



**City of Sherwood
PLANNING COMMISSION
Masonic Hall, 60 NW Washington Street
Tuesday, September 1, 1998
7:00 PM**

A G E N D A

1. **Call to Order/Roll Call**
2. **Approval of Minutes - August 4 and 18, 1998**
3. **Agenda Review**
4. **Public Hearings:** (Hearing Disclosure Statement. Also, declare conflict of interest, ex-parte contact, or personal bias) **Public Hearings** before the City Council and other Boards and Commissions shall follow the following procedure (Resolution 98-743, adopted June 9, 1998):
 - Staff Report--15 minutes
 - Applicant--30 minutes(to be split, at the discretion of the applicant, between presentation and rebuttal.)
 - Proponents—5 minutes each (applicants may not also speak as proponents.)
 - Opponents—5 minutes each
 - Rebuttal—Balance of applicant time(see above)
 - Close Public Hearing
 - Staff Final Comments—15 minutes
 - Questions of Staff/Discussion by Body—no limit
 - Decision(Note: Written comments are encouraged, and may be submitted prior to the hearing, at the hearing, or when the record is left open, after the hearing for a limited time. There is no limit to the length of written comment that may be submitted)
 - A. **SUB 98-4/VAR 98-1 Wildlife Haven Preliminary Plat:** (continued from August 18, 1998, **public hearing & record closed**) a request by Robert J. Claus for preliminary plat approval of a 20-lot single family subdivision located at 585 West Villa Road. 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.
5. **Community Comments:** are limited to items NOT on the printed agenda under Public Hearings.
6. **Other Business**
7. **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
September 1, 1998

1. Call to Order/Roll Call

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

Commission Members present:

Susan Claus (7:10 PM)
Scott Franklin
Keith Mays
Paul Stecher
Angela Weeks
Bill Whiteman

Staff:

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

Commission Members absent:

Adrian Emery

Susan Claus participated as a member of the audience during the Commission deliberations on SUB 98-4/VAR 98-1 Wildlife Haven Preliminary Plat.

2. Minutes of August 4 and August 18, 1998

Chairman Whiteman asked if there were any additions or corrections to the minutes of August 4, 1998 and August 18, 1998. There were no comments.

Scott Franklin moved the Planning Commission accept the August 4, 1998 Planning Commission meeting minutes as presented. Seconded by Angela Weeks.

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

Keith Mays moved the Planning Commission accept the August 18, 1998 Planning Commission meeting minutes as presented. Seconded by Scott Franklin.

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

3. Agenda Review

Chairman Whiteman asked if Staff wished to update the Commission regarding the Ice Hus application. Greg Turner reported that the public hearing notice which was mailed to adjoining property owners had the incorrect location for the public hearing held on August 18, 1998. Staff and the applicant met with the adjoining property owners in an informal meeting to discuss concerns with this application. Chairman Whiteman also attended this meeting. Following this meeting, and upon the advice of the City Attorney, it was decided to hold a second public hearing

for the Ice Hus application. This hearing has been noticed, published, and scheduled for the September 15, 1998 Commission meeting.

There were no further comments.

4. Public Hearings

The public hearing and record had been closed on Agenda Item 4A SUB 98-4/VAR 98-1 Wildlife Haven Preliminary Plat.

4A. SUB 98-4/VAR 98-1 Wildlife Haven Preliminary Plat (cont'd from August 18, 1998)

Chairman Whiteman referred the Commission to the following information which had been received for the record following the August 18, 1998 Commission meeting:

- August 25, 1998 letter from the applicant regarding the proposed conditions of approval for the railroad track storm pipe.
- August 25, 1998 letter from the applicant's attorney, Jerry Hart, regarding the drain pipe which crosses Lots 22 and 23.
- August 25, 1998 letter signed by Jon Bormet and Derryck Dittman regarding the pipe that goes under Lots 22 and 23 and the size of the pipe under the proposed street.
- August 25, 1998 memo from the Planning Department addressing the two key issues relative to the proposed subdivision.
- September 1, 1998 letter from Jerry Hart responding to materials submitted to the Commission on August 25, 1998 by the City Manager, City Attorney and Planning Department. This letter included a proposed condition relative to this matter.
- August 26, 1998 letter from Derryck Dittman regarding Mr. Hart's August 25, 1998 letter regarding the storm drainage across Lots 22 and 23. This letter included a proposed condition relative to this matter.

