



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

A G E N D A

1. **Call to Order/Roll Call**
2. **Approval of Minutes - June 16, 1998**
3. **Agenda Review**
4. **SUB 96-8 Katrina Subdivision Final Plat:** a request by Roger Grahn for a 4-lot single family subdivision off of King Richard Court, Tax Lot 701, Map 2S 1 31AA.
5. **Public Hearings:** (Hearing Disclosure Statement. Also, declare conflict of interest, ex-parte contact, or personal bias)
 - A. **MLP 98-2 Claus Partition (Columbia Street):** (continued from June 16, 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.
 - B. **SUB 98-4/VAR 98-1 Wildlife Haven Preliminary Plat:** (continued from June 16, 1998) a request by Robert J. Claus for preliminary plat approval for a 24-lot single family subdivision located at 585 West Villa Road, zoned MDRH. Additionally, the applicant requests a variance for a cul-de-sac length in excess of 600 feet. Tax Lots 7900, 8000, Map 2S 1 32BC. **Staff is recommending this application be continued.**
 - C. **MLP 98-4 Stocker Partition:** a request by Mike & Tulla Stocker to divide a 0.31 acre lot into 2 parcels, located at 7905 S. Sherwood Blvd, Tax Lot 2500, Map 2S 1 32CA.
 - D. **MLP 98-5 Seeley Partition:** a request by John K. Seeley to divide a 0.96 acre lot into 2 parcels, located at 16425 SW Brookman Road, Lot 31 Arbor Lane, Tax Lot 3100, Map 2S 1 31DD.

OVER →

APPROVED MINUTES

E. CUP 98-3/SP 98-9 Archer Glen Elementary School Addition of one (1) Modular Classroom building: a request by Sherwood School District 88J for a conditional use permit and site plan approval to place one modular classroom at the Archer Glen Elementary School, located off of Sunset Blvd, Tax Lot 1300, Map 2S 1 32CB.

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

City of Sherwood, Oregon
Planning Commission Minutes
July 7, 1998

1. Call to Order/Roll Call

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

Commission Members present:

Susan Claus
Adrian Emery
Scott Franklin
Keith Mays
Paul Stecher (7:20 PM)
Angela Weeks
Bill Whiteman

Staff:

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

2. Minutes of June 16, 1998

Chairman Whiteman asked if there were any corrections, additions or deletions to the minutes of June 16, 1998. There were none.

**Susan Claus moved the Planning Commission accept the June 16, 1998
Planning Commission minutes as presented. Seconded by Keith Mays.**

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

3. Agenda Review

There were no comments.

4. SUB 96-8 Katrina Subdivision Final Plat

Jason Tuck reported that the applicant has completed the public improvements for this subdivision and is asking for final plat approval so that it may be recorded. It is substantially the same as what was submitted with the preliminary plat.

Chairman Whiteman asked for clarification regarding the conditions of approval being met. Mr. Tuck said the construction plans have been approved by the Engineering Department. Chairman Whiteman said he is an adjacent property owner with a northerly boundary to this subdivision. He was particularly interested in the pipe conveyance system to direct stormwater runoff to the existing ditch. Mr. Turner said the Engineering Department has indicated the conditions have been met. Chairman Whiteman said there is no existing ditch and the street is done. He wanted to know what the Engineering Department checked off. Staff will obtain this information from the Engineering Department.

Scott Franklin asked for verification regarding the water quality facility and whether it is of sufficient size to accommodate the increase in impervious area.

Bill Whiteman moved the Planning Commission continue SUB 96-8 Katrina Subdivision Final Plat to the July 21, 1998 Regular Commission meeting. Seconded by Susan Claus.

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

Staff will provide further information at the July 21, 1998 Commission meeting.

5. Public Hearings

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

Susan Claus announced she had a conflict of interest regarding Agenda Items 5A and 5B, MLP 98-2 Claus Partition (Columbia Street) and SUB 98-4/VAR 98-1 Wildlife Haven Preliminary Plat. She would not be participating in these two applications. With regard to Agenda Item 5E, CUP 98-3/SP 98-9 Archer Glen Modular, her family owns a 5-plex which is located adjacent to the school. She received a notice for this application, but does not have any bias and plans to participate in the discussion and vote on this application.

Robert J. Claus asked for a point of information. Regarding MLP 98-2 Claus Partition (Columbia Street) and SUB 98-4/VAR 98-1 Wildlife Haven, there has been considerable new information. He asked that the Commission re-open the public hearing on MLP 98-2 to receive this information. If the Commission does not re-open the hearing, they should make some time available to receive information. There has been considerable information come forth which the Staff has refused to disgorge themselves of, even though the Staff was specifically instructed in the previous minutes to provide the information.

Chairman Whiteman said the public hearing on MLP 98-2 Claus Partition (Columbia Street) had been closed. In addition to Mr. Claus, there is another party who has indicated an interest in speaking regarding this application. He asked what the Commission wished to do.

Angela Weeks moved, at the request of the applicant, the Planning Commission re-open the public hearing on MLP 98-2 Claus Partition (Columbia Street) to receive additional information. Seconded by Adrian Emery.

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

Susan Claus did not vote on this motion.

Chairman Whiteman asked if the applicant wished to provide further testimony.

Robert James Claus, 22211 SW Pacific Highway, Sherwood, Oregon 97140, addressed the Commission. He distributed two sets of documents which apply indirectly to Wildlife Haven,

but they primarily have to do with the Columbia Street Partition. These were marked for the record as Exhibits. He noted:

- In dealing with good administrative practices, the Commission should move this partition to the City Council.
- He referenced a June 22, 1998 letter from Ahmad Qayoumi to Mr. Claus. In the letter, Mr. Qayoumi presumed the Commission would pass the 43% and has already assessed Mr. Claus the costs. Unbelievably a City employee has taken it upon himself to not only tell Mr. Claus that he owes 43%, he has assessed it in an exact amount.
- He said in the other package, the City Attorney, alleges this is an estimate. The exhibit with the July 6, 1998 letter from Mr. Claus to the Planning Commission shows it is not an estimate. It is, in fact, part of a signed contract.
- Mr. Qayoumi has a signed contract with C&M Construction that does not have any change orders. This contract is to put in the waterline, sewer line and all improvements on Columbia Street. There are no change orders and Mr. Qayoumi has written a letter threatening Mr. Claus with a \$29,000.00 fine if he does not immediately disgorge himself of this money.
- He would suggest that Mr. Turner and Mr. Tuck knew this and in deposition, if this goes as far as he believes it will, they will find out about Ms. Engels.
- He talked to Mr. Bill Sproul, C&M Construction. He said he would like to put in the water and sewer line, believing that no one would then go to such levels of intimidation as to seriously suggest that Mr. Claus would be fined if he did not do it. Mr. Sproul informed Mr. Claus, prior to last Friday, that Mr. Claus couldn't pay for this, he would have to pay the City back because these fellas from the City had signed a contract.
- On last Friday, Mr. Qayoumi instructed Mr. Sproul that they were going to use the change work order to take out the water and the sewer line. This is the Friday after the letter had been received.
- He will assume we will just call this a mistake and that Mr. Qayoumi didn't know there was a signed contract, even though he then tried to do a change work order to take it out.
- He met with Mr. Sproul today.
- He made reference to a hand written cost of \$19,765.88.
- The bid sheet shows the water line at 180 feet and it turns out it has to be 280 feet. The specifications show 280 feet, the contract is 180 feet.
- Mr. Sproul told Mr. Claus that they have met and they do not have the change work orders because PGE had a disagreement on Sherwood Boulevard about the utilities. Mr. Sproul told Mr. Claus that he could put this in for Mr. Claus at approximately \$20,000, that is the fire hydrant, water and sewer.
- His attorney is in attendance to address a conversation with Mr. Dittman.
- Under the worse case scenario, this might look like intimidation and an attempt to force Mr. Claus to be quiet about his objections to other things going on in this town. It may be a "lesson."
- There may be some clever reasons why this has happened, but under deposition it won't be clever, it will be perjury. He made reference to a lawsuit he has filed over the fees.
- Mr. Dittman has suggested Mr. Claus go down to C&M Construction, strike up a separate contract, reserve his rights and then litigate.

