



**City of Sherwood
PLANNING COMMISSION
Masonic Hall, 60 NW Washington Street
Tuesday, November 3, 1998
7:00 PM**

A G E N D A

1. **Call to Order/Roll Call**
2. **Approval of Minutes - October 20, 1998 (may not be available until Nov 17 98)**
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:** (Continued from October 20, 1998 PC Mtg) Modifications to approved PUD & preliminary plat approval of a 73-lot subdivision (Phase 8C). Tax Lot 300, Map 2S 1 31. (PLANNING COMMISSION - BRING YOUR 10-20-98 PACKET INFO)
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
November 3, 1998

1. Call to Order/Roll Call

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

Commission Members present:

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

Staff:

Greg Turner, City Planner
Jason Tuck, Associate Planner

2. Minutes of October 6, 1998

Chairman Whiteman announced that the minutes of October 6, 1998 would be available at the November 17, 1998 Regular Commission meeting.

3. Agenda Review

Chairman Whiteman announced Agenda Item 4A, PUD 93-3 Woodhaven Modifications and SUB 98-7 Phase 8C Preliminary Plat was continued from the October 20, 1998 Commission meeting. He referred the Commission to a letter dated November 2, 1998 from the City Attorney answering several questions from the Commission. He reviewed the contents of the letter:

- How can the PUD amendment which involves primary changes to Phase 8C be heard when a decision has not been reached on Phase 7B? *Response: Since this PUD amendment would not affect or makes changes to the 7B plat pending before the Council, pendency of 7B plat approval would not prevent the proposed amendment from being heard.*
- How can the Phase 8C application be deemed complete considering Code Section 2.202 (the phase being potentially out of sequence)? Ms. Weeks said the fact that this is a major change may not have been presented to the City Attorney for a response. *Response: For purposes of ORS 227.178 the 120-day rule, an application is deemed complete unless the applicant is notified within 30 days of receipt of the application of what information is missing. Assuming the application was received more than 30 days ago and no notice of missing information was provided to the applicant within that time, the application is deemed complete and the 120-day clock is running unless waived by the applicant or postponed at the applicant's request. Being potentially out of sequence does not affect the completeness of the application. That does not, however, mean that being out of sequence is not an issue to be dealt with. Since 7B has not yet been approved and 8C is numerically subsequent to 7B, there would appear to be four possibilities for the Planning Commission to take with respect to the preliminary plat for Phase 8C:*

- *Withhold action on the preliminary plat for 8C until the Council has acted on 7B if that can be done within the 120 days.*
- *Approve the 8C plat subject to the condition that the Council approve a change of sequence for 8C or has approved 7B, whichever first occurs.*
- *Refer the action to the Council for action on the matter of sequence change before reviewing the 8C preliminary plat.*
- *Deny the application.*

Chairman Whiteman noted that the 120-day deadline is January 28, 1999. He continued to review Mr. Dittman's letter:

- *Is there a sequencing problem if the Planning Commission hears 8C before Phase 7B is approved by the Council? Response: There is no problem hearing the application, but any decision to approve that is made needs to recognize that it is necessarily conditional on the Council approving the sequence change or the Council making its decision on 7B. Since it sounds like the proposed preliminary plat for 8C incorporates proposed changes in the contemporaneous application for amendment to PUD 93-3, it would seem that approval of 8C would also necessarily be conditioned on approval of the PUD amendment in any event.*
- *What happens if Phase 8C is heard by the Planning Commission and then Phase 7B is heard by the Council and conditions are imposed on 7B which change the PUD and affect 8C? Is the cart being placed in front of the horse? Response: The question assumes that the Council could impose conditions on 7B which change the PUD plan, i.e., which are also significantly inconsistent with the approved PUD plan as amended so that as to constitute a PUD amendment. As the application to approve 7B did not propose such amendments to the PUD, in my opinion, it would not be proper as part of the 7B preliminary plat approval only to make a major change to the PUD plan without a proper application, notice, hearing, etc. Therefore, the answer to the question is that the Council would have to use a different process to do that. If the Planning Commission chooses, however, it could as indicated above, elect not to act on 8C until the Council has approved 8C being approved out of sequence or until the Council has, in fact, approved 7B whichever occurs first.*

Chairman Whiteman announced he had received additional information today. The information included a Miller, Nash letter dated October 23, 1998 with attachments regarding the proposed park property. Susan Claus referenced these materials and explained that one of the things the Commission is concerned about is the park, where it is located and the deal that supposedly has been struck to hold negotiations between the City, School District and Genstar. Because the City did not have all of the information, the School District referred her to their attorney, Miller, Nash, who provided the other documents. The materials she provided to the Commission were the agreement and the resolution by the School District. She noted that this information should be included in the public hearing record. The Commission took some time to review this information.

Chairman Whiteman reviewed the items:

- The agreement deals with the School District discontinuing their actions to acquire by condemnation the property that has been referred to as the park property adjacent to the high school and goes from Meinecke Road to the beginning of the Woodhaven residential area. He read the agreement and School District resolution.
- At this time, the proposed park property is still under the ownership of the developer (Quinkster represented by Genstar).
- Part of the information sent out by the School District regarding their bond issue was that this property was included as part of the District's plans and was pretty much identified as school property.

He asked if Staff wished to provide any further comments. Mr. Turner said he had not been involved in these discussions and he would not be able to respond to questions.