Chairman Whiteman asked if the Commission agreed there still remained three questions on this application, summarized as follows:

- Condition #2I regarding the existing storm line that runs under the railroad tracks and drains the area to the east of the subject site. The applicant is requesting that they not have to do anything with this line and that this condition be removed. The applicant states they have a 21-inch line which apparently met the desires of the City Staff at the time it was placed on the subject property in approximately 1995.
- Condition #2G regarding the existing storm line which runs diagonally through Lots 22 and 23. The applicant's attorney is proposing new verbiage for this condition as contained in the September 1, 1998 letter from Mr. Hart.
- The third issue involves placing a cap on the costs to the applicant for Railroad Street improvements, the portion which the applicant has been asked to construct and apparently has agreed to construct. The applicant has asked that there be a cap placed on these costs of \$60,000.

In response to Chairman Whiteman's question, Staff said they were not aware of any other issues regarding this application. The Commission agreed to continue their review and deliberation of these issues.

Angela Weeks asked if the Commission needed to discuss Condition #10. Mr. Turner advised that at the previous Commission meeting, the consensus of the Commission was that this setback be just for the garages and not the whole house. The condition in the Staff Report was the one agreed to by the Commission.

The Commission discussed Condition #2G regarding the existing storm line that runs diagonally through Lots 22 and 23. In response to Chairman Whiteman's question, Mr. Turner said Staff had nothing to add to the material received by the Commission.

Susan Claus raised a point of clarification regarding the September 1 letter from Mr. Hart and Lots 22 and 23. She thought there was some confusion on the last page of the letter. She said they would not build on Lot 22 and Lot 23 has an existing house on it. They were talking about it not being expanded or anything. After looking at the map, she said Mr. Hart's letter was correct after all.

Chairman Whiteman read the suggested wording from the applicant and the City for Condition #2G:

- Condition suggested by applicant's attorney, Mr. Hart, "As a condition of approval, applicants will not build upon Lot 22 or improve Lot 23 of the Wildlife Haven Subdivision until such time as the legality of the storm water drainpipe now existing upon subject property is determined. Therefore, the applicants and the City each mutually agree to resolve the issue of the legality of the storm water drain and each reserves any rights that they might have under law to establish the legality, or illegality of the storm water drainpipe as it now exists upon the subject property."
- Condition suggested by the City Attorney, "As a condition of preliminary plat approval, applicants will not build upon Lot 22 or Lot 23 of Wildlife Haven as shown on the preliminary plat, until such time as either an easement is established of record satisfactory to the City for the existing storm drainage facilities located on the property, which currently and for many years has received storm drainage from the Old Town Area of the City in its existing location, or the applicant has provided to the public and the City alternate facilities in an alternate location, together with necessary easements for said alternate facilities, all satisfactory to the City. These facilities and easements shall be shown on the development plans and on the final plat before its approval."

Chairman Whiteman said the City Attorney's wording expands upon the condition presented by Staff.

Susan Claus raised a point of clarification that the City Manager's suggested wording puts the onus on the applicant to either move the facilities or grant the easement. This is what

the language from the City Attorney is requesting, that it become the applicant's responsibility to solve it at the applicant's cost.

Chairman Whiteman said he did not believe the Commission read the City Attorney suggested condition as anything other than that. The applicant's suggested condition states they would not build upon it and they would have the opportunity to negotiate or litigate to resolve the issue as far as the legality of the current storm water drain.