- The exhibits show a contract with the City, the details and the changes and then there is an attached Standard Form of Agreement between Owner and Contractor.
- The Planning Commission has a situation where they were supposed to decide what was his “fair share”. The Staff, including Mr. Tuck, Mr. Turner, and Mr. Qayoumi met and before you (the Commission) could say anything, they assessed Mr. Claus the 43%. More than that, they added a \$29,000 penalty if Mr. Claus did not give them the money. He made a reference to Council Member Tom Krause’s comments about “double-dipping”.
- He suggested the Planning Commission move to send this application to the City Council. The Commission has an issue before them where they are supposed to determine a “fair share” amount. They were supposed to vote on it. The Commission did not know there was a contract. Staff withheld the contract from the Commission, even though the May 19, 1998 minutes state the Commission wanted to see the contract and wanted a legal opinion. Staff withheld both of these items and sends Mr. Claus the June 22 letter trying to get money from him when they already have a contract. When Mr. Claus found out about the contract, Staff tries to do a change work order and Mr. Dittman says let Mr. Claus pay for the water and sewer line and litigate it.
- The Commission has never seen a case like this in Sherwood. Nobody has ever come forward with a letter telling someone when you parcel your property you will pay money ahead of time. It has never been done.

Chairman Whiteman asked Mr. Claus to quickly summate his testimony.

Mr. Claus said the Commission has a policy before them, he has been singled out to pay ahead of time, and they cannot make policy. There is another standing policy in Sherwood that if it is a zoned use you do not dictate the densities. The Staff has tried to twist this around so that Mr. Claus is being charged for 8 units when he and his attorney have told them they do not intend to put 8 units in there. They have offered deed restraints which Staff is not familiar with because these are legal documents and we wouldn’t want anything like that in the City where they might know their laws. Staff ignored this offer. If the Commission votes on this application, they will be making two policy decisions.

- Mr. Claus said he will in all likelihood litigate over this and the Commission would not want to be brought in on it. If the Commission follows through on this, Mr. Claus will have to take depositions and find out what the Commission knew and who they talked to. We do know that Mr. Turner, particularly, is a specialist in ex-parte contact. He asked the Commission to send this to City Council and decide whether Mr. Claus’s attorney can limit the density, and the new “fair share” policy will be done on the size of the lot compared to the street it is going on. Let the Council make this policy decision.

Mr. Claus said he has appealed Woodhaven to LUBA and has filed a lawsuit over the fees. He believes he has been singled out and this is harassment. Staff has talked about this and he wants his chance in court to prove it. He wants to go to the people who are letting Staff get away with this and that is the City Council. Let his attorney take it up with Mr. Dittman and if Mr. Claus needs to pay the \$20,000, he will pay it, reserving his rights without prejudice and then he can litigate it. In this way he has demonstrated two things; he is a good citizen, he didn’t try to

increase his damages, and he has mitigated his damages. He is willing to pay \$20,000 just to see if Mr. Tuck's idea of "fair share" is going to hold up in court, and his conduct of course.

Mr. Claus said if the Commission moves this to the City Council, he will not have to pay the appeal fee. He would be very upset if he has to pay another appeal fee.

Chairman Whiteman asked if there had been any response to Mr. Hart from the City. Mr. Claus said Mr. Hart would address this issue.

Chairman Whiteman asked Mr. Claus if he was asking the Commission, based on this information, to move the application to the City Council without further discussion or action by the Commission and waive the appeal fee to City Council. Mr. Claus said this was correct.

Chairman Whiteman asked if there was anyone else who wished to testify on MLP 98-2 Claus Partition (Columbia Street).

Julie Kandik, 825 S. Columbia Street, Sherwood, Oregon 97140, addressed the Commission. Ms. Kandik noted:

- She owns the property directly adjacent to the partition on the right-hand side of Columbia Street. They have lived there for about 2-1/2 years.
- She was not notified of this land use application. She received a packet from the Planning Department (Roxanne). She has not had time to review the 82 page long document.
- She does not know what is going on and why Mr. Claus is ready to sue. What is he ready to sue over?
- One of the concerns they have on Columbia Street is the parking problems. The duplex units have tended to double, triple and quadruple park in front of the other property owner's driveways. Where are these people going to park if part of the road taken away.
- She did not really have a concern with the development, but the issues on Columbia Street, such as parking, have not been addressed. This application will add another element into this.
- Her desire would be to have the application tabled at least another month.
- Her next door neighbor had received some type of notice.
- Her property is seven feet from the proposed development. There are two houses there which Mr. Holbrook built about 2-1/2 years ago.

Chairman Whiteman said Ms. Kandik certainly had some concerns. He was not sure the Commission was the body to come before to address the parking concerns. He was concerned about the fact that she did not receive a notice.

Roxanne Gibbons, Recording Secretary, said the mailing list received from the applicant for the adjacent property owners did not show Ms. Kandik as owning the lot. Mr. Tom Harris was listed as the owner of two lots, one being the lot owned by Ms. Kandik. The public hearing notice was mailed to Mr. Harris. Ms. Kandik said there have been some problems with Washington County's tax rolls being up-to-date.

Chairman Whiteman said the Council has adopted an ordinance that in the future property being developed will be posted with a sign. He said the Commission would take under advice Ms. Kandik's concerns. He thought her concerns needed to be brought before the City Council because apparently the contract has been let for the Columbia Street as well as Sherwood Boulevard improvements.

Ms. Kandik asked what the 43% was that Mr. Claus was objecting to and what the standard is. Chairman Whiteman said this is the question the Commission is trying to deal with. There are a couple of standards. Sometimes it is front footage of the property and sometimes it has to do with the number of dwelling on the property the assessment is divided amongst. At this particular time, as he understands it, the project as it stands would be paved and completed with no costs to the existing property. Ms. Kandik said Columbia Street was paved previously. When she and her husband moved in 2-1/2 years ago this should have been taken care of and replaced, and Mr. Bormet admitted this should have been done.

Chairman Whiteman said the Council needs to be aware of the parking problems and this may become a police enforcement issue. Mr. Tuck said the Code states two cars per duplex unit. Ms. Kandik said there is no parking for the duplex units unless it is on the street. Mr. Tuck said he advised Ms. Kandik that there are two separate issues, the minor land partition application and the parking concerns. Chairman Whiteman said the maps show where the street is going to go in and part of this application has to do with a completed street. The City is saying this street will be completed. The easement takes this real close to the existing carports and garages. Mr. Tuck said the carports are in the City's right-of-way. Mr. Turner said they would have to be moved and he was not sure how this was going to be accomplished.

Chairman Whiteman asked Staff if this was something which should go before the Council or is it something the Commission needs to consider. Mr. Turner said it is something that should be considered by the City Council. It sounds like there is a parking problem on this particular street so the question to the Council would be if there is a way this could be alleviated. Scott Franklin asked if the proposed street width for Columbia Street allows for parking on the street, one or both sides. His recollection of what the Commission has seen is that there would be no parking on the street because it would be too narrow. Mr. Turner said this is probably something which should go to the Council.