Chairman Whiteman spoke to the City Attorney regarding the Woodhaven application. He was told that because of the 120-day deadline, the Commission needs to hold the public hearing tonight. Mr. Turner said this sounded contrary to what the City Attorney responded to in his letter of November 2, 1998. Ms. Dittman's response seemed to say that the public hearing could be continued. The Commission discussed how many days were required for noticing and the appeal period. Mr. Turner said this application would automatically go to the City Council for a public hearing. Because the preliminary plat is tied to the PUD amendment, both would likely go to the City Council.

The Commission agreed to hold the public hearing on PUD 93-3 Woodhaven Modifications and SUB 97-8 Phase 8C Preliminary Plat.

4. Public Hearings

Chairman Whiteman read the public 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 disclosed that prior to the October 20, 1998 meeting, she had not talked to the Government Standards & Practices Commission (GSPC). There is a pending LUBA appeal by Jim Claus on Woodhaven Phase 7A. In the absence of talking with the GSPC, she removed herself from participating in the Woodhaven discussion on October 20, 1998. She has since spoke with the GSPC. She said the Phase 8C application is separate from the 7A appeal. She has no financial interest, but she is disclosing there is the potential conflict of interest because of the 7A appeal. She planned to participate in the discussion on the Woodhaven agenda item tonight.

Chairman Whiteman said the law does state, as he reads it, as long as there is no direct cause that could benefit her personally or financially, and although she has an interest by her spouse being involved in an appeal, as long as Susan makes the declaration of a potential conflict of interest there is no reason why she could not participate in the discussion.

There were no other Commissioner comments.

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

Chairman Whiteman opened the public hearing on PUD 93-3/SUB 98-7 and called for the Staff Report. Jason Tuck referred the Commission to the Staff Report dated October 20, 1998, a complete copy of which is contained in the Planning Commission's minutes book. He noted:

- Phase 8C is south of Sunset Boulevard and west of the railroad tracks. He identified the area on the map. Tax Map 2S 1 31, Tax Lot 300.
- On March 26, 1997 the City Council approved revisions to the Woodhaven Final Development Plan which included:
 - An updated phasing plan.
 - A revised set of conditions.
 - Changes to allowed uses for specific areas of the PUD.
- The Notice of Decision and Findings were attached to the Staff Report for reference.
- Phase 8 was divided into three phases, 8A, 8B and 8C. He identified the area on the map.
- The preliminary plats for Phases 8A and 8B were approved on March 17, 1998.
- The applicant is requesting modifications to the PUD as well as preliminary plat approval for Phase 8C.
- Based on the demand for smaller single family lots, the applicant is requesting modifications to Phase 8C. These include:
 - Modify the Woodhaven PUD Final Development Plan Map to increase the number of dwelling units in Phase 8C from 51 to 73 single family detached residential lots.
 - The lots sizes would range from 3,580 sf to 7,659 sf.
 - Revise two of the March 26, 1997 conditions of approval. Revise Condition 1B to change the setback and dimensional standards for 8C only. The front setbacks would be 10 feet and 18 feet to the garages, and the rear setbacks would be 15 feet. Reduce the minimum lots size for 8C to 3,600 sf. Lot dimensions have a minimum depth of 75 feet and minimum width of 48 feet.
 - Revise Condition 1J to increase the total number of dwelling units in the overall PUD from 1,148 units to 1,170 units. This would be an increase in 8C from 51 to 73 lots.
- The site for Phase 8C contains 12.86 acres and the net density is 7.8 dwelling units per acre based on available acres.
- He identified the proposed road connections from Phase 8C to Phases 8A and 8B.
- The site is zoned LDR and the minimum lot size allowed for single family dwelling units is 7,000 sf. The PUD overlay allows a minimum lot size of 5,000 sf. The applicant is requesting modification to allow smaller lots sizes in Phase 8C.
- The required findings for PUD approval and preliminary plat approval are contained in the Staff Report.
- The applicant submitted drawings of what the units will look like and these were shown to the Commission.

In conclusion, based on the findings of fact and agency comments, Staff recommends approval of PUD 93-3 Woodhaven Modifications and SUB 98-7 Woodhaven Phase 8C Preliminary Plat with

the conditions contained in the Staff Report, with the change to the number of units on Condition #9.

Mr. Tuck identified a letter for the record dated November 4, 1998 from Mr. L.J. Ernster, a property owner in the Woodhaven PUD.

The Commission asked for clarification regarding Conditions #9, 14A and 15. Mr. Turner said there still needs to be a park because all of the smaller parks have been consolidated into the larger park.

Chairman Whiteman asked what the School District actions and the agreement between the District, the City and Genstar mean. He asked how they would readdress the park question in the total PUD. Mr. Turner said he did not know the answer, but would assume if the proposed park property goes to School District there would be a change to the PUD which would come before the Commission for review. Again, there has to be designated park property because all of the smaller parks were consolidated into one.

In response to Mr. Stecher's question, Staff reviewed the setbacks in the previous phases.

Chairman Whiteman asked if the applicant wished to provide testimony.

Phil Nachbar, Genstar Land Co NW, 11515 SW Durham Road, Suite E-9, Tigard, OR 97224, addressed the Commission. He thanked the Commission for hearing the application in light of the Commission's concerns about other issues. He noted:

- There will be a park in Woodhaven or nearby for community use.
- He reviewed the proposed development and distributed pictures of how the homes would be designed.
- He identified Phase 8C on the map. The phase has a series of cul-de-sacs and there will be some preservation of the wetlands and open space. This phase adjoins Phases 8A and 8B.
- Phase 8C previously had 51 units and they are asking for 73 units. The net change is 22 units.
- Previously lots sizes were roughly 50 feet by 100 feet and they are requesting lots sizes of 48 feet by 75 feet. They would be taking about 25 feet off of the back lot area and this allows them to gain a higher density than previously requested.
- This proposal allows them to align Sunset Boulevard with the smaller lots. They are also providing a bermed area which will be landscaped in back of the lots adjacent to Sunset Boulevard. This will provide a buffer from a busy road.
- They did not plan to provide fencing along this area. It would be the landowner's option to provide a fence. They felt the berm would provide the necessary buffer. The berm will be a part of the common property to be maintained by the homeowner's association. This is roughly 25 feet from right-of-way to the end of the right-of-way where the lots begin. It will be a 3-1/2 to 4 foot berm which will be well landscaped and irrigated. There will also be street trees along Sunset Boulevard.