Paul Stecher said if the condition drafted by the City Attorney implies it is the property owner's responsibility, he does not agree with this. As he stated a couple of meetings ago, the property owners have property rights and if someone has rightfully or wrongfully stepped onto their property, it should not be the property owner's responsibility to, whoever owns the drain pipe should have the responsibility to defend their drain pipe. The property owners do not receive a benefit from this drain pipe. Keith Mays asked if the benefit would be that the property owners do not have water running across their property. Angela Weeks said the applicant cannot shut this line down. Mr. Stecher said the Commission does not know the history and whether there was a natural passage there prior to the line being installed. If there is an illegal pipe on this property, the benefit of the doubt should go to the property owner.

Scott Franklin asked which part of the City Attorney's condition puts the onus on the applicant. Mr. Stecher said they just heard the applicant say this is what was said. Chairman Whiteman said the condition says the applicant will not build upon the lots until such a time as either an easement is established of record satisfactory to the City for the existing storm drainage facility located on the property or the applicant has provided to the public and the City alternate facilities in an alternate location together with necessary easements for alternate facilities.

Mr. Stecher said it sounds like extortion, either give us an easement or forget it. He said the condition suggested by the applicant's attorney would give equal rights to both parties, it is more concise, straightforward and allows both parties to serve their cases.

Paul Stecher moved the Planning Commission replace the wording for Condition #2G as proposed by the applicant's attorney. Seconded by Angela Weeks.

Susan Claus asked for a point of clarification in that the condition should state, "further improve", because there is already a house on Lot 23. The applicant would not do anything else to the property or further improve Lot 23.

Chairman Whiteman said Condition #2G should read, "As a condition of approval, applicants will not build upon Lot 22 or further improve Lot 23 of the Wildlife Haven Subdivision until such time as the legality of the storm water drainpipe now existing upon subject property is determined. Therefore, the applicants and the City each mutually agree to resolve the issue of the legality of the storm water drain and each reserves any rights that they might have under law to establish the legality, or illegality of the storm water drainpipe as it now exists upon the subject property."

Mr. Stecher clarified that the definition of “further improve” does not mean the applicant would not have to maintain the property and existing dwelling.

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

The Commission discussed Condition #2I regarding the storm line which runs under the railroad tracks and drains the area to the east of the subject site. Chairman Whiteman read the condition from the Staff Report, “An existing storm line runs under the railroad tracks and drains the area to the east of the subject site. The line was previously extended by the property owner without permits and is substandard. The pipe shall be replaced by the developer in coordination with the City’s work related to the regional storm facility.”

Chairman Whiteman referenced the August 25 memo from City Staff, last paragraph, first page, which read in part, “The City does not know whether the work has been done to City standards. The submitted plans for Wildlife Haven indicate that the culvert is 8”...” Mr. Turner said 8 inches was indicated on the plans submitted by the applicant. The applicant has stated the pipe is 21 inches. Chairman Whiteman read the rest of the paragraph and the recommended wording for Condition #2I. He asked Staff why it was such an issue with Staff that the line was extended without permits and was substandard. Why is it not enough just to say that the pipe is not adequate to serve the needs of this particular project.

Mr. Turner said the issue is the pipe was installed, it is 21 inches and is supposed to be 24 inches. Sue Engels said the size of the pipe is not the only issue. The City does not know anything about the fill, quality of the pipe, or adequacy of the connection. Chairman Whiteman said the City is asking that the pipe be upgraded to 24 inches. Ms. Engels said presumably a project engineering inspection would allow the City to know the size of the pipe and what type of fill was used.

Chairman Whiteman noted the City Manager said boring would be the appropriate method of putting this line in. Mr. Whiteman said if the line is substandard boring would not help. Mr. Turner said the City does not know what size the pipe needs to be, it may need to be 36 inches. The master plan says 24 inches, but it may need to be 36 inches. The City needs to do the work on the site to determine how much water is coming down into this area. The City can only require the applicant to install a 24 inch pipe because this is what is called for in the Storm Water Master Plan.

Chairman Whiteman said if the application is approved, the installation of the line would need to be coordinated with the City. Mr. Franklin said boring would be the only method of doing it under the railroad.

