

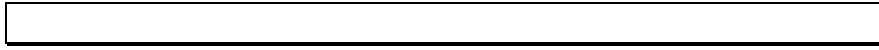


**City of Sherwood
PLANNING COMMISSION
Masonic Hall, 60 NW Washington Street
Tuesday, October 20, 1998
7:00 PM**

A G E N D A

1. **Call to Order/Roll Call**
2. **Approval of Minutes - October 6, 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. **PUD 93-3 Woodhaven Modifications & SUB 98-7 Phase 8C Preliminary Plat:** Modifications to approved PUD & preliminary plat approval of a 73-lot subdivision (Phase 8C). Tax Lot 300, Map 2S 1 31.
5. **Community Comments:** are limited to items NOT on the printed agenda under Public Hearings.
6. **Other Business**
 - A. **Planning Monthly Report for August & September 1998**
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
October 20, 1998

1. Call to Order/Roll Call

Vice-Chair Susan Claus called the meeting to order at 7:02 PM.

Commission Members present:

Susan Claus
Adrian Emery
Scott Franklin
Keith Mays
Paul Stecher
Angela Weeks

Staff:

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

Commission Members absent:

Bill Whiteman

2. Minutes of October 6, 1998

Vice-Chair Claus asked if there were any additions or corrections to the minutes of October 6, 1998. There were none.

Adrian Emery moved the Planning Commission accept the October 6, 1998 Commission minutes as presented. Seconded by Angela Weeks

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

3. Agenda Review

Vice-Chair Claus announced there was one item on the agenda under Public Hearings. She has a family member that has an appeal before LUBA regarding Woodhaven. She would not be participating in the public hearing for this item. Commissioner Angela Weeks would conduct the public hearing portion of the meeting.

Angela Weeks assumed the Chair position. She announced that prior to opening the public hearing on PUD 93-3 Woodhaven Modifications and SUB 98-7 Phase 8C Preliminary Plat she would like the Commission to discuss tabling this item. The application includes a major change (density change) to the PUD. She referenced Section 2.202 of the Development Code. She did not believe the application before them should have been deemed complete because Woodhaven Phase 7B Preliminary Plat is still before the City Council. There are too many major issues that need to be resolved with this phase of the application.

Scott Franklin said one of issues is the sequencing of the phases, the other is the park property and the extension of the connector road. Ms. Weeks said there are also water and utility issues.

Mr. Franklin said he spoke to the City Attorney about the proposed PUD modification and whether it would just affect Phase 8 or the entire PUD. Because Phase 7B is subject to Council review, there is the question of anything in the PUD modifications that may affect 7B. The City Attorney said if any of the modifications apply to 7B, then 7B would be affected. Mr. Franklin said because the Commission does not know what the decision on Phase 7B will be, he did not know if the Commission could make a determination whether or not the Commission decision would also apply to 7B. You not only have Phase 8C, but you also have 7B which needs to be resolved.

Mr. Mays said the Commission should not hear Phase 8C out of sequence without Council approval.

Greg Turner said the Commission has the option of taking PUD 93-3 Woodhaven Modifications and SUB 98-7 Phase 8C Preliminary Plat and hearing each of them as a separate application. Sue Engels stated the application has been deemed complete by Staff and the 120-day deadline has been determined. Any PUD amendment which has been deemed complete and is a major change would be heard by the Commission and then the City Council. Ms. Weeks said there seemed to be too many unresolved issues with Phase 7B. Ms. Engels suggested the Commission not table the application, but continue it to a date specific and ask if the applicant would be willing to extend the 120-day deadline. If the application is tabled it would need to be renoticed. If the application is continued to a date specific, it would not have to be renoticed.

