be a need once the site is built.

Dean Sorensen, Gramor Development, 9895 SE Sunnyside Road, Suite P, Clackamas, Oregon 97015, addressed the Commission. Mr. Sorensen said the bike racks which were placed in the original shopping center are in several of locations, the entrance between Godfathers and McMenamins, on the side of Albertsons by the video store, and a rack by Providence Medical. With regard to the speed bumps, when they did the addition for the Providence building, Providence had some concerns with the pedestrian connection, so they placed two speed bumps and a couple of slow signs. The speed bumps were in response to existing conditions that develop throughout the project. They could certainly take a look at this in the future with regard to the proposed Burger King and La Petite Academy. If the tenant feels there is a need, Gramor would review the need. Gramor has discussed the solid waste disposal location with Pride Disposal. He identified the area on the maps. There is no further anchor signage proposed for the project, other than what is existing at the site. There was a submittal for La Petite building signage included with the application. A materials board for La Petite was included with the application.

Chairman Whiteman asked if there was any further testimony, either proponent or opponent. There being none, Chairman Whiteman closed the public hearing on SP 94-2 Revision II Sherwood Market Center and SP 98-3 La Petite Academy Site Plan for discussion by the Commission.

Mr. Franklin said the only concern he would have is with regard to sight distance and the improvements in the surrounding area. With the modifications to Condition 2C, this could answer the sight distance requirements.

Mr. Turner said Condition #4 would be met by the applicant at the time of building permit issuance.

Mr. Tuck said the proposed application would have less traffic impact than what was previously approved. He read the Washington County recommendations, "Prior to occupancy the road improvements required in Condition IB4 above, shall be completed and subject to Washington County." The condition states two sets of completed engineering plans for the construction of the following public improvements. Any additional off-site safety improvements found to be required for compliance R&O 86-95 upon completion of the County traffic analysis analyst review.

Bill Whiteman moved based on staff report and public testimony, the Planning Commission approve SP 94-2 Revision II Sherwood Market Center and SP 98-3 La Petite Academy Site Plan subject to the conditions as outlined and amended, Condition 2C and

the acknowledgment that the plan as presented would meet Condition #4. Seconded by Dave Heironimus.

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

5E. SP 98-6 Burger King Site Plan

Chairman Whiteman opened the public hearing and called for the Staff Report. Jason Tuck referred the Commission to the Staff Report dated May 19, 1998, a complete copy of which is contained in the Planning Commission's minutes book. He noted:

- With the previous site plan modification approval, the Commission created the pad for the proposed Burger King. He identified the location on the map.
- The site is zoned Retail Commercial (RC) and the proposed use is permitted outright.
- The only issue was the location of the solid waste disposal facility, e.g., moving the access on the east to access on the south.
- All the required findings for site plan and included in the Staff Report.

In conclusion, based on a review of the applicable code provisions, agency comments and staff review, Staff recommends approval of SP 98-6 Burger King Site Plan with the conditions as contained in the Staff Report.

Scott Franklin declared a potential conflict of interest, because he had done work in the past for Burger King. He did not feel this would affect his decision making process for this application and he planned to participate in the discussion and vote for this application.

Chairman Whiteman asked if the applicant wished to provide testimony.

Dave Cutter, Burger King, 5209 NE Elam Young Parkway, Suite F700, Hillsboro, Oregon 97124, addressed the Commission. Mr. Cutter thanked Staff for their work. He understands the conditions. He does have a bike rack in front of the restaurant. The condition regarding the trash enclosure, they worked with Pride Disposal for locating the enclosure. He identified the location on the map and the need for locating the recycling container. They have redone the exterior of the building to match the surrounding brick in the existing shopping center. He identified on the map the location of a "No U-turn" sign on the island and then perhaps something which would indicate access to 99W and Tualatin-Sherwood Road, as well as other directional signs.

Chairman Whiteman asked if there was any proponent testimony.

Dean Sorensen, Gramor Development, 9895 SE Sunnyside Road, Suite P, Clackamas, Oregon 97015, addressed the Commission. Mr. Sorensen addressed some of the positive aspects of the layout. The proposed configuration has allowed them to maximize the amount of storage for people coming into the area. The other benefits are the pedestrian connections of the site.

Mr. Heironimus asked for clarification regarding the drive-thru traffic directional sign. Mr. Sorensen identified the location on the map.

Chairman Whiteman asked if there was any further proponent or opponent testimony. There being none, Chairman Whiteman closed the public hearing on SP 98-6 Burger King for discussion by the Commission.

There were no further Commissioner comments.

Scott Franklin moved the Planning Commission approve SP 98-6 Burger King Site Plan as proposed, with the adjustments to location of the trash enclosure and revised drawing as approved by Pride Disposal. Seconded by Keith Mays.

Vote for Passage of Motion: 4-Yes, 0-No, 0-No

Susan Claus had left the meeting.