- They are designing the homes to be within 15 feet of the open space, but the PUD approval allows them to be within 10 feet.
- In response to Mr. Stecher's question, the fencing along Sunset Boulevard would be limited to white vinyl because it is attractive, durable and low maintenance. They would allow some of the green vinyl fence, but they do not want to start using wood fencing in this area. Over time a wood fence starts to look deteriorated. They do not plan to continue the white vinyl fencing in this phase, but they do plan to put a berm and landscaping in this area. They decided not to use the white vinyl fencing here because it is such a small area they did not believe it would be necessary.
- The Woodhaven CC&R's state that all fencing backing up to open space has to be green vinyl. This is the standard they use and this rule is being enforced. If someone wants a wood fence, it would have to be done so you would not see a continuous fence line behind the berm. They would try to create plantings along this berm so whatever fence is built would not be visible from Sunset Boulevard.
- The height of the back yard fence for the lots along Sunset would probably be limited to 6 feet. The CC&R's are subject to their judgment. Typically where you have a walkway going through an open space, there are green vinyl fences 4 feet in height. In this particular area, providing there is good screening from Sunset, he thought it would be okay to have a wood fence.

Chairman Whiteman asked Staff how high the berm with vegetation could be. Mr. Turner said the Code does not specifically address berms. The Code addresses hedges, fences, and walls and does not mention berms.

Mr. Nachbar continued with his testimony. If the Commission has concerns about fencing, they could provide elevations and the type of fencing for this specific area. He noted:

- What they are trying to achieve in Phase 8C is essentially a more affordable type of housing. The prices of homes now are roughly in the area of \$200,000 and above. This particular project would allow their builders to build in the \$140,000 to \$165,000 range. Their builder is Stonebrook Homes and a representative is in the audience tonight. They feel there is a strong market for housing in this price range.
- Going to the higher density provides the community with a more affordable house.
- The primary setback request is 18 feet to the garage. The smaller lots in Woodhaven go down to 50 feet in width and this request is just 2 feet less in width. He reviewed the various lot sizes in the PUD.
- The homes in this phase would range from 1250 sf to 1600 sf. At this time, they feel the market would support a smaller single family home rather than an attached type of unit.
- The population of Woodhaven is approximately 650 families or 1300 individuals.

Chairman Whiteman asked if a traffic study had been done for Pinehurst and Sunset intersection and possible signalization. Mr. Nachbar responded the traffic study was updated by Kittelson & Associates as a part of this PUD amendment. They looked at the overall improvements to see whether the additional 22 units would warrant any other changes in the transportation system in Woodhaven. Kittelson determined the current transportation plan for the PUD is adequate to

support the 22 additional units. Currently, they are looking at the possibility of a small commercial project on the NE corner of Pinehurst and Sunset where the neighborhood commercial site is located.

Chairman Whiteman asked about the piece of private property along Sunset in the PUD and whether or not it would have access Sunset Boulevard. Mr. Nachbar said they provided this property owner with driveway approaches and sidewalks and currently they have access to Sunset. Chairman Whiteman said the City determined that Sunset Boulevard would not be very wide in this area and he was concerned that without some type of signalization at Sunset and Pinehurst there would be traffic problems.

Mr. Mays asked if the developer had notified the homeowner's association about the density change. Mr. Nachbar said they have not formally met with the association to review this specifically. They have been meeting on a regular basis for several months, but this specific proposal has not yet been brought up. Perhaps at their next meeting they should discuss the proposal.

Chairman Whiteman said Pinehurst Drive from Sunset to Galewood looks like it would be a collector status, but as it goes down it looks like it becomes connector status width. Mr. Nachbar said he would have to verify this with the engineer. Mr. Tuck said he thought it is narrower and that the Commission reviewed this during Phases 8A and 8B. Chairman Whiteman said this was before the proposal to increase density was presented.

Ms. Claus asked if the approval for Phase 8A included the width for Pinehurst at what they are proposing with Phase 8C. Mr. Nachbar said Pinehurst Drive from Galewood has always been the same width and has not changed as a result of this proposal.

Mr. Nachbar thanked the Commission. He introduced Ron Carl from Stonebrook Homes. They are currently building in Phase 1D and will be building in Phase 8C.

Chairman Whiteman asked Mr. Carl if the goal is to get into more affordable housing what would be the square footage of the houses. Mr. Carl said the square footage will be relative to what Mr. Nachbar discussed earlier. The lower end the home would be 1200 sf and the higher end will be 1600 sf. The homes will not be single story because the economics don't work with this size. The homes will be two stories. Mr. Nachbar said the minimum square footage for homes in the PUD has been done on a phase by phase basis. They have a stipulation that the corner home be one story or a story and one-half. Mr. Carl said they are just taking some of the back yard out in this proposed phase. When Stonebrook started out the high end homes were \$140,000 to \$160,000. Since then market prices have all gone up based upon land prices. They are working on a market study to determine the price range for the lots in this phase.