Mr. Franklin said this is a modification to the PUD and a request for preliminary plat approval of Phase 8C. The Commission is objecting to hearing a modification to the entire PUD when there are still outstanding issues with Phase 7B Preliminary Plat. Ms. Engels said the Commission could hear the Staff Report and determine if they want to consider the PUD Modifications as a separate application from the Phase 8C Preliminary Plat. A PUD amendment was approved in March of 1997 and this was a major change. Any time you have a PUD amendment, it is a major change to the overall conditions. This PUD modification is another proposed major change. Whether the Commission hears Phase 8C Preliminary Plat is a different issue. The Commission can consider a PUD amendment at any time. All of the conditions are reviewed with the PUD amendment. Mr. Franklin said this is a modification to the PUD as well as Phase 8C Preliminary Plat and these are two separate actions. Ms. Engels said this is correct. Mr. Franklin said what the Commission is objecting to is that modifications to the entire PUD are being requested when there are still outstanding issues on Phase 7B. The Commission is being asked to approve a modification to the entire PUD and the City has not yet determined whether or not they are going with 7B as presented. Ms. Engels said the Commission knows what the PUD conditions are at present. It would be helpful if the Commission heard the Staff Report and why this is being submitted as a joint application. Mr. Franklin asked for clarification as to what the Staff is asking the Commission to hear.

Mr. Turner said the Commission has the following options:

- Hear the PUD Modifications and Phase 8C Preliminary Plat as a joint application and ask City Council to allow the “out of sequencing”.
- Hear only the PUD modifications, bearing in mind that most of the modifications being asked for are a part of Phase 8C Preliminary Plat.
- Hear the application and make a decision and refer it to the City Council subject to their approval of the out of sequencing.

The Commission discussed the options. In response to their questions, Mr. Turner said Phase 7B Preliminary Plat is scheduled for a public hearing with the City Council on November 10, 1998. The next Commission meetings are November 3 and 17, 1998.

Mr. Franklin suggested the Commission listen to the Staff Report and determine if the public hearing should be opened for testimony. Ms. Engels said the Staff Report is a part of the record for this application and the public testimony would be part of the public hearing and record.

Ms. Engels suggested if the Commission did not wish to hear this item tonight, they continue the application to a date certain. She asked the Commission to specifically identify what sections of the Code have not been met by this application.

Ms. Weeks said there are too many unanswered questions related to Phase 7B and now the Commission is being asked to hear a major change to the PUD without a resolution to Phase 7B. Ms. Engels said the application has been deemed complete by Staff. Ms. Weeks said there is a question with the sequencing in hearing Phase 8C prior to Phase 7B being resolved.

Mr. Franklin asked when the previous PUD modifications were approved in March of 1997 were there any other phases under appeal or being held up for approval. Ms. Engels said Staff would have to look back at the chain of approval for the phases to answer that question. Mr. Mays and Mr. Franklin said that the Commission could not look at Phase 8C without considering the PUD modifications.

Ms. Engels said Ms. Weeks opinion is that no modifications can be made to the PUD while there are outstanding issues with Phase 7B Preliminary Plat. This is a very specific question which should be posed to the City Attorney. Mr. Emery asked what would happen if the City Council changes the conditions for Phase 7B and these changes in turn also affect Phase 8C, and the Commission hears Phase 8C, would their decision become null and void. Ms. Engels said this is another specific question regarding the process. Phase 7B is before the Council and there are issues which need to be resolved, but the PUD has not been changed and the existing conditions are in effect and it is up to the Council to determine if these conditions have been met. Mr. Emery said he would be in favor of continuing this application given the questions on Phase 7B.

Mr. Mays said the Commission could not look at Phase 8C Preliminary Plat without reviewing the PUD modifications. Ms. Engels said the PUD modifications must happen at least simultaneously or prior to hearing Phase 8C and could be considered separately.

The Commission reviewed their specific questions:

- What happens if there are conditions placed on Phase 7B that would affect the entire PUD and Phase 8C. How would this affect a Commission decision on Phase 8C if they heard the application and made a decision on it tonight.
- The question of hearing Phase 8C Preliminary Plat out of sequence.
- The application being complete according to Section 2.202 of the Development Code.
- The PUD amendment being heard while Phase 7B is under review by the City Council.

The Commission asked Phil Nachbar, Genstar, if the applicant would be willing to extend the 120-day deadline. He said there is nothing to keep the Commission from hearing the application tonight and continuing a final decision to another meeting, if necessary. The Commission always has the right to reserve approval until they are satisfied that there are no issues with Phase 7B that may affect the entire PUD. At least tonight, the Commission could hear the initial Staff Report and allow public testimony while the 120-day clock is running. The City Staff has determined that the application is complete and the Staff Report is based on this finding. He said at this time, the applicant would decline to extend the 120-day deadline.