Ms. Kandik said quite some time ago when she brought this issue to the City Manager, she was told Mr. Bormet evidently had some communication with Mr. Claus and that he (Claus) would provide some parking for these units even though he had sold them that year he would be glad to provide some parking for those units. This never materialized. This was what was communicated to her. She and Mr. Claus have not had any communication about this at all. Chairman Whiteman said Ms. Kandik needed to talk to the City Council.

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

Jerry Hart, 330 N. Evans, McMinnville, Oregon 97128, representing Mr. Claus, addressed the Commission. Mr. Hart noted:

- The last time he was in attendance, a couple of meetings ago, there was a request from the Commission regarding a couple of legal issues. One was whether duplexes could be built on these three lots if the partition was approved. In speaking with Mr. Turner today, Mr. Dittman advised that duplexes could be built. This is, of course, in the absence of a deed restriction that his client would utilize to restrict these properties to single family homes. There was also a question to determine if this type of restriction would be possible. He did not know if Mr. Dittman answered that question.
- He assured the Commission this type of restriction could be done and that building on these lots could be restricted to single family homes.
- The Commission also had a question of whether or not a contract had been executed. The answer is yes, in fact, there was a contract between the City and a contractor for the agreed upon amount for the improvements which includes the utilities on Columbia Street.

Mr. Claus said the contract was signed prior to the June 22 letter from Ahmad Qayoumi. Keith Mays said he was not talking about the letter, he was talking about the public hearing. Chairman Whiteman said the last meeting was June 16 and the Fax is dated June 18. Mr. Claus said he deliberately did not give the Commission the bid openings.

Mr. Hart continued to address the June 22, 1998 letter from Mr. Qayoumi. He noted:

- The letter is really quite amazing. They had come before the Commission on a couple of occasions and they had one meeting with City Staff on how to deal with the City's proposal that Mr. Claus pay for 43% of the improvements to the street (Columbia). Prior to this meeting, the City's Director of Engineering submits a letter to his client in effect telling him if he does not agree to pay the 43% the City is going to go ahead and put in the street improvements without putting in the sanitary sewer and the water line. Then if Mr. Claus wanted to put any building on his property, he would have to pay for the water and sewer line and pay an additional amount of money because at that point he would have to tear up a street that had just been paved. This would be an extraordinary, inefficient use of resources and cost his client additional money.
- If the Commission looks at these facts, they could get a sense why Mr. Hart was truly amazed by the proposal contained in the June 22 letter.
- They are attempting to work out the problems, the Commission is looking at it and sought advice from legal counsel and all of sudden they get waylaid at the last minute by a letter from a City Staff employee.
- He wrote a letter to Mr. Dittman. This led to their proposal to let Mr. Claus put the water and sewer lines in before the City paved the street. Mr. Claus will have to dig into his pocket and put the money out. Let Mr. Claus reserve the right to go after the City for the recovery of this money he has spent. This is the proposal they made to Mr. Dittman and seems to be the only rational way of dealing with this.
- He could not believe the City's Director of Engineering would propose something like this to his client. In essence, he believed it was an attempt to coerce his client to agree to the City's

Staff proposal of his client paying 43%. If you look at from the most optimistic light for the City, it was a poorly drafted letter and a very poorly written letter. It puts his client in a position where he has to go to extraordinary steps that before he develops the property he has to dig into his pocket, shell out \$20,000 to put these two lines in so that they go back to his property. He is willing to do this for the simple reason if he doesn't then he has a threat of additional costs and damages down the road. One thing Mr. Claus felt he needed to do is to attempt to minimize a very bad situation that was forced upon him.

- Mr. Claus has spoken at length of his perception of retaliation and coercion and suffice it to say, if those things do not exist, then the activities and the action of the City over the last couple of weeks strongly makes them suspect at the very, very best.
- He did not know how the Commission should deal with this particular problem at this time. He thought the Commission has been put into a rather difficult situation where he did not know if there was a very good solution.
- On one hand, there is a tendency for the Commission to support Staff recommendations, but if they do that they are really encouraging his client getting gouged. He would hope that the Commission take real hard look at this and whether they want to participate in this type of practice.

Paul Stecher asked Mr. Hart what would be the adequate or appropriate amount of costs for any developer.

Mr. Hart said Chairman Whiteman spoke of a couple of ways; one would be frontage, another would be expected generation of traffic or usage. The City has always required, in imposing exactions or conditions upon a development, to look at the effect of the proposed development. He thought this was required in other cities and that would be a good place to start. In response to Mr. Stecher's question, he thought the 43% was totally inappropriate. Mr. Stecher asked what he thought was appropriate.

Mr. Claus said Mr. Hart could not answer that because he does not know all of the facts. You have an easement given by me. This lady, who I fully intend to cross complain against, the builder bought two lots from me at a specific discount because the City alleged to him the water lines weren't there so I took off \$10,000 to bring in the water lines. So you have a \$15,000 sewer off of me, you got \$10,000 in a water line and then she comes in here and starts squawking about a street that she is getting without paying for and I am sitting here having to pay 43% after already having paid \$25,000 towards that street.

Chairman Whiteman asked Mr. Claus to calm down.

Mr. Claus said when you start asking me what is "fair share", what you are getting down to is they are trying to do an \$80,000 street and gig me for \$60,000 of it when I will have at the most 25% of the use on that street. Now where are you getting off even coming up with a number like that when you asked me for an easement, you got an easement for the sewer line, you damaged the value of the lots, then turned around and said I'm overburdening the water, they tell me I have to put in the new water line. I gave him the money off the discount on the lots for the water line and now I am back paying for the water lines again. Every time this City has asked me for

anything, until recently, they've gotten it. They wanted an easement, I gave them an easement. That was \$25,000 off those lots and I suffered that loss immediately.

Chairman Whiteman tried to interrupt Mr. Claus.

Mr. Claus continued, then I gave them the water line and now you are asking what is your fair share. Mr. Stecher said he was just asking, he understands Mr. Claus has incurred damages and is very upset, all he is saying is how can that be remedied.

Mr. Claus said the City could credit him for the easement and credit him for the water line, you put it together and then he pays his 25% of that bill. That bill would be close to \$90,000, he would pay 25% of it and that is it and the City pays the rest of it. They are not going to do that. We tried to talk about that and the City does not want to talk to those things. The idea has been to find some way to hold up his building and Mr. Bormet said to the Commission, "We don't care what he has done in the past in there that doesn't matter in this hearing. He is going to pay 43% of those costs." He wouldn't even go into your formulas and the Staff, being as good as they are at following orders, that is exactly what they have done.

Mr. Stecher asked Mr. Claus if he was saying he wanted to be credited for the easement, the past water line..... Mr. Claus made another reference to suing someone and letting them go back and litigate against Holbrook. Nobody can talk to me until all of a sudden it gets to court and then all of sudden a whole bunch of people are gong to start talking to me. Every time this City has wanted something I have bent over backwards to give it to them. Then I come to this Staff and because I am objecting to another matter all of sudden I can't move anything in this.

Chairman Whiteman asked the Commission revert, go back and let Mr. Hart conclude his testimony. Mr. Hart said he was done.

Chairman Whiteman said he thought the question Mr. Stecher was asking is probably a question which the Commission is supposed to determine and whether or not the Commission can determine it. He would probably agree that it is not a fair question to say to somebody like Mr. Claus, who has brought up the subjects concerning his dedication of right-of-way and not being given any credit, and now saying he feels somebody is "screwing him over." To ask him what he thinks is his fair share, he has said 25%. The Commission is dealing with 43% and 25%.