5F. MLP 98-3 Salisbury Partition

Chairman Whiteman announced the Commission had received a request for continuance of this application. Robert J. Claus said he is the applicant representing the Salisburys. He was sorry Mr. Cottle made the request, but the applicant would like to go forward. Mr. Cottle said this would be acceptable. The Commission agreed to open the public hearing for this application. Chairman Whiteman opened the public hearing and called for the Staff Report. Jason Tuck referred the Commission to the Staff Report dated May 19, 1998, a complete copy of which is contained in the Planning Commission's minutes book. He noted:

- The property is located on Meinecke Road, Tax Lot 1000, Map 2S 1 31A.
- The applicant is proposing to partition to divide a 16.02 acre parcel into two lots, one being 12.01 acres and the other being 4.01 acres.
- The site contains two houses and various other structures. The topography is relatively flat with a slight ridge in the middle.
- The site is zoned Medium Density Residential High (MDRH) and the minimum lot size is 5,000 square feet.
- The preliminary partition plat is in compliance with the standards of the MDRH zone.
- He reviewed the required findings for minor land partition approval as contained in the Staff Report.
- Comments were received from Mark Cottle regarding potential changes in wording for Condition #3. Staff has not had an opportunity to discuss this with him.

In conclusion, based on a review of the applicable code provisions, agency comments and staff review, Staff recommends approval of MLP 98-3 Salisbury Partition with the conditions contained in the Staff Report.

There were no questions of Staff.

Chairman Whiteman asked if the applicant wished to provide testimony.

Robert J. Claus, 22211 SW Pacific Highway, Sherwood, Oregon 97140, addressed the Commission. Mr. Claus said the only change that this is being done for the LDS Church. They have adequate roads, sewer and storm to continue their development. The only contingent the Commission may want to include is that instead of the "fair share" language, is that the applicant will comply with all local, state and federal laws on the matter. In other words, no one with the Federal courts having prescribing what is your ability to contribute or not contribute the fees without having a takings is going to lead to more to Federal law. So, what Mr. Cottle has suggested, he would suggest the Commission amend to say they will pay the costs as dictated by local, state, federal codes and laws instead of their fair share. Fair share is a term somebody discovered recently. If the LDS Church does not want these conditions, they can appeal it to City Council.

Chairman Whiteman asked why the back property line was not square across on the map the Commission received. Mr. Claus said the applicant contends Genstar has not moved the yellow tag yet which they will move Thursday, thanks to Mr. Bowers. He asked where Chairman Whiteman was referring to. Mr. Claus said because this is where Genstar's street comes in and when they come in for their site plan they would have to dedicate this to the City. The applicant has laid this out with AKS Engineering.

Chairman Whiteman asked if there was any further proponent testimony.

Mark Cottle, 300 N. Sherwood Boulevard, Sherwood, Oregon 97140, addressed the Commission. Mr. Cottle said he concurs with Mr. Claus's comments. It is a little more precise to say they are obligated to abide by City ordinance, federal and state laws. It makes this easier and they all know what they are looking at rather than some illusionary fair share concept. They would be happy with it either way.

Chairman Whiteman asked if there was any further testimony, either proponent or opponent. There being none, Chairman Whiteman closed the public hearing on MLP 98-3 Salisbury Partition for discussion by the Commission.

Chairman Whiteman asked Staff for comments regarding Mr. Cottle's recommended language for Condition #3.

Ms. Engels said the concern has been raised, and Staff would probably need to check with the City Attorney. Staff would like to place a condition at this level for public improvements.

In response to Mr. Franklin's question, Ms. Engels said they asked for legal advice and this wording was suggested to Staff. She did not feel comfortable changing the language without further legal counsel advice.

Chairman Whiteman said both the applicant and the potential property owner's representative have a concern with the "fair share" wording. If the Commission leaves this wording in, it does not come back to the Commission for discussion, it would become very subjective to Staff or the City Manager.

Mr. Franklin referenced the Staff Report regarding finding D1 and asked for clarification. At what point does the Staff Report conflict with the final recommendation. Ms. Engels said there were several questions here and she would like to get a legal opinion. In practical terms, to what extent would this property be subject to or required to, as an example, widen Meinecke Road.

Chairman Whiteman said he has a problem that the term "fair share" become subjective, primarily at the end to one person. He would like to see this application continued so the Commission could get some legal opinion.

Keith Mays said the applicant indicated they did not care which language the Commission chose.

As a point of information, Mark Cottle said they would live with the fair share language because it does not mean anything.

As a point of information, Robert Claus said this is a partition, there is nothing happening here, what happens is when they come in for a conditional use permit to build the church.

Chairman Whiteman said as the points of information were taken, he would have no objection to taking action on this application.

Keith Mays moved the Planning Commission approve MLP 98-3 Salisbury Partition subject to the conditions contained in the Staff Report. Seconded by Scott Franklin.

Vote for Passage of Motion: 4-Yes, 0-No, 0-Abstain

6. Community Comments

There were no comments.

7. Other Business

Jason Tuck reviewed pending land use applications. Chairman Whiteman advised he would not be in attendance at the June 2, 1998 Regular Commission meeting. Vice-Chair Claus would run this meeting. There was no other business.

8. Adjourn

There being no further business, the Commission meeting was adjourned at 10:55 PM.

Respectfully submitted,

Planning Department