In response to the Commission question, Staff advised that the 120-day deadline is January 29, 1999.

Paul Stecher moved the Commission hear the Staff Report. The motion died due to a lack of a second.

Angela Weeks moved the Planning Commission continue PUD 93-3 Woodhaven Modifications and SUB 98-7 Phase 8C Preliminary Plat to the November 3, 1998 Regular Commission meeting. Seconded by Adrian Emery.

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

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

The Commission noted that the questions would be presented to the City Attorney and if any Commissioner had further questions, to present them to Staff. The responses will be made available at the November 3, 1998 Commission meeting.

4. Public Hearings

The Commission did not open the public hearing on Agenda Item 4A.

4A. PUD 93-3 Woodhaven Modifications & SUB 98-7 Phase 8C Preliminary Plat

This item was continued to the November 3, 1998 Regular Commission meeting.

5. Community Comments

Susan Claus returned to the table to Chair the remainder of the meeting. Vice-Chair Claus asked if there was anyone who wished to provide comments.

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

- He thanked the Commission for what they did on Wildlife Haven.
- He has felt for some time on Wildlife Haven, as he did on Columbia Street, that there was some kind of an agenda. To quote Mr. Bormet, he felt they were being “hosed by the Staff”. This was a quote by Jon Bormet to his partner, that they got “hosed by the Staff”.
- The City is trying to do an urban renewal district down town. The City is alleging they have one and this is not true. This is like the double talk you always get from Bormet. The City has components, but they have not put it together.
- The City is trying to get possession of the Wildlife Haven property and then redevelop it.
- With all of the issues over the theater, Columbia and Villa (Wildlife Haven) that now the City is actually running by, he spent \$50,000 and all of sudden is being told that Jon Bormet is a property broker. The City is asking he and his partner to give the City a price. They have it pre-sold, so it is going to get very interesting as they go over this “hosing” the Staff gave them. This suddenly explains an awful lot about Columbia and the current behavior of Staff.
- He has been extremely concerned about the appeal fees. He explained how Jim Rapp handled the appeal fees, for example you paid one-half of the site plan review, the City kept a running clock on the Staff time so what money you used you were charged, and what they did not use was refunded. When Mr. Bormet came here one of his actions was, and by the way Walt Hitchcock is having trouble believing he ever signed this ordinance, the City changed the appeal fee to just 50% of the site plan. His view is this is a tax because you don’t have any record, you can’t see the Staff record, and you are paying for things that you are not getting.
- He explained the appeal fees for Yamhill County, the City of Newberg and City of Tigard.
- He asked the City to supply the records for his appeal.
- He offered to go to arbitration and when he first talked to Mr. Sercombe that appeared to be something that would work. Then Mr. Sercombe took an incredibly hard line. They will not find out why he took this line until they take depositions. They will find out because in a deposition you are under oath. The Courts take a very dim view if you do not tell the truth under oath.
- All of a sudden he had a civil rights violation case and he could not state his damages. He did not know how much time was spent or how much money the City should have charged him. He had to tell the Judge very truthfully that Mr. Sercombe was right. He is not an attorney and he had no idea how much money was due. Mr. Sercombe was right that it might be a civil rights case. The Judge agreed with Mr. Sercombe and a jury trial of the civil rights violation case has been set for February 22, 1999.
- Now he will have the right to depose the Staff and he will be able come back to the Commission and make a report.
- All of this is extremely unfortunate, in his opinion, because this is public money being spent.

