



**City of Sherwood  
PLANNING COMMISSION  
855 N. Sherwood Blvd  
Tuesday, April 15, 1997  
7:00 PM**

**A G E N D A**

- 1. Call to Order/Roll Call**
- 2. Approval of Minutes of March 18, 1997**
- 3. Community Comments:** *Community comments are limited to items NOT on the printed agenda.*
- 4. Consent Agenda - No applications scheduled.**
- 5. Public Hearings:** (Hearing Disclosure Statement. Also, declare conflict of interest, ex-parte contact, or personal bias)
  - A. SUB 97-3 Woodhaven Phase 4 Preliminary Plat:** a request by Genstar Land Co NW for preliminary plat approval of an 83-lot single family subdivision in the Woodhaven PUD. Tax Lot 100, Map 2S 1 31.
  - B. SUB 97-4 Woodhaven Phase 6 Preliminary Plat:** a request by Genstar Land Co NW for preliminary plat approval of a 180-lot single family subdivision in the Woodhaven PUD. Tax Lot 100, Map 2S 1 31.
- 6. Other Business**
  - A.** Election of Planning Commission Chair and Vice-Chair.
- 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**  
**April 15, 1997**

**1. Call to Order/Roll Call**

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

Commission Members present:

Allen Baker  
George Bechtold  
Scott Franklin  
Bill Whiteman

Staff:

Greg Turner, City Planner  
Jason Tuck, Assistant Planner  
Roxanne Gibbons, Recording Secretary

Commission Members absent:

Susan Claus  
Angela Weeks

**2. Minutes of March 18, 1997 Commission Meeting**

Chairman Whiteman asked if there were any corrections, additions or deletions to the minutes of March 18, 1997. There were no comments.

**Allen Baker moved the Planning Commission accept the March 18, 1997, Planning Commission meeting minutes as presented. Seconded by George Bechtold.**

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

**3. Community Comments**

Chairman Whiteman introduced Scott Franklin, the newest member of the Planning Commission. Mr. Franklin said he moved to Sherwood about 2-1/2 years ago, he is employed by an engineering firm in Beaverton, and he looks forward to serving on the Commission.

Chairman Whiteman announced that Chris Corrado had resigned his position on the Planning Commission. The Mayor will be appointing someone to fill this position. Anyone interested in serving should contact City Hall for an application.

Chairman Whiteman called for comments from the audience regarding any items not on the printed agenda. There were none.

**4. Consent Agenda**

There were no land use applications scheduled.

**5. Public Hearings**

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

George Bechtold advised the Commission that he may have a potential conflict of interest regarding Agenda Item 5A, SUB 97-3 Woodhaven Phase 4 Preliminary Plat and Item 5B, SUB 97-4 Woodhaven Phase 6 Preliminary Plat. He was in attendance mainly to provide a quorum for the Commission to conduct business. He would limit his participation to the discussion, but did not plan to vote on either land use application.

Chairman Whiteman said the City Attorney had confirmed that the Commission could vote on both land use actions tonight if they so desired, and any action would require the consenting vote of three Commission members.

There were no other Commissioner disclosures.

#### **5A. SUB 97-3 Woodhaven Phase 4 Preliminary Plat**

Chairman Whiteman called for the Staff Report. Jason Tuck referred the Commission to the Staff Report dated April 15, 1997, a complete copy of which is contained in the Planning Commission's minutes book. He noted:

- Phase 4 is located within the Woodhaven PUD, north of Sunset Boulevard and east of Highway 99W, Tax Lot 100, Map 2S 1 31.
- The applicant is requesting approval of the preliminary plat for an 83-lot single family subdivision. The site contains 19.94 acres, 14.86 are buildable.
- The proposed roads within Phase 4 will connect Phases 2 and 3 with Phases 6 and 7.
- There is an identified wetlands in the site which have been delineated with the original PUD application.
- The site is zoned Low Density Residential (LDR) and the PUD overlay allows lots to be a minimum 5,000 square feet. The required setbacks for each lot are contained within the conditions of approval.
- The application meets the seven required findings for preliminary plat approval.
- The applicant is proposing to improve the local streets to a width of 26 feet within a right-of-way of 46 feet, as approved under the Woodhaven Modified PUD Master Plan. Pinehurst Drive and Woodhaven Drive are classified as collectors and will continue at a paved width of 30 feet inside a right-of-way of 60 feet. These two streets will contain a 5 foot planter strip along the street on both sides.
- There are no private streets proposed with this application.
- The plat complies with the Comprehensive Plan and applicable zoning district regulations.
- Tualatin Valley Fire & Rescue has reviewed the proposal and provided comments.
- The Woodhaven PUD was approved prior to the adoption of the Tree Ordinance on January 10, 1995. Therefore, the applicant is not required to submit a tree survey as part of Phase 4. Individual lots will be reviewed at the time of building permit issuance to determine which trees shall remain and which trees shall be removed.

In conclusion, based on the findings of fact and agency comments, Staff recommends approval of SUB 97-3 Woodhaven Phase 4 Preliminary Subdivision Plat with the conditions contained in the Staff Report.

Allen Baker asked for clarification regarding the recent amendments to the Woodhaven Final Development Plan and conditions of approval. In particular, when making major changes to a PUD, should these changes include bringing the PUD into conformance with all City ordinances, including the Tree Ordinance. Mr. Tuck said the PUD had received approval prior to the effective date of the Tree Ordinance. Therefore, any application submitted is subject to ordinances which are in effect at the time of submittal. There are areas in the Woodhaven PUD which have been set aside for the preservation of natural areas, the wetlands area which is heavily wooded and the Ponderosa Pine area.

**Chairman Whiteman opened the public hearing on SUB 97-3 Woodhaven Phase 4 and asked if the applicant wished to provide testimony.**

Phil Nachbar, Genstar Land Company NW, 11515 SW Durham Road, Suite E-9, Tigard, Oregon 97224, addressed the Commission. Mr. Nachbar said everything had been adequately covered and he did not have an organized presentation for the Commission regarding the Phase 4 application. He noted the applicant made some modifications to this phase in accordance with City Staff recommendations which were included with the original amendment that was previously approved. The proposed frontage road connection was modified.

Mr. Nachbar said he would answer any questions. There were none.

**Chairman Whiteman asked if there was anyone who wished to speak in favor of the application. There being none, Chairman Whiteman asked if there was anyone who wished to speak in opposition to this application.**

Conrad Claus, 125 NW First Street, Sherwood, Oregon 97140, addressed the Commission. Mr. Claus said he was representing Bob and Lila Salisbury. He would speak on their behalf as well as provide his own observations. He noted:

- He asked that his comments apply to both SUB 97-3 Woodhaven Phase 4 and SUB 97-4 Woodhaven Phase 6 preliminary plats.
- He asked that the record be left open for seven (7) days and that the public hearing be continued.
- There are only three Commission members in attendance to participate in the decision for these applications. It is important that as many Commissioners as possible participate in the decision.
- The appeal period has not run out yet on the March 26, 1997 decision regarding the changes to the Woodhaven Final Development Plan.
- On behalf of the Salisburys, Mr. Claus will be filing an appeal to LUBA on Wednesday, April 16, 1997.
- It is not appropriate to review the subparts of a PUD, when the PUD itself is being appealed and under consideration by LUBA.

Mr. Claus said he would answer any questions.

Chairman Whiteman placed into the record a letter from Derryck Dittman, City Attorney, dated April 10, 1997, responding to the effect of an appeal to LUBA of the Council's approval of changes to the PUD 93-3 Final Development Plan. An appeal does not automatically stay the effect of the decision given by the Council. A stay can be granted by LUBA upon application of the petitioner (appellant) pursuant to, and in compliance with ORS 197.845 and LUBA Rules of Procedure 661-10-068. Requesting a stay requires an undertaking and subjects the person requesting the stay to risk having to pay the applicant's attorney fees and damages resulting from the stay. Until a stay is ordered by LUBA, the applicant may proceed pursuant to the decision given at the local level. In so doing, however, the applicant is subject to the risk that it may have to bear the cost of undoing substantive steps it has taken pursuant to the location decision, if LUBA reverses or modifies the local action. Until a stay is ordered, there is no risk to the City by proceeding with hearings on review of the phases. Even if there is a stay, mere review of a phase does not cause any problem so long as it is not implemented by construction and approval is given subject to LUBA affirming the decision appealed. Absent a stay, the applicant would be entitled to have the City proceed in ordinary course with its application.