Mr. Claus said please don't forget that he has to put in the same water, sewer and roads on his property that these folks are getting for nothing. As a point of information, the garages on the duplex will not come down based on the most recent survey. What will come down is the walnut tree in front of them. It is significant the Commission know this because in effect they are making a nonconforming property, they are leaving everything there to the benefit, and again whether or not I took discounts on this property or not will be a question of fact, but we knew these things if we took discounts, every place to see to it that the infrastructure be in. Now we are right back to the fact that oh no we can't count any of those things because he is opposed to Woodhaven.

Chairman Whiteman asked if there were any further questions or testimony. There being none, Chairman Whiteman closed the public hearing on MLP 98-2 Claus Partition (Columbia Street) for discussion by the Commission.

Chairman Whiteman asked how the Commission could debate this when there has already been a request of the applicant to pay 43% of the improvements. If the Commission comes up with another criteria they recommend to the City Council, if this is the position of the Director of Engineering, somehow a lien would have been made on the property for this amount of money and whatever was litigated wouldn't reflect that because he reads this as the letter was dated June 22, 1998 and Mr. Claus had until June 25, 1998 to tell the City what he was going to do. Now it is July 7, 1998 and the Commission is supposed to be deciding whether they are going to deal with 43% or whether they are going to recommend some other form of participation by the applicant.

Angela Weeks said the letter was dated one week after the last meeting of the Commission.

Chairman Whiteman said the question still remains what does the Commission do about calculating the costs to the applicant for Columbia Street improvements. Mr. Franklin said the June 22 letter assumes the Commission was going to make a decision supporting the 43% when, in fact, that decision has not yet been made.

Sue Engels discussed the history of Columbia Street and its improvements. It is not unusual for the City to get estimates, but it would be fairly unusual to take on the improvement of Columbia Street. There are lots of streets in the City that need work. The reason the City, in addition to the South Sherwood Boulevard estimate, asked for an addendum was to find out what it would cost to improve Columbia Street. There is an existing parcel there. What would happen if Mr. Claus put in for a building permit. He would not be required to improve the street if he were putting in a single family dwelling, but he couldn't build it if he didn't have the water and the sewer, he would have to go get it himself. Chairman Whiteman said let's agree that the sanitary sewer is Mr. Claus's responsibility from the manhole to his property. Ms. Engels said there is an overburdened two inch water line which he cannot hook into. He would have to go to South Sherwood Boulevard and get the water line and bring it to his property. He would have to pay for this up front and would be entitled to a pay back agreement if any one else hooked in to this water line. This is the same thing as a type of zone of benefit. It would be a Council decision to require the other property owners on Columbia to hook into the upgraded water line. If there were some type of deed restriction and there were only three single family houses built on the divided partition, at that point the Code requires some measure of City improvement. The percentage would depend on the circumstances. She addressed the June 22 letter from the Director of Engineering Services. The recommendation of Staff is the "fair share" participation in the improvements. She referenced the memo from Staff included in the packets.

Chairman Whiteman asked if a contract has been let for Columbia Street. Mr. Turner said he did not believe so. Chairman Whiteman said the contract is let, the demand for money has been made and now the Commission is charged with deciding who is going to pay how much.

The Commission discussed at length what action to take regarding this application. They discussed LIDs and grant money. Chairman Whiteman said the question was whether or not the 43% of the cost of the project was fair and reasonable. It was calculated on size of property. There was discussion whether it be calculated on total size of lot size or on number of dwelling units and trips generated.

Keith Mays asked if there were grounds for the Commission not to act on the partition if they don't determine the fair share amount. Scott Franklin was concerned about the contents of the June 22 letter and the dates of the previous public hearings on this application. Paul Stecher said the City should try to get rid of the gravel traps around the City whether or not something is being developed. He did not know who would pay for it, but it would be good practice to clean up the City and fix the streets. "Fair share" comes down to something between the developer, the current property owners and the taxpayers. There needs to be some balance.

During this discussion, Chairman Whiteman had to ask Mr. Claus several times to refrain from speaking.

The Commission agreed they had the following options regarding this application:

- Send it to the City Council without a recommendation. This would avoid the applicant having to pay an appeal fee. The Commission would make findings as to why they were sending it to Council.
- Approve the application and indicate that the "fair share" percent would be the responsibility of the City Council to determine.
- Approve the application with conditions that might be considered by the Staff to be so heavily in favor of the applicant, that the Staff would take it to the City Council. There would be no cost to the applicant for an appeal fee.
- Approve the application with the conditions recommended by Staff. The applicant could appeal this decision to City Council and pay an appeal fee.

Mr. Claus called for a point of order. There is one option the Commission failed to mention. They could simply approve the partition and say there will be no costs and Mr. Bormet has said if this was done, the City would pay for the appeal. So there is a fourth option.

Mr. Franklin said the Commission needs to be real careful that the applicant not having to pay an appeal fee be of primary concern to this body. This should be the same for any applicant. Chairman Whiteman said he agreed.

Scott Franklin moved the Planning Commission send MLP 98-2 Claus Partition (Columbia Street) because of new evidence introduced into the public hearing, primarily the June 22, 1998 letter from the Director of Engineering to Mr. Claus making a request for costs based on 43% of the total cost of the project which is a number the Commission had not considered as being a "fair share" amount. This application is being sent to the City Council without a recommendation. Seconded by Angela Weeks.

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

Susan Claus did not participate or vote on this application.

5B. SUB 98-4/VAR 98-1 Wildlife Haven Preliminary Plat (continued from June 16, 1998)
Chairman Whiteman said the Staff is recommending this application be continued. He called the Commission's attention to the packet Mr. Claus distributed at the meeting tonight. This included the letter dated July 3, 1998 to the Commission from Mr. Claus with attachments. The request for continuance is not totally challenged by the applicant, but he does suggest that the Commission do what they can to ensure Staff does not delay a hearing on this subdivision without good and just cause. Greg Turner said Staff expects to have the necessary information by the next Commission meeting, July 21, 1998.

Mr. Claus asked for a point of information. Absolutely nothing the Commission is stating about the fill, absolutely none of it, has been brought to the applicant's attention. The thing that has been brought to their attention is false on its face. The applicant has not had any chance to have a dialogue with Staff regarding this matter and they refuse to discuss it with the applicant.

Adrian Emery moved the Planning Commission continue SUB 98-4/VAR 98-1 Wildlife Haven Preliminary Plat to the July 21, 1998 Regular Commission meeting. This continuance was at the request of Staff. Seconded by Keith Mays.

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

Susan Claus did not participate or vote on this application.

Chairman Whiteman recessed the meeting for a 10 minute break at 8:50 PM and reconvened the meeting at 9:00 PM and continued with the public hearings.

5C. MLP 98-4 Stocker Partition

Chairman Whiteman called for the Staff Report. Jason Tuck referred the Commission to the Staff Report dated July 7, 1998, a complete copy of which is contained in the Planning Commission's minutes book. He noted:

- The site is located on South Sherwood Boulevard, the second house south of Division Street, Tax Lot 2500, Map 2S 1 32CA.
- The applicant is requesting a minor land partition to divide a 0.33 acre parcel into 2 lots, one 8,736 sf and the other 5,754 sf. Access to the rear parcel will be through an easement driveway.
- The site is zoned Medium Density Residential Low (MDRL) and the partition plat is in conformance with the standards of the zone.
- The applicant has met the required findings for a minor land partition.