Chairman Whiteman said there are a lot of people who would consider \$140,000 to \$160,000 not to be low cost housing. Mr. Carl said "low cost" is not the right term. They are trying to get to the point where the lowest price single family home is available in the market.

Ms. Claus asked if they were going to build fences in the back yards of these homes. Mr. Carl responded they were and it was very important to them. Mr. Tuck referenced the Code under Fences, Walls and Hedges, Types of Fences, "The standards apply to walls, fences, hedges, mounds, and screens of all types (or a combination thereof) whether open, solid, wood, metal, wire, masonry, plant vegetation or other materials."

Mr. Nachbar said they would be glad to come back with more information on what the berm would look like in this area along Sunset Boulevard.

Chairman Whiteman asked Mr. Nachbar if the applicant was willing to stop the 120-day clock on this project until some further questions could be answered? Mr. Nachbar said this question was asked at the last meeting and after hearing that discussion, he had to say no. After tonight's hearing, he would have the same answer, no.

Chairman Whiteman asked if there was anyone who wished to speak in favor or opposition to the application, PUD 93-3 Woodhaven Modifications and SUB 98-7 Phase 8C Preliminary Plat. There was no proponent testimony.

Kevin Murphy, (opponent), 22984 SW Pinehurst Drive, Sherwood, Oregon 97140, addressed the Commission. Mr. Murphy said he lives within sight of the proposed project. He noted:

- As a homeowner in Woodhaven he is not real thrilled about this project. They bought their house with the expectation that there would be a certain character consistent throughout Woodhaven.
- They are afraid with the smaller lot sizes they are going to be getting a crammed together slum ward on this side of Sunset Boulevard.
- They are happy with the way Woodhaven looks now and they would just like to see this consistency applied to the rest of the development.
- At the last couple of homeowner's meetings, this has not formally been brought up, but various homeowners have expressed their displeasure at what is going on with this proposal.

Ms. Claus asked Mr. Murphy what he knew about the proposed park property in general. Mr. Murphy said at the last meeting it was mentioned that the School District, Genstar and the City were having discussions about the property. His knowledge is that nothing is going to happen immediately, but the impression was they may not have a park in this location. There was the feeling that it probably makes sense for the School District to have this land. Right now they are not thrilled about this. They saw the original Woodhaven plan with nice tot-lots throughout the development which he thought was a good idea. Then they saw it all being collected in one area as a large park. To him, this was not as great. All they know now is that it is undecided. They moved into their home about 1-1/2 years ago. He identified where he lived on the map.

Lawrence J. Ernster, (opponent), 17960 SW Frederick Lane, Sherwood, Oregon, 97140, addressed the Commission. Mr. Ernster provided a letter dated November 4, 1998 for the Commission. He said most of his questions had been answered. He read the letter:

- Section 2.202 of the Code states the application must be in substantial conformance with the Comprehensive Plan. This claim seems without basis when the number of units to be constructed in the Phase 8C proposal are about 44% more units constructed than proposed in the original plan.
- He referenced sub-section 7 that addresses adequate public facilities and services being available. How can this be when existing water supplies are not adequate in the surrounding development. Is Genstar going to construct another reservoir and/or a well to supply the additional units?
- Rather than add more units to the existing plat, there should be a building moratorium imposed until adequate water supplies are available. The moratorium should be imposed throughout the entire Woodhaven development, at least until present commitments have been honored.
- There is already a significant amount of road construction underway in 8C. Does the developer feel that approval is cut and dried. This work has continued since the October 20 meeting.
- Does Genstar feel the approval is “in the bag” so to speak and therefore, they are proceeding forthwith to construct the streets in a manner to provide smaller lots and narrower streets to accommodate the extra 44% of houses?
- Are they so arrogant they are going to proceed with or without the approval of the Planning Commission?
- Has a revised environmental impact report been submitted?
- Are the existing streets going to have any additional traffic generation. Streets in the area already in place are too narrow to back out of a driveway without at least two maneuvers if a vehicle is parked at the curb across the street.
- Genstar has not met all of the required mandates in the so-called “completed” parcels of this development. He has lived in his home for 19 months and the curb and gutters have not been brought to an acceptable condition to allow the final paving of the surface. Genstar should demand that the building contractors bring the curbs and driveways up to Code before allowing any at fault builders to proceed with more construction.
- They administer the homeowner’s association in a manner to accommodate Genstar. The CC&R’s are not enforced and storm damage from last winter’s ice storm was never adequately cleared from the common areas.
- The Planning Commission owes protection to their present constituents as well as future citizens. Restricting the over-extension of construction at this time can only impose this protection. The increase in housing units can only increase the amount of traffic on streets designed to accommodate 51 homes.
- He suggested a way to relieve the traffic on Pinehurst would be the Meinecke Road connection.

In response to Chairman Whiteman’s question regarding the curbs and gutters, Mr. Ernster said the contractors drove over them with caterpillars and there were sloppy subcontractors pouring cement. His particular builder is starting to put things in right. He is waiting for his curbs and gutters to be fixed because it is not being enforced by the developer. He has not heard anything from the homeowner’s association. Some of his neighbors are calling the Contractor’s Board. He likes to deal on a one-on-one, honest basis and he is not getting this kind of treatment. He

intends to go to more City Council meetings to voice his concerns. Frederick Lane is not the only street to have curb and gutter problems.

Chairman Whiteman thanked Mr. Ernster for writing a letter ahead of time.