Chairman Whiteman said they have this new resolution to be nice to everybody in public meetings. This should also imply to the material received from Staff. All the Commission needs is a condition which states based on the Storm Water Master Plan, the pipe needs to be 24 inches without going through all the other statements about lack of permits and being a substandard installation. Life is a two-way street and we need to look at all sides. Is the City going to require

the applicant to install a 24 inch pipe that equals the Storm Water Master under this portion of the development to connect to the City's portion which runs under the railroad tracks.

In response to Ms. Weeks' question, Ms. Engels said the date on the Storm Water Master Plan is 1991. Ms. Weeks said if the applicant did the fill work in 1995 to City requirements, how could it change that much. Ms. Engels said the City does not know if the fill work was done to City requirements and that only an assertion has been made. Ms. Weeks said the Commission has heard testimony and received a letter from the former Mayor Walt Hitchcock saying the pipe was installed to City requirements. Chairman Whiteman said the Commission does now know if anyone looked at the master plan and said this is what needs to be done. This question is probably one that is irrelevant to the question of what should be done now. Ms. Engels said the City needs the ability to have the current pipe changed to coordinate with the master plan. The Storm Water Master Plan is not scheduled to be updated in the near future. If the subdivision were built in a timely fashion, what might happen is the City would require a 24 inch pipe.

Chairman Whiteman asked if the condition could also be met by having the developer provide a performance bond so when the City was ready to do their share of the work the bond would be available to pay for the applicant's share of the project. Ms. Engels said when a subdivision is built a road that would be accepted into the system then becomes public property. There are questions about the plan, as well as the fill and the road. The fill would need to meet the engineering standards.

Susan Claus asked for a point of clarification in that they had Chesapeake Park Subdivision which was previous to this and they had fill on that property and there was no fill permit required on that. This was a 13 lot subdivision in the City. They had compaction tests done on the fill when it and the pipe were put in. She said their engineer could respond to this.

Chairman Whiteman said her statement would stand and they would not need any further testimony on this because this is an engineering situation.

Mr. Stecher said they are talking about a 24 inch pipe, but there is an underlying issue that has to do with the actual compaction, quality of the fill, and whether it can take the load of a two way right-of-way. The City cannot be sure if the pipe can take the load because they never had a permit for this work. Instead of taking out the whole line, why not test to see if the line and fill are suitable. Keith Mays said if the test shows the fill is substandard and has to be taken out, then they should replace the pipe at the same time. Ms. Engels said the fill testing would be part of the engineering review process. If the fill is fine, they would still need to deal with the 21 inch pipe and replacing it with a 24 inch pipe. The condition could be reworded to take out the reference to the permit.

Chairman Whiteman said if the City is going to have a roadway, they do not want it to collapse or fall apart in the next few years, before it is accepted they would require some type of sampling or fill test be done. Mr. Franklin said part of this would be done as part of the construction

project and certain standards would need to be met. Whether the core samples meet the standards would be based on science and the test results for the different materials.

Jim Claus asked if he could give the Commission some information about this. Chairman Whiteman denied the request because the public hearing had been closed. Jim Claus said something about a licensed engineer when he built it.

The Commission continued their discussion regarding testing of the fill materials, how the pipe was installed, and whether the pipe was installed to City standards.

Susan Claus asked for a point of clarification in that the Staff brought up new information regarding Ms. Engels alluding to the fact that the City may have the need for a 36 inch pipe and they could only require a 24 inch pipe. In light of this, if the City does not know what their ultimate standard will be even though they are held to the Storm Water Master Plan for a 24 inch pipe, it would not make any sense for the applicant to install a 24 inch pipe when it is an off-site anyway. Chairman Whiteman said this was not the question before the Commission. The question has to do with the 24 inch pipe and anything bigger than this he would assume the City would have to pay for it. Susan Claus said it is part of the condition they are working on. If the Commission decides this is an improvement the applicant needs to make, it seems like it is more feasible and financially responsible that in lieu of payments if the City has to go up to 36 inches and as an off-site the applicant is required to put in 24 inches, why not have the applicant pay for the 24 inch pipe and let the City do whatever their ultimate project is going to be. Then they would not lose the 24 inch money.