In conclusion, Staff recommends approval of MLP 98-4 Stocker Partition with the conditions contained in the Staff Report.

Susan Claus asked for clarification regarding the right-of-way requirements. There were conflicting statements on page 3 and page 5. Mr. Tuck said Condition #3 is basically the boilerplate condition to cover all of the necessary improvements. He did not believe any additional right-of-way would be necessary. The Commission could revise the wording of this condition.

Scott Franklin said Condition #3 also gets into the “fair share” question again.

Chairman Whiteman asked how the City was assessing South Sherwood Boulevard. Mr. Turner said as far as this project South Sherwood Boulevard is definitely part of the capital improvement project. In this particular instance, the capital improvement project will be picking up the majority of the costs.

Susan Claus said the report states the applicant would be required to pay their “fair share” of improvements to South Sherwood Boulevard. Mr. Turner said this is a standard condition which is being included with all minor land partitions.

Chairman Whiteman asked if the City was going to assess the applicant. Mr. Tuck said they would be assessed for certain things such as connecting to sewer and water. This condition is an attempt to cover what may be required.

Chairman Whiteman asked if this condition was new. Mr. Turner said it is the same condition which was applied to the Salisbury partition. Mr. Franklin said the difference is that this is a capital improvement project and not a development project which was done by a private developer.

Chairman Whiteman asked if the City can assess this property for an amount for these improvements, under this capital improvement project, that may not be assessed to other property owners. Mr. Turner responded if their project has an impact or there is some reason to do so, if what they are doing is causing the need for that, yes. As far as South Sherwood Boulevard, that is part of the City’s capital improvement project, there is not a traffic control device needed in this particular case, so it is basically a catch-all condition. The condition does give the authority to assess, even if it is a capital improvement.

Sue Engels said the basic wording of Condition #3 allows, at the partition level, to ensure the public improvements are made, as they are needed. At the building permit level there is not anything you can do to get these improvements. This is the recommended type of catch-all condition to place on partitions.

Chairman Whiteman asked if the Commission approves the application and in the construction of South Sherwood Boulevard, would the services automatically be brought to the property line to be connected to later and assessed at that time rather than having to go back and dig up the street. Mr. Turner said they would have to ask Engineering that question.

Chairman Whiteman asked if the applicant wished to provide testimony.

Michael Stocker, 28600 SW Canyon Creek Road, Wilsonville, Oregon 97070, addressed the Commission. Mr. Stocker noted:

- He wasn't intending to ask any questions because this is a fairly simple request. After hearing Mr. Claus's situation, he did have a couple of questions.
- He had the same question regarding Condition #3. Is the verbiage boilerplate. The concern he has is when ambiguity or certain things could be construed as nebulous or questionable calling this a boilerplate. Typically what happens is it hits the pocketbook of the developer or the contractor unless it is defined.
- Personally, he likes facts and he likes things to be clear, especially when it comes to bidding projects or building things.
- He had a question about the term "fair share". If the application is approved, he would appreciate it. The intent is to either sell the lot to a builder for a single family dwelling or build on it himself. He has built other homes in Sherwood and never had any problems.
- With the partition, there would be an existing house on one lot and he or another builder would build a single family home on the other lot.
- This is the first time he has tried to split a lot and his question is the term "fair share". Can he be assessed for capital improvements or additional costs over and above the capital improvements that are happening on South Sherwood Boulevard.
- In his view, he will be responsible from the stub-out, down the new easement on to the new lot. As a builder, that is all he should be responsible for. He is building and developing a lot, not a street. The taxpayers own the street. This is what he is reading into the discussion.
- He wanted to make sure he was not going to get surprised later on.
- Regarding Chairman Whiteman's question, as a point of information, the City's capital improvement process has already come up to his property, if not beyond. It has been dug up.
- He asked if the sewer and water had passed his property, or is it still to be stubbed up.
- He wanted to know what the City's plan was and that it can't be left up in the air. He does not have any problem with "fair share". He wanted to know what he was fair sharing and what he was going to have to pay.
- He asked about the Engineering Department's memo, "It is possible based on the available funding, that the utilities such as telephone, cable and electric will be installed underground. The applicant might be required to place the underground conduits and wiring for the proposed lot." He asked if these underground utilities were planned at this time.
- He is assuming the electrical is coming overhead and probably stubbed off on a pole. This would be a minimal fee. It would be the same with cable. If they are going underground, he needs to bury the electrical, telephone and cable and this would be a whole new expense to him that he was not aware of at this point. This is his second question.
- What is he going to be assessed later on.

Sue Engels said typically some of Mr. Stocker's questions would not be answered at this level. They would be dealt with when the Engineering Department reviews the partition plans. The Commission said the difference is that a contract has already been let for the South Sherwood

Boulevard capital improvement project. Ms. Engels suggested the application could be continued until the Engineering Department resolved some of these questions.

Mr. Stocker said he was not asking for dollar amounts at this time. He wanted to know if the sewer and water were in there now. How far has the pipe been run. He is responsible to hook up to the sewer and water, all the way down the existing driveway to the street. He would be glad to do it, but frankly he would have to dig up the brand new asphalt to plug in to the sewer and water. He is aware of this. He just wants some kind of assurance that all of a sudden he is not going to be helping pay a capital improvement project that is supposed to be at no cost to the property owners on that street.

Ms. Engels said she was not sure there would be any costs. An existing parcel is entitled to every consideration that every other existing parcel is entitled to. But what this gentleman wants is to create an additional parcel. Ms. Claus said that the zoning allows. Ms. Engels said an additional parcel that potentially has an additional impact. That puts it in a slightly different category.

Ms. Claus said part of the problem is there is a capital improvement project. The applicant has a partition in front of the Commission. What is the City going to do and for how long is the City going to say we did this capital improvement project on South Sherwood Boulevard, anybody along the street that puts any kind of density on this allowed by the zone, the City is going to back retroactively and assess them. It is so complicated and she did not think it was accomplishing whatever the "fair share" would be. The Commission needs to know how far this capital improvement amortizes out to anybody else on South Sherwood Boulevard that wants to submit some kind of land use application.

Mr. Stocker said there should be some kind of fee schedule in place for this type of situation.

In response to the Commission's question, Ms. Engels said the language for Condition #3 was provided by the City Attorney as a boilerplate type of language.

Chairman Whiteman asked Mr. Stocker if there was any kind of statement he would want included in the record in regard to the engineering review. Mr. Stocker said as a contractor he is well aware of his responsibilities to hook up to the public utilities, including sewer, water, electrical and cable. He does not have any problem with that. He does not want to be responsible for any kind of portion of a capital development of that new line which is running down that street now for any reason. It is really simple, if the Commission approves this partition and the sewer does not come down for a week, it would give him time to catch the contractor and get a couple of stubs to his driveway. One of the stubs would be at his expense and he would not have to go out later and dig up a brand new street.

The Commission advised Mr. Stocker that with the contract being let for the South Sherwood Boulevard capital improvement project, the utilities are going underground. Mr. Stocker said he would not ask the Commission to continue the application while he researched what the undergrounding costs would be to cost him.

Mr. Stocker thanked Jason Tuck for all of his assistance in processing this land use application. It has been a pleasure working with the Planning Staff.

Chairman Whiteman asked if there was any further testimony, proponent or opponent.