Sanford Rome, (opponent), 1780 E. Willamette, Sherwood, Oregon 97140, addressed the Commission. He placed a visual aid on the stand. He noted:

- What he is going to say is not a personal attack. The piece of paper was blank because if he came in with a bunch of stuff already on the paper it would not get the attention of the Commission.
- The Commission has the grounds to use the word “stop”. He drew the dollar sign for a reason. They are already grading the roadway for Phase 8C. The applicant is a large conglomerate, corporate developer. Maybe it makes sense to grade the road now, it probably does.
- The Commission has the numbers in front of them. He came before the Commission when the area was going to be a golf course and in the early 1990’s when it was going to be 1100 units. When you add up the total number of units the City has given them along the way, it is over 100 units. This is what every person who lives in the City has given them.
- If you voted in the recent election, the citizens had put before them a \$33 million budget proposal to add more schools to pay for the people that the developer has brought to Sherwood.
- This is about money. Every lot they make one dollar off of costs him \$1,000 a year.
- It is real simple, you go from 51 lots at an average cost of \$50,000 and you have \$2.55 million. If you use \$60,000 a lot, you have \$3.06 million.
- He knows they paid \$4,000 an acre out there. They are in business and are entitled to make a profit. He is a businessman and he can appreciate this.
- If you go to 73 lots and drop the price \$10,000 a lot, you still come up \$2.9 million.
- This is not about affordable housing. This is a smoke screen. The bottom line is the \$400,000 you give them and what did the citizens get back. They had to pass a \$33 million bond issue. They have to figure out where they might put a park. They have to figure out water and now they are concerned about roadways.
- The Commission has the opportunity, not to kick them out of town, they build nice houses and have a reasonably nice subdivision, but it has problems. When you have to worry about how traffic will get in and out and have trouble backing out of your driveway, you should be going to Meinecke. They send 650 families out of Sherwood without coming downtown to look for antiques or get a pack of cigarettes. Think about what this has done to him and the downtown merchants.
- They have allowed the City Manager to put in cobblestone bricks downtown so it looks like Minneapolis. What would have been wrong with fixing the cracks in the sidewalks and saving taxpayers some money.
- He does not care how many people the City employs or how many City-owned vehicles there are. But what they have is a situation where now it is time to bring the developer back to the table and say we let you build this wonderful subdivision, what do you want to do for the

City. Don't stop the development. It gives him the opportunity, when someone has to move out of town and can't sell his house, to be able to put another home in the rental market.

- If the bond levy passes and the Convention Center expansion and light rail passes, plus the Washington County Sheriff's bond and Fire District bond, you have added \$70.00 per month to the average \$150,000 starter home. On a \$200,000 home, you have added \$85.00 per month. Luckily, most people vote their pocketbook rather than their conscience.
- The citizens are paying taxes to let the developer continue with what they have done.
- The Commission should not let the people who are bought and paid for that work in the City say this is a Staff Finding. It time for the Commission to fix some of these problems.
- He feels like he has been a target. They have all been shooting at his pocketbook.
- They need to look at the real social, moral and physical costs to this town.
- It is time to bring Woodhaven to the table and say this is what we need.
- We paid for the YMCA fiasco and it may not be profitable or break even for 5 years or ever. And you can't even have a real honest to God swimming and diving pool.

Mr. Rome said it is all based upon dollars and everyone who lives in this town is a target.

Robert J. Claus, (opponent), 22211 SW Pacific Highway, Sherwood, Oregon 97140, addressed the Commission. He presented several documents to the Commission. In addition to the documents, he demanded that the public record on Phases 8A, 8B, 7A and 7B become part of this hearing. The information he handed out included an outline of pleadings he has presented to LUBA. He noted:

- Woodhaven or Genstar is very good at telling you what a hearing is really not about and saying that is the way you should decide it.
- The elevations they have shown the Commission are simply fraud because we do not have design review. The square footages are frauds because the homes are two story. The reason the houses become affordable is because they stack them. They are really cutting square footage while trying to get around the CC&R's.
- It is significantly about what Mr. Rome stated. It is about them being able to take capital gains back to Canada tax free. It is about a 43% increase in this subdivision.
- It is not about a sequence change as Staff is presenting it. Staff is saying they are merely changing the sequence and it is a minor change. This is not true either.
- The conditions state the park and the Meinecke Road/Sunset Boulevard connection were to be completed before anything else was done. You can't say they are just resequencing when in fact, and if Mr. Nachbar disputes this tonight, he can put in the Commission's possession a letter telling their developers that we will not advise anyone there is a park in this subdivision because there isn't one. This letter has already been sent to their developers.
- It is about a 43% density change in Phase 8C. What is the scope of these changes, are they major or minor? Mr. Dittman has said a density change is a major change. The Commission has no option, they must reject the subdivision and deny the application.
- The Staff misled the Commission and almost panicked you about the 120 days in the first hearing by saying you really couldn't make this extension because the time was running. Staff set the stage and told you the hearing must be held. Deny the subdivision application

tonight as a major change. Refer to the Zoning & Development Code on a PUD, it is cited in his brief.