- He does resent the fact that somebody does not want his subdivision and wants to include it in an urban renewal plan. This is subterfuge and that bothers him.
- When you go before LUBA, LUBA accepts the findings of fact that the City puts in front of them as being true. This is because usually, without exception in Oregon, Staff tells the truth. All LUBA is doing is looking at those facts and the black letter law.
- He was pleased when the Commission continued the Woodhaven modifications tonight. Suppose in a motion to intervene, the City said, contrary to what they told the Commission, that Woodhaven owed money on system development credits. Now that's a sworn affidavit. Just suppose that, he's not saying they have, but in a hearing he may produce some interesting documents. Suppose the School District filed a motion September 1 and a resolution to go after the park. This is eminent domain and they have to have tendered offers. If they tendered offers and they tried to buy it, that's a major change because the park is not there any more. Wouldn't it be interesting if he could produce a motion from the School District that September 1, they knew. But suppose that Woodhaven had sent a letter to their builders saying there isn't going to be a park there. Suppose that letter exists. The Commission's finding of fact is going to be very different from LUBA and somebody is going to be explaining to the two judges why they didn't come forward and divulge that information.
- This is where he is at with LUBA. He has a motion to correct the record.
- He is telling the Commission to be very careful. When somebody is after your land and they don't tell you that and you get "hosed by a Staff", you have a very serious problem with the Staff. And if we find out that they knew about it, there is a case that just went to the 9th Circuit Court where this went on in California. They had a jury trial and it is a civil rights violation and a jury can sit down and assess a fine.
- He is telling the Commission this because he could not believe some of the things that now appear to be true. They don't know they are true because they are only being told they are true by some politicians. If these things are true, the Commission is going to want to have a very different finding of fact.
- He thanked the Commission because if they had not permitted the construction of a record, he would not have had a go at any of this. Who would have ever dreamt that the School District passed a resolution and they were going to fight to get a property. In this state you have to have tendered offers before you can do this. You have to tender an offer, do an appraisal and enter in negotiation and then file the suit.
- If these things are true, you have major changes in a PUD and those facts may have been withheld from a major appellant body with City Staff sitting in the audience. Mr. Dittman's defense is that he did not know.
- He never expected to have civil rights jury trial. He is not a lawyer and he does not know the damages because he does not have the records. The damages may vastly exceed anything he has read.
- The Commission did a great job on Wildlife Haven and the record is very complete and he thanked them very much for this.
- He thanked the Commission for the LUBA record. With this he will be able to bring them some resolutions and some things they can take a look at and say our finding of fact is these are major changes, this was done behind our back, this has to have a new petition. Then they can have a meeting and all of the people from Woodhaven that don't have a park can come in

here and tell you what they think. Maybe they will say everything is wonderful in Woodhaven and let's go forward.

- He thanked the Commission for letting the record be complete because they would never have found these things out if they had been in front of the City Council with Mr. Cottle, Ms. Engel and Mr. Bormet running the clock.
- There are whole bunch of things he does not "think" they are not telling us because he would never accuse anybody of a civil right violation, not when he can have a deposition.
- He thanked the Commission for their record because it has time and again saved him.

Vice-Chair Claus asked if there was anyone else who wished to provide community comments. There were no further comments.

6. Other Business

Vice-Chair Claus noted that Planning Monthly Reports for August and September 1998 were included in the packets.

Mr. Emery asked for an update on the Oregon Trail application. Mr. Turner advised an interpretation from the City Attorney was it would be best to go to the City Council with the complete application. If they do not do this, the applicant would not have an opportunity to appeal the decision of Staff that Phase 3 would need to go back to the Commission. The whole application will be presented to City Council.

Vice-Chair Claus asked what other applications are being scheduled for public hearing. Mr. Turner said there are not any new applications scheduled for public hearing at the next meeting. Mr. Tuck said there are two new applications which have not yet been deemed complete.

Vice-Chair Claus asked about the status of the Transportation System Plan (TSP). Ms. Engels said the Focus Group considered four broad assumptions in terms of the impact of traffic in the City. One assumption was what would happen if you didn't change much under a no-build assumption. You take the traffic projections and look at the no-build assumption over the planning horizon which in this case is a 20-year planning projection. The Focus Group then had three different assumptions on how you might deal with all of the traffic issues. The TSP is not just about roads, it is about pedestrian connections, and bicycle paths. There was one assumption that assumed a very aggressive transportation demand function. This is where you would put most of your resources into changing people's habits and where you assume people are going to take the bus and walk and bike and we are going to spend our first dollars to facilitate this. This is an aggressive assumption in the change of behavior to increase ridership on public transit by 20%. Another assumption that is totally opposite of this is you have enough money and you build your way out of any problem, assuming you will have the money to do this. But in that assumption you put your money there in concrete and you don't do anything to beef up public transit and do just the legal minimums on everything else. The fourth assumption is what would happen if you have a local street network and you made a somewhat mildly aggressive assumption about transit. Right now transit serves about 2% of the community. If you have an assumption that it would serve 4% or 5% that would be a fairly aggressive change in behavior.