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

- The City has a signed contract on Sherwood Boulevard. The Commission has an exact analogous situation to what Mr. Tuck did with him on Columbia Street.
- You have him creating a lot and entering on Columbia. The way Mr. Tuck figures this is he takes the percentage of the land, 13,000 sf and he goes down the capital improvement, he takes the percentage and then he takes the percentage of the budget. You have it laid out right in front of you. God Bless Mr. Qayoumi for this.
- We now know how Mr. Tuck does it. He has to take the 13,000 sf of these two lots and he then has to take the entire frontage on Columbia and Sherwood Boulevard. He then takes the percentage distances of that lot and (inaudible). Let's assume it is 300,000 sf or 6 acres, you owe \$50,000.

Chairman Whiteman asked Mr. Claus what he was referring to.

Mr. Claus said that is what they did on his application. You took my application and you said I had 43% of the land on Columbia, you didn't say I had 43% on Sherwood Boulevard. So what you need to do in this you now have a formula and if you do not apply that formula tonight you are clearly using a discriminatory method for assessing costs. He is trying to put this where there is a capital improvement. Remember he has frontage and Mr. Claus does not. Mr. Claus said he has no frontage on Columbia and he will still have to put in all of his sewer, water and streets. He tried to warn the Commission this was where their formula was taking them. With his three lots he still has to put in his street frontage, water, sewer and storm system on his lots. But he has to pay for the other street with nine living units, seven lots fronting on it, even though he has not frontage.

Chairman Whiteman said this has not been determined yet.

Mr. Claus said it has because the "fair share", Mr. Tuck has had a meeting and formula for fair share as a percentage of the land you own and he said Mr. Dittman has agreed with it. What the Commission has got is a situation that either you are backing away from that or you must ask the question how many lots, by square footage, front on Sherwood Boulevard, what percentage does he own and what is his fair share. You now have the formula. Is the Commission backing away from this formula or is the Commission telling him that Mr. Tuck simply didn't do his work. The second question he has is the church, in order to get a building permit, had to give up right-of-way. He has already given up right-of-way. Any analogies that Ms. Engels makes won't hold.

Chairman Whiteman said now Mr. Claus was out of order because the Commission has moved the previous application to the City Council. Mr. Claus is referring to his situation on Columbia Street.

Mr. Claus said he was referring to the church. The church.....Chairman Whiteman said Mr. Claus was referring to his property on Columbia Street. Mr. Claus said the church gave up right-of-way, and the Commission needs to know this because the issue is “fair share” and how you are arriving at it, due process of law and equal treatment. Chairman Whiteman said with regard to his properties. Mr. Claus said the Commission has an assessment here of fair share and the same questions that were leveled at him and the same substantial facts to make the judgment are not being made here by the same man. The way he arrives at fair share, absence of talking about Columbia, is you take the percentage of the property square footage on that improvement, you then take the capital improvement, divide that percentage against the total percentage and assess that. This is a \$1 million improvement. It sounds like the applicant has 5%, he does not know and the Commission does not know that number. If the Commission says they reject his fair share formula he is delighted. If the Commission says he didn't do his work and we don't know what his fair share formula is then you need to continue it and have him go back and get the percentages that this lot makes up of the frontage on Sherwood Boulevard and he needs to tell you because that is how Ahmad Qayoumi assesses these.

Chairman Whiteman said one of the questions which is going to be answered by the Council is whether or not Columbia Street is part of the capital improvement project. The applicant has said he is going to hook up to the utilities. Mr. Claus said he is paying 43% of all those costs, including the street. He is paying 100% of the sewer and water and he is paying 43% of the sidewalks, curbs and gutters. Chairman Whiteman said this has not been determined and the fair share formula has not been determined.

Mr. Claus said if the Commission okays that and if the Council comes down with their recommendation against him, you have a clear cut case of discrimination. He does not really care because it is interesting that this applicant is a contractor and it is interesting that he is not.

The Commission said if they rule in favor of this application, it will rule in favor of Mr. Claus later. Mr. Claus said that is right and it needs to be made part of the record and it needs to be clear that is what his issue is. You have an identical issue of a capital improvement project, you have a piece of ground that is benefiting from it, he is parceling from it and the fair share, you have never been offered any of things such as how much of his land and the percentage. There is another application with the same question tonight.

Mr. Franklin said the difference is that Staff has indicated to the Commission, both verbally and in writing, that Columbia is not part of the capital improvement project for South Sherwood Boulevard. Mr. Claus said if this is false, you have a capital improvement project and it benefits any property, why does it make any difference where it is any place in the City. He has been assessed as part of the capital improvement project because he had 43% of the land over 60% of the costs. He has to pay other costs that they are not admitting to and then if he doesn't do that he gets a \$29,000 fine. He's got a capital improvement project and whether you want to call it

that or not, there is water and there is sewer. The City is arguing with PGE right now because PGE won't let them underground although the City has contracted with C&M Construction to underground. His point is he is using a different formula. It is a capital improvement project on Columbia and a capital improvement project on Sherwood Boulevard.

Chairman Whiteman said the question they have asked Council is how we assess it. Mr. Claus's point is well taken and it is on the record.

Chairman Whiteman asked if there was anyone else who wished to testify. There being none, Chairman Whiteman closed the public hearing on MLP 98-4 Stocker Partition for discussion by the Commission.

Chairman Whiteman moved, based on the Staff Report and public testimony, the Commission amend Condition #3 as follows:

“The owner shall be responsible for their fair share of all costs associated with the installation of all required public improvements outside the Capital Improvement Project currently taking place and planned on South Sherwood Boulevard. The installation of said facilities shall be made to the City standards as those standards exist at the time the property is actually being developed.”

Seconded by Keith Mays.

Vote for Passage of Motion: 5-Yes, 0-No, 2-Abstain (Claus, Stecher)

Mr. Franklin asked if the Commission wanted to do anything about the May 14 memo from Engineering Staff, in particular #6 referencing the undergrounding. Chairman Whiteman said the applicant stated he could work with the Engineering Staff to come to a conclusion on any ambiguity. Mr. Franklin said one thing to consider is whether the telephone ducts are a part of the capital improvement project. He wanted to bring up this point. Mr. Stecher said whatever decision the Commission makes with this application it should be consistent with past and future decisions. Mr. Franklin said the difference is every other application that comes through may not have a capital improvement project going through.

Chairman Whiteman moved based findings of fact, agency comments, public testimony and Staff recommendation, the Planning Commission approve with the amended conditions, MLP 98-4 Stocker Partition. Seconded by Adrian Emery.

Vote for Passage of Motion: 5-Yes, 0-No, 2-Abstain (Claus, Stecher)

5D. MLP 98-5 Seeley Partition

Chairman Whiteman called for the Staff Report. Jason Tuck referred the Commission to the Staff Report dated July 7, 1998, a complete copy of which is contained in the Planning Commission's minutes book. He noted:

- The property is located within the Arbor Lane development, 16425 SW Brookman Road, Lot 31, Tax Lot 1000, Map 2S 1 31A. It has a Brookman Road address because that is where the access is located at the southeast corner.
- The applicant is requesting a minor land partition to divide a 0.96 acre parcel into 2 lots, one being 5,903 sf and the other being 36,001 sf. Parcel 1 will continue to access Brookman Road and Parcel 2 will access Shadygrove Drive within the Arbor Lane development.
- The site contains one house and three accessory structures.
- The site is zoned Low Density Residential (LDR) and is part of the Arbor Lane PUD. There were some questions about whether the proposed lot sizes were in accordance with the zoning. The minimum lot sizes in Arbor Lane varied because it was a PUD. There are some lots which are less than 5,000 sf. The proposed lots are larger than those and meets the zoning requirements.
- The required findings for a minor land partition have been met.