- Deny the application and let the applicant go to City Council and then LUBA.
- The Staff presents themselves as the finder of fact in Sherwood. They should not do this. In fact if they start advocating and say these are the findings of fact, they should be sent to the audience and they should get five proponents of Woodhaven.
- The Commission is hearing as a finding of fact, this a density change, which is defined as a major change in the PUD and if it is you must have a denial because the criteria to accept it, i.e., the underlying PUD has not been changed.
- The Commission must order and request an investigation by the City Council to find out if the applicant is in conformance with the conditions of their PUD. There is a letter in the information he presented which clearly states the School District has the proposed park property. The School District is an active use, it is an active land use. A park is a passive land use. You have proof positive that you have gone from a passive use to an active use and there must be an investigation because the conditions for which this has been brought forward have been changed. We don't have a park, we have an active use of the School District.
- The City admitted in their pleadings that SDCs were given to them for that park. We have been told that is exactly what did not happen. That is waste, fraud and abuse of public funds.
- There is no Meinecke/Sunset connection. Nothing was to proceed after Phase 6 until the Meinecke/Sunset connection was put in and they agreed to pay for all costs. This is in the terms and conditions. The Commission does not have the right to change this. Neither does the Staff. This must also be investigated.
- The Sanitary Sewer Plan has been changed. They have not filed the necessary papers with the Land Conservation & Development Commission (LCDC).
- The park is gone. By the conditions presented, the Commission must first deny the application and have a finding of fact that sends this to City Council saying these conditions have been changed and we order an audit of the conditions.
- The Commission must ask how did the Council have these conditions changed. He spelled the word, "ultravires". It means in Latin, beyond the scope of the authority.
- The Commission are the finders of fact. The Commission should have found whether there was a major change. The Staff should have presented this question to the Commission. The Staff has made a conclusion and finding of fact that they do not have the authority to do.
- The Council needs to find out:
 - Who dropped the half-street costs on Meinecke Road.
 - Who failed to pay for the sewer connection.
 - Why have all costs for the Meinecke/Sunset connection with a figure of around \$300,000 been dropped
 - Why was the Sanitary Sewer Plan allowed to be changed, or to quote Mr. Bormet, "amended" so that Salisbury's property was left high and dry and the sanitary sewer was not brought up.
 - Who redeveloped the Villa Road connection without permission and did not follow the Commission instructions.

- If these things have occurred, then waste, fraud and abuse of public funds have occurred to the tune of a massive amount of money.
- If I was an appointed or elected official, I would want to make sure I was not a part of this. I would prefer to get it back to the Staff, who acted ultraviresly in allowing these “back room deals”.
- The \$88,000 bond they took for the Meinecke/Sunset connection when they knew the cost was over \$300,000 and were instructed to pay all costs, was a back room deal. The dropping of the Meinecke half-street connection was a back room deal. The dropping of the sewer was a back room deal. It is waste, fraud and abuse of public funds.
- When Mr. Hitchcock was Mayor of Sherwood the City had \$20 million. The other day Mr. Claus tried to get an answer from one of the Council members and was told it is now something under \$10 million. The City has collected another \$4 million and have lost \$14 million and we can afford to give away \$2.5 million to these people.
- He referred to the information he distributed regarding SDC’s, in particular Mr. Dittman’s pleading to the court to intervene on eminent domain. Mr. Dittman admits that the City gave away SDC’s for the park. The word is past tense in his pleadings. Therefore, the Commission must call for an investigation on SDC’s because this is a case of fraud with public money.
- He reviewed the things the Commission should do:
 - Deny the subdivision because there has been a major change without the underlying criteria for the PUD being changed. Therefore, it is a proposed major change without a new public hearing. Any major change requires a new application and a new public hearing. There is a major change in density.
 - Ask the City Council to audit all of the conditions of the PUD and find out which have been changed by a professional land use attorney that is not affiliated with Genstar and/or Mr. Dittman. Among those changes are the park, the roads, and the sanitary sewer.
 - Find out who made the changes to the costs, because this is not a LUBA matter. This needs to go to a formal investigation body to find out who gave away the City funds. The Meinecke half-street improvements \$250,000-\$300,000, disappeared; the trunk sewer line from Johnisee’s Robins Run to the Salisbury corner, estimated at \$400,000; all costs of the Meinecke/Sunset connection whether it was \$87,000 or \$88,000, when it really is \$300,000; the sanitary sewer changes, we don’t know how much it is going to cost to correct; but we do know on Salisbury’s property we are going to be forced to buy into a private sewer lines on Smith Farms Estates; we don’t know what happened on the Villa Crossing, it is not what you were promised, it is something else. The Staff took this on themselves to change it and as Mr. Rome points out, increasingly the debt is increasing in this town to pay for what they are not doing. He discussed the PUD in general.
 - Find out who made the money changes and find out what the SDC thing is all about by simply directing this to the City Council.
- None of these things would have happened if the City Council had been doing its job. Refer this application to the Council and if they can’t give us an answer, let him take it back to LUBA.
- He is very upset about this because you are talking about massive amounts of money.

- The Commission gave Staff specific instructions to bring the Villa Road crossing design back to them for review. This was never done. Someone from Staff took it upon themselves to tell the Commission they are not a governing body, I am the governing body in this town. I hope it was not Jon Bormet who did that because he did not have any right to do this.
- At the last meeting the Commission was close to being panicked by the 120-day deadline by Ms. Engels, when in fact it really was not an issue. The Commission spent 45 minutes having to resist her continual charges to move these developers forward.
- Tonight, let's put the whole thing back on record. Let's try to keep the City financially sound, protect the homeowners in Woodhaven who came here with a PUD with specific plans, and anyone who continues to try to withhold information, let's get a total record of it, so as these investigations proceed we know who to ask for the money.
- Everyone knows if this Staff wants to knit-pick you to death, if they want to hammer you on variances, and knit-pick you over sewer lines, they can take a year doing it. If they can do this, why can't they tell you 8C might be a major change in density and therefore require a new petition.
- He said the information he presented to the Commission is part of the record and he wants to make sure it shows up in the record.
- He thanked the Commission.

Chairman Whiteman asked if there was anyone else who wished to provide testimony on PUD 93-3 or SUB 98-7. There being none, Chairman Whiteman asked if the applicant wished to provide rebuttal testimony.