Chairman Whiteman said this sounded very reasonable and he assumed this is something that would be negotiated at the time it happened.

Chairman Whiteman said the question is does the 21 inch line need to be a 24 inch line. If the Commission decides the 24 inch line is a reasonable requirement as a condition, the question is whether or not this condition could be met by putting up a performance bond for the work. The whole thing needs to be coordinated with the City.

Susan Claus said the timing aspect is the problem.

The Commission discussed whether the applicant would be required to put in a 24 inch pipe to replace the 21 inch pipe. Sue Engels said the applicant is not being asked to do an off-site improvement. Chairman Whiteman said if the only way to bore is from the other side of the railroad tracks, or the City side, then somebody is going to have to pay for this boring. Ms. Engels said there was no intention in the condition for the applicant to bear the cost of the bore under the railroad tracks.

Susan Claus asked for a point of clarification in that the reason she said off-site is the storm water drainage system for which the pipe is built is completely off site to their subdivision.

Chairman Whiteman said the Commission understands this, but the applicant does propose to build a roadway over this the top of this pipe that will become City property. This is all part of the record from previous testimony.

Mr. Stecher asked if the City failed in their responsibility to require the 21-inch pipe, is it the applicant's problem that the City "dropped the ball." He was assuming the City did permit the applicant to place the 21-inch line. Mr. Franklin said a similar argument was discussed regarding the storm line along Lots 22 and 23. There had been several arguments brought up by Staff and the applicant. The Commission has been told the pipe was installed on an emergency basis. Ms. Weeks said she mentioned former Mayor Hitchcock's letter because he is the only one with the institutional history regarding the extension of the pipe. The letter also stated that permits were not required at that time.

The Commission discussed at length the installation of the 21-inch pipe and whether it meets the current Storm Water Master Plan. Chairman Whiteman said the condition as written does not specify the size of the pipe or reference the Storm Water Master Plan. Ms. Weeks said the condition should also state that this issue should not hold up the development of the project. Mr. Turner said the condition could be reworded by the Commission. Ms. Engels read proposed wording for the condition, "An existing storm line runs under the railroad tracks and drains the area to the east of the subject site. The line was previously extended by the property owner. The portion of the line on the subject property shall be installed or bonded for by the developer in accordance with the City's 1991 Storm Water Master Plan in coordination with the City work related to the regional storm facility." By saying installed or bonded for, it would allow the applicant to put the money up and go ahead with their project.

The Commission discussed whether the size of the pipe should be included with the condition. Chairman Whiteman asked if there was the potential that with the other treatment facilities in the area, the pipe would not have to be upsized. Ms. Engels said the worst case for the applicant is that they would bond for the cost of the 21-inch pipe and the installation at some future date would be the City's problem. Ms. Stecher said there seems to be something between the applicant and the City and both parties are having a "pissing match" and the Commission is getting caught in the middle. Ms. Engels said in 1995 there was no development application for this property when the applicant extended the pipe. When a property is developed, several things are necessary to meet Code and master plan requirements. Chairman Whiteman said in his opinion and due to the fact this is how other developments are conditioned, when a property is developed it is the applicant's responsibility to meet the master plan requirements. It does not make sense, however, to have the applicant put in a 24-inch line and have the City dig it up at a later time for a different size pipe. After further discussion, it was agreed that the size of the pipe not be included in the condition.

Scott Franklin said if the fill is bad, when Railroad Street is extended, the street compaction should flush this out as the City inspects the project. Ms. Engels reread the condition.

Keith Mays moved the Planning Commission change Condition #2I to read, "An existing storm line runs under the railroad tracks and drains the area to the east of the subject site. The line was previously extended by the property owner. The portion of the line on the

subject property shall be installed or bonded for by the developer in accordance with the City's 1991 Storm Water Master Plan." Seconded by Bill Whiteman.