In conclusion, Staff recommends approval of MLP 98-5 Seeley Partition with the conditions contained in the Staff Report.

Susan Claus asked for clarification regarding the lot size. This is a lot inside of a PUD. The Code makes reference to making changes in the PUD, if you increase the density at all, and adding another lot would do this, you have another series of Code requirements that are triggered because you are in a PUD. The minimum lot size of the LDR zone is 7,000 sf and this partition, as proposed, would have a lot less than 6,000 sf. They are getting the benefit of the PUD by giving them a lot size that is less than underlying zoning, but the Commission does not have the PUD review and public hearing that the Code calls for when you increase densities. There is PUD Code language which should have been a part of the Staff Report. She remembered when the Arbor Lane PUD was passed, there was a condition which allowed some partitioning, but the Staff Report does not address this. This larger parcel would also have the capability of further partitioning.

Greg Turner left the meeting to get the Arbor Lane PUD planning file.

Chairman Whiteman recessed the public hearing on MLP 98-5 Seeley Partition and moved to the next agenda item.

5E. CUP 98-3/SP 98-9 Archer Glen Elementary School Modular Classroom (1) Building

Chairman Whiteman called for the Staff Report. Jason Tuck referred the Commission to the Staff Report dated July 7, 1998, a complete copy of which is contained in the Planning Commission's minutes book. He noted:

- On May 6, 1997, the Planning Commission approved two modular classroom units for the Archer Glen School.
- The site is located on the north side of Sunset Boulevard, Tax Lot 1300, Map 2S 1 32CB. The modular unit proposed location is behind or north of the school approximately 235 feet from the north property line.

- The applicant is requesting a conditional use and site plan approval to place one portable classroom structure at Archer Glen. The structure contains two classrooms with a maximum capacity of 30 students per classroom or a total of 60 students.
- The units are portable and can be relocated. The District anticipates the units will remain at the proposed location indefinitely.
- The site is in the Institutional Public (IP) zone and the proposed modular classrooms require a conditional use within the zoning designation.
- The required findings for a conditional use and site plan have been met by the applicant.

In conclusion, Staff recommends approval of CUP 98-3/SP 98-9 Archer Glen Modular Classroom (1).

Angela Weeks asked if these conditions were similar to those in the previous application. Mr. Tuck said Condition 2G is added, "Relocate existing catch basin to the east and regrade asphalt for property drainage."

Chairman Whiteman asked if the applicant wished to provide testimony.

Pete Miller, Principal, Archer Glen Elementary School, addressed the Commission. Mr. Miller noted:

- The District has no problems with the conditions contained in the Staff Report.
- In response to Ms. Claus's question, parking problems only occur at major events. They have not heard any concerns from the Gregory Park residents.
- They have crossing guards on Sunset Boulevard and South Sherwood Boulevard during the school year.
- The population of Archer Glen is estimated to be 730-740 students in the Fall of 1998. The other grade school will have approximately 600 students.
- There is room to add additional modular classrooms at Archer Glen, to the east. However, each time they do this they cut out real valuable playground space.
- They will be hiring two new teachers to fill these classrooms. They hired 4 new teachers with the previous two modular classrooms.

Ms. Claus asked what the parking requirements are for this site. There was discussion that they are adding classrooms, but not extra parking. Mr. Tuck said the requirement is two per teacher.

Mr. Miller said they have about 33 teachers now. Chairman Whiteman said the Staff Report states the school parking lot is designed to accommodate 96 automobiles.

Mr. Miller said he is taking the place of the School District's Maintenance Supervisor, Lloyd Whelchel, who is on vacation. Mr. Miller reviewed the conditions and said they had no problems with them.

Chairman Whiteman asked if there was anyone who wished to testify, proponent or opponent.

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

- These people have frontage on South Sherwood Boulevard. Remember how they got their District Office, all of this was done with a slight of hand. Carole Connell gave them the permit saying that it was part of their project. If this was part of the project, what Carole did not realize was now you have a parking density problem. If that is part of it, those people in the building have to have parking at the school facility. You can't separate them. They don't meet the parking requirements any more.
- If they are doing a (inaudible) you've got them in a capital improvement. He disagrees entirely with the implications Mr. Franklin made that a capital improvement project has to be endorsed by the City. Obviously, any PUD is a capital improvement project. Therefore, if you try to do anything in any change of the PUD you've got a fair share problem because it is a defined capital improvement.
- These people are trying to increase the density, they are trying load up on Sherwood Boulevard and they have frontage on Sherwood Boulevard. This has not been brought out.
- This may have nothing to do with this because apparently what you are saying is since you have an existing lot and you build on it, you don't have any costs. In fair share we have really got to understand what you mean. What you mean is if you have an existing lot and even if all of the improvements put in benefit you, you don't have to pay any part of the costs. The only time you try to get anyone to pay part of the costs is if you in some way have overburdened the existing utilities.
- On Columbia they knew they were overburdening the utilities when they let the last of the houses be built. So the City claiming this innocent thing, we didn't know what we were doing, is not true. They knew they were exceeding the capacity.
- Those facts come out here. We have a parking problem because they have combined now. They don't have the original configuration and the District went along with them. We now find out they are on Sherwood Boulevard and you are not assessing any costs to them for capital improvements. So we know capital improvements are not assessed if they are on existing buildings. You can expand as much as you want in the capital improvement area, what you can't do is parcel the ground that may be built on some time in the future.
- I hope you can see some of the subtleties become so blurred that it takes someone with Ms. Engels capacity to explain to us what they mean.
- You've got parking, you've got stop lights, you've got students, you've got frontage on Sherwood Boulevard, you've got a parking problem, you've got a density problem, you've got a capital improvement problem and none of these things are being discussed. Not one of them.
- In light of that, you might go back and say why aren't you counting your parking in District because you came in here and got the zoning, but yet you are adding six. I'm not sure they have 96 spaces left. It depends on how they define their personnel in the office. You've got all kinds of problems you are simply going to have in letting these people generate more traffic in an area that I don't think is zoned to take.
- He wanted to preserve this because he wanted to take this up to City Council because for some time he has wanted to take that school layout to LUBA. Frankly, what they claimed

they were building, the model school they were building, they did not do any of the accessory requirements of that school. Now we are getting much more density.

- And no one else would be allowed to do this without paying their “fair share”.

Chairman Whiteman asked if there was any further testimony. There being none, Chairman Whiteman closed the public hearing on SP 98-9/CUP 98-3 Archer Glen Modular Classroom Building (1).

Mr. Franklin said there have been some comments with regard to parking. He asked what the right number was. Mr. Tuck said it sounds like the applicant was to combine the District parking off of South Sherwood Boulevard with the School parking. There are two separate tax lots. The application (CUP 98-3/SP 98-9) has no frontage on South Sherwood Boulevard. Chairman Whiteman said Mr. Claus was indicating when it was originally developed, the Planning Department, at that time, allowed all of it to be considered one project.

Mr. Tuck said the zoning for the District Office is Medium Density Residential High (MDRH). The parcel being discussed for the modular classroom is zoned Institutional Public (IP).

Scott Franklin moved based on the Staff report and recommendations presented, the Planning Commission approve SP 98-9/CUP 98-3 Archer Glen Modular Classroom(1). Seconded by Adrian Emery.

Vote for Passage of Motion: 6-Yes, 0-No, 1-Abstain (Claus)

5. MLP 98-5 Seeley Partition (resumption of public hearing)

Chairman Whiteman moved back to the application, noting that the public hearing remained open. There was a question in regard to the conditions of the original PUD of which this property is a part.