Mr. Nachbar said he would briefly go through the list. He noted:

- The water supply is a City issue to determine whether or not there is enough water. The developer has met all of the conditions of approval and provided the City with a water system update plan. They have heard a few comments from residents and surrounding property owners about the lack of water pressure. Whether this lack of pressure means there is inadequate water supply or it is insufficient, is really an issue of the City determining that.
- They have not constructed any streets in Phase 8C. They have a grading permit for 8B and completed the street grading for 8B which is adjacent to Phase 8C. They do not assume that 8C is going to be approved.
- Regarding the park site, when you read Mr. Dittman's letter, what he is really saying is if there are any requirements imposed on Phase 7B that affect the entire PUD, you would have to renotice for a PUD hearing and add the conditions at that time. The proper time for the Commission and Council to review the park issue and its impact is with Phase 7B.
- At this point in time, there is nothing obstructing the dedication of the park property.
- The City Council has the option of creating a separate PUD amendment to provide for the dedication of a park or the assurance that a park would be located in the Woodhaven vicinity.
- He did not have an understanding of "without prejudice" means.
- There have been comments about the developer's motive in providing a higher density in Phase 8C. If they were strictly interested in making more money, they probably would not have sold the property for the YMCA site. If you add the total number of units together, they

had 140 units on the YMCA site for a total of 1287 units. They reduced this by 140 units and now they are adding 22 units.

- He did not know if they were going to make more money on Phase 8C, but they do know they can provide a more affordable house that they think will do well in the marketplace and it is going to be a profitable venture for them and the builder.
- He did not think this would create a “little slum” south of Sunset. This is the farthest exaggeration from the truth.
- The point of providing the elevations for these homes to the Commission was to say the homes are not going to be shoddy looking, they are going to be varied and unique, but smaller.
- There seems to be a lot of confusion about what the developer is doing, either behind the scenes or in front of everyone. These are Council issues. If the Council feels the developer is not being fair, or the City has not got a good deal with regard to SDC’s, it is the Council’s obligation to provide some direction on behalf of the City Manager to take another course of action. This is not an issue which is a part of this development tonight.
- With regard to Meinecke Road, they have looked at a number of options. There was an original understanding about what the \$87,000 was intended to do. It was re-evaluated by the City Manager, with the recommendation of the Staff Report. He did not think this was part of tonight’s discussion. The appropriate time in his view, would be when they are discussing Phase 7B at the Council meeting.
- What is relevant is whether this PUD proposal provided to answer the questions and findings of fact are accurate. Is the proposal going to be a benefit to the community overall.

Chairman Whiteman said there seems to be a question of whether this is considered a major change. Mr. Nachbar said he was confused as to what the major change issue really is about. As he understands it, if there is a major change to the PUD, then it calls for a PUD amendment. This is what is being presented to the Commission. Chairman Whiteman read from the Development Code regarding major changes to the Final Development Plan. Mr. Nachbar asked what the Code requires for a new petition. Chairman Whiteman said as he reads the Code, it is a much more extensive proposal which would include all of the phases of the PUD. Mr. Nachbar said he would defer this question to City Staff.

Ms. Claus asked if it this was a new petition should it be subject to all ordinances in effect at the time. Historically, Woodhaven has been treated as a grandfathered project. She asked what Mr. Nachbar’s understanding was in this regard. Mr. Nachbar said he could not comment on the adequacy of the Staff’s recommendation. Ms. Claus asked why the application was not deemed complete until September 30, 1998. Mr. Nachbar said the only thing that was missing was the set of drawings and elevations of the homes. The City asked them to provide these elevations. Mr. Tuck said there were two letters of incompleteness. Mr. Nachbar said at that time, they were also considering some other changes.

Ms. Claus asked if there was an estimated time when the commercial site would be developed? Mr. Nachbar asked how this was relevant to what was being reviewed tonight. He said they were trying to present the application as one, a PUD amendment and the preliminary plat for Phase 8C. Mr. Turner said if the PUD modifications were not approved the Phase 8C preliminary plat could

not be approved. The Commission could approve the PUD modifications and not approve Phase 8C preliminary plat. Ms. Claus said the commercial site development would be relevant when considering traffic. Mr. Nachbar said when the updated traffic analysis was done, the consultant considered the commercial site development. He could not specifically say when a site plan would be presented for the commercial site. Mr. Turner said the size of the building would determine whether it would be heard under the streamlined process.

Mr. Franklin said the question was asked at the last meeting and this application was presented as a major change. He wanted to clarify this for the record.

In response to Ms. Weeks question, Mr. Nachbar said they were providing an amendment to the PUD and an application for this and the preliminary plat for Phase 8C.

Chairman Whiteman ask if this was the last undeveloped residential site in the PUD. Mr. Tuck said there is still the townhome site.

Chairman Whiteman closed the public hearing on PUD 93-3 Woodhaven Modifications and SUB 98-7 Phase 8C Preliminary Plat for discussion by the Commission.

Chairman Whiteman said he agreed with Mr. Franklin, the Commission is talking about the PUD Modifications and not particularly Phase 8C. What happens if the School District acquires this proposed park property. What happens to the sewer line on Meinecke Road and the access question. The applicant is not willing to stop the 120-day clock, so the only way for the Commission to deal with this application is to deny the Woodhaven PUD modifications because this hearing has not met the criteria for a major change. Mr. Mays said he agreed they should deny the PUD Modifications. Chairman Whiteman asked what the denial of the PUD Modifications would do to SUB 98-7 Phase 8C Preliminary Plat.