Vote for Passage of Motion: 3-Yes, 2-No (Stecher, Weeks), 0-Abstain

A roll call vote was taken. Susan Claus did not participate in the vote on this motion.

In response to the Commission's questions, Staff said there was nothing in this condition that would delay the project. Ms Engels said it would not be the City's intention to cash in a bond for a 24-inch pipe when only a 21-inch pipe was necessary. Angela Weeks said she agreed with Mr. Stecher in that she had a hard time making the applicant pay for something that they have already paid for. Mr. Franklin said during construction of the project, until a determination is made about the 21-inch pipe, to protect the City's interest and investment in the right-of-way, that they make sure the fill material and back fill on the property meet engineering standards.

Chairman Whiteman said the final item deals with the extension of Railroad Street from the project and the applicant's desire to place a cap on the costs of \$60,000. The reason for this request is because there is no knowledge of what may be underneath this area once it is torn up. He asked Staff if there were ever any buildings in this. Mr. Turner said he did not recall seeing any buildings in this area.

Chairman Whiteman asked what the applicant's responsibility would be if they run into hazardous materials. Mr. Turner said if the applicant is doing the development, it would be their responsibility to clean it or do whatever needs to be done to bring it to a satisfactory condition.

Susan Claus asked for a point of clarification if they were talking about the City's property or the applicant's property.

Chairman Whiteman said they were talking about the project where the condition talks about the applicant being responsible to pay for it, the portion of Railroad Street that comes from Park to the beginning of the applicant's property.

Susan Claus asked what is off-site from their property if there was something hazardous, this would be part of the applicant's cost?

Chairman Whiteman said this is the question he is asking.

Sue Engels said this may be a legal question best answered by the City Attorney.

Chairman Whiteman said historically, they do not know what went on in this area over a period of time. He was not greatly in favor of putting a dollar cap on the amount, but if the applicant does this, because it is the best thing for the City rather than access Villa, and then finds something that nobody expects and is held to clean it up because of environmental concerns. Mr. Mays said if it was on City property, the applicant would have some legal recourse. He did not feel comfortable capping the expense on the project.

In response to Mr. Franklin's question, Sue Engels said it is City-owned that is intended for the eventual extension of Railroad Street, but to-date has not been approved.

Susan Claus said the City has stored materials on this site too. She did not know if the applicant would be responsible if there was hazardous waste on this site. This could become a never ending nightmare.

Sue Engels said at this time the City does not know what the road would cost. Mr. Turner thought the Commission received an engineer's estimate, but this could have been something seen at City Hall.

Susan Claus asked for a point of clarification regarding the capping. She did not have any problem with not capping it. She did have a problem if the assumption is if there is something found off-site that is hazardous, the applicant would be responsible to clean it up.

Ms. Engels said there is no condition which specifically relates to this. Chairman Whiteman asked how the Commission could protect the developer from unusual circumstances in the City right-of-way that is off-site. Ms. Engels said the Commission probably does not want to open a can of worms by getting into the definition of "unusual", the concerns should be narrowed to more specifics.

Ms. Weeks said Condition #8 only speaks to the landscaping. She asked if the City should be responsible for the extension up from the development to Railroad Street. Ms. Engels said what she is saying it is in the City's interest to extend a road to a development and the question would be what is the City's interest in doing this. Ms. Weeks said it would be in the City's best interest that the developer does not go down Villa Road. Ms. Engels said the proper access to this land for the type of use is Railroad Street, not Villa Road and Villa Road would really not be an option.

The Commission discussed how a condition could be worded to cover these concerns. Ms. Engels said she was not sure it would be good policy to say the City would just take care of it by wording a condition to compel the City to spend an unknown quantity of money. Mr. Stecher said the Commission does not have the authority to spend taxpayer money.

Chairman Whiteman said he believed the completion of Railroad Street into this project is the best way to do the project. He would prefer that there was something which said if something is found that there would be some relief or cooperation between the City and the developer to overcome whatever may be found. Mr. Mays said the Commission seems to be talking about too many "ifs". Chairman Whiteman asked the Commission if they even wanted to talk about this.