Mr. Turner read the condition of the original PUD for Arbor Lane, Condition #13, “Lot 31 and Tax Lot 800 may be divided in the future in accordance within the underlying zoning standards. The new building lots created must conform to and be a part of the underlying homeowners association.”

Susan Claus said the underlying lot standards would have to be at least 7,000 sf. The discrepancy is that the proposed minor partition size is less than what the Low Density Residential (LDR) zone is. Mr. Turner said based on this underlying zoning the parcels would need to be 7,000 sf.

Chairman Whiteman asked if this would change the Staff’s recommendation. Mr. Turner said based upon this condition, Staff would have to recommend denial of the application.

Ms. Claus said the Commission did not need to deny it. Mr. Turner said the applicant would need to ask for a variance if he wished to ask for what is being presented now, or he could change the configuration of the lots to meet the underlying zoning requirements of 7,000 sf.

Ms. Claus said the applicant has been working with the Staff. If the Commission denies this application, he would have to do a new application. Mr. Turner said it would be better to continue this application to work out the zoning requirements. Ms. Claus asked that the original conditions of approval for the PUD be included with the application in the next packet.

Chairman Whiteman addressed Mr. John Seeley, the applicant. He explained what the Commission was considering. The underlying zone is LDR which has a minimum lot size of 7,000 sf. The application proposes a lot of 5,900 sf. The Commission is recommending this application be continued to the next meeting to allow Staff to meet with him to resolve this issue.

Mr. Seeley said on that point, the two lots adjacent to this partition are smaller by far and Mr. Tuck knows this. They are just taking a part of Lot 31 which is 5,903 sf. Ms. Claus explained that the conditions of approval for the PUD included a specific condition which states you have to look at the underlying zoning for any partitioning. This is what the written record is and there is a procedure if Mr. Seeley wants to have a lot smaller than the 7,000 sf minimum lot size. A variance request would come before the Commission and this would be a different procedure with Staff. Chairman Whiteman said the information the Commission and the applicant have is incomplete. After reviewing the original PUD conditions, there was a specific condition which related to the division of land Mr. Seeley is proposing to partition.

Mr. Seeley said he had spent quite a bit of money for this partition and an additional expense, he would not be too happy with. He and Jason have talked about this.

Ms. Claus said along those lines, the fees are being challenged now in court. There are lot of people that have the same feeling about how high the fees are. But the Commission is talking about instead of denying the application, have Staff work with Mr. Seeley so he could keep this application going and not have any additional charges. Staff will contact Mr. Seeley. Mr. Seeley said he knows Mr. Tuck's telephone number.

Mr. Franklin said the May 14 recommendations from Engineering include comments regarding easements for sanitary sewer, storm and water. In looking at the maps provided, he was curious as to why they needed an easement for the lateral stubs that are already there. Mr. Tuck said the proposed lot goes across where those stubs are located. The map Mr. Franklin was referring to looked like it was from the as-builts. He identified on the map where the stubs are located.

Susan Claus moved the Planning Commission continue MLP 98-5 Seeley Partition to the next Commission meeting, July 21, 1998. Seconded by Bill Whiteman.

Vote for Passage of Motion: 7-Yes, 0-No, 0-Abstain

6. Community Comments

Chairman Whiteman asked if there were any community comments.

Robert James Claus, 22211 SW Pacific Highway, Sherwood, Oregon 97140, addressed the Commission. He wanted to bring something to the Commissioner's attention. They are now getting a set of rules that are different depending on who is involved. We now know, apparently, home phone numbers are being given out. He was quite surprised to hear Mr. Seeley say that.

The Commission corrected Mr. Claus that Mr. Seeley said he knows Jason's number at City Hall.

Mr. Claus said the Commission has heard testimony about extraordinary treatment for people and applications for partition. His experience has been quite the opposite. He wants to make the record because the Commission has heard testimony about different treatment. He cannot get return phone calls, he cannot find out statements, slander of title occurs on his property. We try to point out they have a mix up and we can't get a return phone call. He alleged that public employee people supposedly have things. I have been labeled as a developer, I've been labeled as a contractor, I've been labeled as everything other than somebody attempting to get a parceling. The Commission has had confusing misrepresentation. Tonight the Commission has been told there is no signed contract on Columbia Street. They have been specifically told that by Ms. Engels. You have a signed contract, including the water and the sewer line. This is in the process of being attempted to be deleted now. There is information the Commission should have had such as contract prices, bids, and materials were not presented where it was convenient not to present them. This leads to two things, substantial mistakes in fact on the Commission's decision and it may lead to a biased decision.

Mr. Claus said tonight the Commission has had more than ample examples of this. They don't know the percentage in a capital improvement that parcel is. When you ask the question, you can't get an answer. Yet that is exactly the basis the fair share was based on his property. If those numbers are going to be given one place, they've got to be given every place. And if they are not going to do it, then the Commission better realize the reason this function is going out of their hands. He would point out to all of the Commission, basically within the 21 day appeal period, the Commission will no longer have this function in front of them. The Council's confidence they have placed in the Commission has been, 3 acres are out, parceling is out, and an applicant will deal with the Staff. He hopes the Commission knows why people are getting concerned with this. He did not think any of the Commissioners were aware of this until now.

Ms. Weeks said these would come before the Commission on a Consent Agenda. Mr. Claus asked if the consent agenda was a public hearing. Ms. Weeks said no, but if there is something the Commission does not approve of, they can send it back to the City Council for a public hearing. Mr. Claus said the reviewer is the City Council, not the Commission. The Commission has lost the public hearing function for these particular land use applications.

Mr. Claus said you can't get a question answered if they don't want to answer it. They simply are now in a position where the majority of these things they are going to handle. Ms. Weeks said she disagreed with Mr. Claus. A lot of times he has valid reasons, but he complicates the issues.

Mr. Claus discussed how these applications would be heard at City Council as well as the fee schedule of the City and other jurisdictions.

Chairman Whiteman said Mr. Claus's point about the Commission being out of the loop in some of these things is well taken. Also, Mr. Claus has stated many of his concerns and how it relates to him in the two issues which are before them. Mr. Claus explained what started the last round of incidents. He discussed his appeal to LUBA, the Salisbury property, and Meinecke Road/Sunset connection. There has been substantial misrepresentation of fact. We now have a situation where in the future our parceling goes to the very group that has got this board's authority taken away from them. That is a remarkable political act. There is only one way that can be corrected and they know it. They can do certain things legally, but until they get a City Council that stops this and reigns this in they are on a never-ending, downhill spiral, if they want to do it, and you challenge it, be prepared to be hit a half a dozen other places, be prepared to be singled out, be prepared to be told it doesn't matter what you did in the past, we're going to get you, be prepared for rude treatment, be prepared for meetings broken, be prepared for all kinds of things to happen. He did not think the Commission was doing a bad job, in fact, the Commission was doing too good of a job. And this is the reason they are not doing it anymore.

7. Other Business

Mr. Turner announced that anyone interested in attending the planner's training on September 12, 1998, to let Staff (Roxanne) know. The flyer was provided to the Commission.

Mr. Turner said he had a copy of the streamlining process for distribution to the Commission. The ordinance will become effective for applications presented after July 23, 1998.

Ms. Engels said Staff is continuing their review of the TSP draft document. Staff needs to work with the consultant prior to making a presentation to the Commission. Public information sessions are also planned.

There being no further business to discuss, the Commission meeting was adjourned at 10:40 PM.

Respectfully submitted,

Planning Department