Mr. Turner said if the Commission denied the PUD Modifications, Phase 8C could not be built as presented tonight.

Ms. Claus asked if the Commission would need to make separate denials. Mr. Turner said the applications would need separate motions for denial.

Mr. Nachbar said he would be willing reconsider extending the 120-day deadline if the Staff or Commission could identify what the issues are.

Chairman Whiteman said the Commission thinks the changes are a major change for the PUD. The PUD is all those properties within the boundaries of the project called Woodhaven. This includes all the conditions included in the March 26, 1997 Notice of Decision. The public hearing was not advertised or held to any of the other phases, except Phase 8C Preliminary Plat.

Mr. Tuck referred the Commission to the approval standards for a PUD in the Development Code. The Commission discussed the definition of a new petition and a new petition for the entire PUD.

Mr. Turner corrected what he had stated previously. This application was advertised as a modification to the PUD and Phase 8C. It was noticed everyone in the entire Woodhaven PUD and within 100 feet of the PUD boundaries. The Council did not change the boundary noticing requirement when they approved the streamlining process.

Chairman Whiteman said there are several things on the table at the Council level, and for the Commission to make a conclusion on a PUD modification for the entire PUD without the Council decision would be impossible, in his opinion. He referred to the letter from the City Attorney answering the Commission's questions.

Chairman Whiteman asked the Commission if there was a motion.

Keith Mays moved the Planning Commission deny PUD 93-3 Woodhaven Modifications. Seconded by Angela Weeks.

Mr. Mays said this is a major change to the PUD, the entire PUD should be addressed and the application needs to be resubmitted. Ms. Weeks said she agreed with Mr. Mays. One of the questions the Commission asked was if this was considered a major change and the City Attorney did not address this question. Mr. Turner said Staff has stated this is a major change, however, the sequencing issue was a minor change.

Mr. Franklin said another concern is the outstanding decision by the Council regarding Phase 7B and the proposed park. What will this do the boundaries of the PUD and the connection to Meinecke Road.

Ms. Claus said because the Commission does not have findings for denial, the Commission would need to direct these findings be prepared prior to a final decision being made on this application.

Chairman Whiteman said findings for the PUD Modifications would include the issues within the PUD regarding parks and open space have not been adequately addressed by the City in order for the Commission to make a decision. Another finding is there needs to be some type of further study regarding the Pinehurst/Sunset intersection. There is also the question of the Meinecke/Sunset connection. These are three items that have not been addressed with the PUD modification. He had some other recommendations for the Council to consider which would probably fall outside findings for denial of the PUD Modifications.

Ms. Claus said in order for the Commission to make a decision, they must have findings of fact for that decision. Chairman Whiteman said he agreed.

Keith Mays amended his motion to direct Staff to prepare findings of fact based on denial of the application. Seconded by Angela Weeks.

Mr. Nachbar said he wanted it on the record that one of the reasons for denial was the applicant would not extend the 120-day deadline. When the Commission asked him to extend the 120-day deadline, he was not privy to this issue. Now that he is privy to this issue, he is telling the Commission that he would provide a continuance of the 120-day deadline for evaluation of this issue as to whether Staff feels they have adequately addressed the entire PUD and the issues relevant to it. He did not think it is right for the Commission to deny because at the time he did not know what the issues were and that is why he would not extend the 120-day deadline.

Mr. Claus asked for a point of order because the absolute insistence of Mr. Nachbar to interject himself into the Commission discussion after the public hearing is closed is absolutely irregular. Chairman Whiteman said Mr. Nachbar too asked for a point of order. He was going to stop all discussion now because the Commission had a motion on the floor.

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

Chairman Whiteman asked for a motion regarding SUB 98-7 Woodhaven Phase 8C Preliminary Plat.

Bill Whiteman moved the Planning Commission deny SUB 98-7 Woodhaven Phase 8C Preliminary Plat based on PUD 93-3 Woodhaven Modifications being denied. Seconded by Keith Mays.

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

Chairman Whiteman reviewed the Commission's concerns and/or questions to the Council:

- It would be appropriate for the Council to review and audit all of the SDC charges for PUD 93-3 Woodhaven.
- The Council should review and audit all of the conditions of approval for PUD 93-3. How many of these conditions have been modified or changed without Commission actions.
- If the proposed park property is sold, what happens to the question of the sewer along Meinecke Road. Who is responsible for the payment of that sewer. Mr. Turner said this is being addressed with Phase 7B.
- The Meinecke Road improvement and participation in the Meinecke/Highway 99W. Mr. Turner said this is being addressed with Phase 7B.
- From Pinehurst to Galewood where it is narrowed down, review by the Engineering Department on whether this should be a collector road rather than a connector road. Mr. Franklin said this was approved with Phases 8A and 8B which considered different density.
- With regard to Phase 8C, the fencing along Sunset and the berm and vegetation needs to be addressed.

Chairman Whiteman said the School District is asked for input on residential applications. He does not remember receiving anything from the District indicating that anything being built is going to have a negative impact on the schools.

5. Community Comments

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

Sanford Rome, 1780 E. Willamette, Sherwood, Oregon, 97140, addressed the Commission. He thanked the Commission for their actions. The citizens are trying to get the City back into the direction and focus it needs to go. He hoped the Commission would support the citizens at the Council level.

6. Other Business

The Commission discussed moving their meetings to the Senior Center. It was the consensus of the Commission to continue holding meetings at the Masonic Hall.

7. Adjourn

There being no further business to discuss, the Commission meeting was adjourned at 10:30 PM.

Respectfully submitted,

Planning Department