Sue Engels said any time a property owner develops a property, the potential is always there that something hazardous may be found and then it would probably be a legal issue on whose land or obligation it was to clean it up.

Chairman Whiteman asked that the minutes reflect the concerns of the Commission. Ms. Weeks said to protect the applicant, the Commission should mention something about the potential hazardous materials. The Commission indicated because of the unknown history of the area that is currently owned by the City and has the right-of-way for Railroad Street, the developer has agreed to improve, if the developer runs into a hazardous waste situation, the Commission is interested in the public sector participating or maybe taking over the system of removal of that material.

Susan Claus asked for a word clarification, to use “latent condition” instead of “hazardous waste.”

Ms. Engels said every development runs into some kind of “latent condition”. The Commission said environmental concerns, latent or otherwise.

Keith Mays moved based on public testimony, Staff Report and other communications, the Planning Commission approve SUB 98-4/VAR 98-1 Wildlife Haven Preliminary Plat with the conditions as revised, Conditions 2G and 2I. Seconded by Bill Whiteman.

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

Susan Claus asked for a point of clarification from the Staff, if something extraordinary happens off-site to the applicant, is it the Staff’s position that the applicant is responsible for it.

Chairman Whiteman said he did not know if the Staff could answer this question.

Susan Claus asked if Staff was representing that any and all costs associated with the road extension are automatically the developer’s burden or if there is at least a neutral if there is something extraordinary that happens.

Mr. Turner said if there was some hazardous problem there, they would have to check with the City Attorney for an opinion. Based upon what the Commission said, the City would be involved in some way.

Chairman Whiteman recessed the meeting at 8:52 PM for a break and reconvened the meeting at 9:00 PM.

5. Community Comments

Chairman Whiteman asked if anyone wished to provide comments.

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

- This will be the last time he appears in front of the Commission because he decided that some of them really need to be in some heavy litigation. This would be a wonderful education. He would guarantee them that during the deposition they would know what he means.
- What really brought this about is that they caught the Staff in major misrepresentations about Woodhaven.
- He made a reference to George Orwell's 1984. The first thing that happens when government becomes corrupt is they corrupt the language. The Staff is saying things that are just not true.
- He talked to two State agencies and they both agreed that Sherwood has an administration that is beyond belief. Things are occurring here that have never occurred in Oregon before.
- The building fees just went up with no studies or hearings.
- Both of these agencies are thinking about suing, but he beat them to it. He was asked if he was in it for more than 2 years and he said yes he was in it for more than a 2 year period.
- The case law is very clear on two issues. There is no nexus between the storm water and his property. To suggest he would be responsible for hazardous waste is an illegal thing to ask him to do. The Staff is asking for an illegal act.
- The City has an engineer who apparently has never heard of Tigard or "Dolan".
- He had a registered engineer, Doug Leach from Carlson Engineering, when they put that in. The City made him custom order a 21-inch pipe. Every agency imaginable was down there and the City would not give him a permit.
- When he filled Chesapeake Park, the City would not give him a fill permit. When George Burns (Allied Systems) filled on the hill, the City would not give him a fill permit. To ask that question is negligent, per se.
- The Commission is trying to stick burdens or strict liability on him. The City Manager signed a memo which is ridiculous.
- As he told Mr. Cottle and Mr. Draper today, the fun and games are over with. He will lose, but he won't lose here. Draper has been told not to talk to him and to get an attorney. It is going to cost him a lot of money and he is going to sell some properties to do this. There is nothing more vile in this country than a government that cannot abide by the law, lies in public and then turns around and says...(inaudible).
- He has put his foot down with his family too because of the latest incident with the theater. Derryck Dittman goes in and takes off the gifting provision. They specifically asked for two items. When they went in to the theater to get the items, the police were called on his son. That was a mistake.
- If the City ever tries to get him to take hazardous waste they will be facing a lawsuit.
- He is angry about what the Commission and Staff have done. They call people liars and they don't ask for proof. Doug Leach would have come in, he lives in Sherwood. Joe Eaton did the fill. He custom ordered a 21-inch pipe because the City wouldn't let him put a connector of a 24 on there. He cleaned up a mess that the City dumped on private property and destroyed a road. They sneak like dogs in the night on the property and bury a storm water he found a year ago and nobody knows about it.
- There is no use coming to the Commission any more, there is no use talking to City Hall any more, there is no use in making a contract and gifting something because the first thing that is