Ms. Engels said this is the basic framework of the technical information that was considered. She discussed the other issues discussed by the Focus Group. The crunching of the numbers by the consultant has been difficult because you are dealing with 99W, Tualatin-Sherwood Road and the proposed I-5 and 99W connector. A lot of what impacts Sherwood is driven by the regional traffic problem.

Vice-Chair Claus asked when the TSP process would start, either the Focus Group being done or coming before the Commission. Ms. Engels said she did not have a definite answer, but they are hoping within the next couple of months.

Mr. Franklin said the update provided by Ms. Engels give the Commission a good idea of the process the Focus Group went through. He is a member of the Group, but as he recalled the Focus Group was citing the local option and the leading candidate to do some work. He was still confused as to what the delay on this plan is. Ms. Engels said some of the numbers still need to be developed. Part of this would also look at a loop that would go from Tualatin-Sherwood Road and come out on 99W somewhere in the general area where a I-5/99W connection could be and this would be shared space. They are somewhat hampered by ODOT not knowing where they are, what they want and what the impact would be. The ODOT consultants on the I-5/99W connector don't even know how much traffic would be coming south. Everything you would do on 99W would terrifically impact Sherwood. Mr. Franklin said the Focus Group discussion about 99W and Tualatin-Sherwood Road revolved around some system of frontage roads. Ms. Engels said this was a part of the local street network. He recalled the discussion of the 99W/I-5 connector, although it would be important and something to address, at that time there was not discussion as to anything concrete, e.g., is it going to be built and if so, is it going to be built within the next 20 years. Ms. Engels said what changed is it is in the Regional Transportation Plan (RTP).

Mr. Franklin said the RTP does not specifically go to the level where you would have to come up with the TSP and attempt to make this conform to the I-5/99W connector road. The City would not wait until all the studies are done for the RTP before completing the TSP. He said when they were talking about the frontage road, in particular the section near the Gleneagle Pool, he heard there may be problems with this regarding whether or not there was enough room for a frontage road. Ms. Engels said there were some differences of opinion on whether or not this was feasible. Engineering did some work on this and this will be part of the TSP. There is no set date for the next Focus Group meeting.

Vice-Chair Claus referred to the Planning Monthly Report, in particular the streamlined applications which identified three approved applications. Mr. Turner said these were the only streamlined applications approved to-date. Vice-Chair Claus said they had two minor land partitions and one site plan. She asked if there were a lot of other applications under the streamlined review because one of the things that was presented with the streamlining process to the City Council was Mr. Bormet said there were 27 applications in the Planning Department and it had the appearance that the minute the streamlining went through it would break loose all of this back-up. Mr. Turner said at that time there were 27 applications in process and by the time the streamlining process came about, those items had already gone through the Planning

Commission review. Vice-Chair Claus said the streamlining process was approved two months ago and the Commission has not reviewed 27 items in this time. Now it looks like the Commission is all caught up and she was just wondering what happened to the 27 applications. Mr. Turner said he did not know when Mr. Bormet said this. Vice-Chair Claus said this statement was made at the City Council meeting when the streamlining process was adopted.

Ms. Engels said the City is required to comply with the Urban Growth Management Functional Plan by January 1999. All of this will come through the Commission. Mr. Turner did a compliance report for Metro and there are a lot of Code changes that will be required. Mr. Turner said the City has asked for an extension because the City cannot do the transportation portion until the TSP is completed. The Commission said from the Planning Commission standpoint they are ready to start reviewing this information.

Vice-Chair Claus asked if the Old Town Saloon Expansion Site Plan, because it is in the Old Town Overlay District, was this something that was handled by Staff or does it need Commission review. Mr. Turner said the Commission would have reviewed it if it fell under the square footage requirement for review by the Commission. Ms. Claus said there had been some other remodeling in the Old Town District which needed to follow design guidelines. Mr. Turner said the Old Town Saloon was handled at the Staff level because the expansion was going to be from the back of the building. The Commission will continue to receive the monthly Planning Reports.

7. Adjourn

There being no further business to discuss, the Commission meeting was adjourned at 8:20 PM.

Respectfully submitted,

Planning Department