going to happen is the police are going to be called illegally to interfere with you when you try to have the contract enforced.

- The property owners gave a fortune to the City in SDCs and TIFs. They let the City steal their money so the City could build the infrastructure and now the City is using it against the property owners. This is the basis of a totalitarian system.
- He would not trust the Commission under any circumstances. The Commission let these people tell you specifically lies and did nothing about it.
- The City left Salisbury high and dry. Bormet wrote an agreement with Salisbury, any fool could have read it on its face, and he walked away from it. You think citizens are going to sit around and take this.
- Draper had the nerve to say to him today, we could pay for the road, of course he was going to give me a little cash payment. That is a mistake. He is not interested in their money. They came to a public hearing and made statements and he is going to make sure they keep to their statements. From his viewpoint you don't get any help from the appointed or elected officials in this town.
- Rapp would not let him breathe in this town without being on his neck and that is what Hitchcock told the Commission.
- Then we find someone trying to illegally shove toxic waste down his throat. It will be 2-3 years and he told the lawyers for the Bureau of Reclamation. His day came. He told both of the state agencies today that it was his lawsuit.
- These hearings and Columbia Street have now cost him over \$40,000. Forty-thousand dollars so that he can hold the line and get a road put in on Phase 6.
- The Commission passed Phase 7A when the road connection condition had not been met.
- Mr. Mays may think he is not determined, but his only hope is he won't live long enough to take Mr. Mays deposition.
- Eighteen months ago they met at City Hall and violated the law and came in front of the Commission and Mr. Bormet had the unmitigated gall to say he would not allow the sewer plan to change one inch. Then he said look everything is okay if you bury it fourteen feet and the Commission let Phase 7A pass.
- He has been hammered on Villa since he walked in there and he just wanted to do what was legal, but the Staff said oh no, we don't want you to do it that way, and then \$10,000 more is spent and the Staff recommends against the variance.
- The City is absolutely lawless now. Money comes into the town and no one knows where it goes. You ask how much was spent on Murdock for that mess and no one knows. You ask did J.C. Reeves get a pump station paid for, for his subdivision. You can't get a straight answer or you are going to hear from the Staff that it is none of your business.
- When he gets the people under oath and they dispute his files, he will go as he did with U.S. Bureau of Reclamation to the right federal agencies and ask for perjury charges.
- The only way you are going to save this town is to keep money from flowing into that City Hall because that money is going to be used to harm the citizens.
- Look at the YMCA. Everybody said don't put the YMCA out there, but Cottle and Hitchcock decided to. Now that they violated the expectations of the homeowners in Woodhaven they are going to have the other property owners take 4 acres of their land out of existence in order to supplement eight to put in a frontage road. What they should have done is have a new petition, and have a citizen driven town.

- He is going to where it is citizen-driven, where he gets a fair hearing and where if somebody commits perjury they answer for it. He is very committed to get this. It may be 2-3 years before he comes knocking on their doors, but he will. He is angry and this is something the Commission would do nothing about.

There were no further comments.

6. Other Business

Chairman Whiteman said he received a notice from ODOT for the Draft Quarter Plans Review and the Oregon Highway Plan and Oregon Transportation Plan will be available for review. This meeting will be September 16, 1998, 4:00 PM to 8:00 PM, the Washington County Public Services Building in Hillsboro.

7. Adjourn

There being no further business to discuss, the Commission meeting was adjourned at 9:17 PM.

Respectfully submitted,

Planning Department