**Chairman Whiteman asked if there was anyone else wished to testify regarding SUB 97-3 Woodhaven Phase 4. There was no further testimony.**

Chairman Whiteman said it was his feeling, prior to hearing from Mr. Claus, that since Mr. Bechtold was not going to participate, Mr. Franklin was new to the Commission, and two Commission members were not in attendance, that the Commission hear the testimony tonight and continue the public hearing and decision-making to the next Planning Commission meeting. He did not feel comfortable being a participant in a minority of three persons who would make a decision concerning any land use matter. He asked for comments from the other Commissioners.

**Chairman Whiteman moved the Planning Commission continue the public hearing on SUB 97-3 Woodhaven Phase 4 Preliminary Plat to the May 6, 1997 Commission meeting. Seconded by Allen Baker.**

Mr. Baker said he agreed with Chairman Whiteman and would feel more comfortable with a decision coming from more members of the Commission.

Mr. Franklin concurred with the comments of Chairman Whiteman and Mr. Baker.

Mr. Nachbar asked if Chairman Whiteman had closed the public hearing. Chairman Whiteman said the public hearing was not closed. Mr. Nachbar asked if there was going to be an opportunity to provide further comments, prior to the Commission voting on the motion. Chairman Whiteman said there would not because there was a motion on the floor. He previously asked for further comments and rebuttal after hearing Mr. Claus's request for a continuance and there was no response. Because the public hearing remains open there could be a motion for reconsideration of the motion. The motion on the floor is to continue the public hearing. If the motion is approved, the public hearing will be continued and the Commission could reconsider the motion based on any further comments.

The Commission voted on the motion:

**Vote for Passage of Motion: 3-Yes, 0-No, 1-Abstain (Bechtold)**

Chairman Whiteman said the public hearing on SUB 97-3 Woodhaven Phase 4 would continue and asked if anyone else wished to provide further testimony.

Phil Nachbar, Genstar Land Company NW, 11515 SW Durham Road, E-9, Tigard, Oregon 97224, again addressed the Commission. He noted:

- Regarding the action taken tonight by the Commission, all the Commissioners did have time to review the Staff Report and recommendations for Phase 4. The fact that some Commissioners chose not to attend the meeting seems to be an indication that they do not feel it is important or they do not have any major concerns with the application.
- To some degree, the City and the Commission have some sense of responsibility towards the applicant to be timely and responsive. Unless there is a real good reason to continue this application, the Commission has an obligation to review the proposal under the time frames required. The Commission has had ample time to review the application.
- Phase 4 is totally in compliance with the amended Master Plan which was submitted and approved by the City Council.
- Regarding an appeal, the Commission has heard from City Staff and the City Attorney on how an appeal would affect the Commission decision on this application. The Commission would be within the law in approving the application tonight. It is entirely under the Commission's choice to do so.
- There is a personal feeling of frustration because the applicant has worked very hard with the City towards designing a plan that works within the community and they continually have no sense there is an equal amount of cooperation from the Planning Commission with regard to the subdivision. The Commission has an obligation to act on this application.

Chairman Whiteman referenced Section 3.205.03 Hearing Record from the Community Development Code, Part 3, in particular Item A which states, "Unless the hearing is continued or an additional hearing scheduled, any person testifying may request, verbally or in writing before the conclusion of the initial hearing before the Commission or Council, that the record remain open for an additional seven (7) calendar days. Such requests shall be granted. The Commission or Council shall not take final action on the land use application until the hearing record is closed."

Greg Turner, City Planner, stated if the Commission wished to grant or continue the hearing, they have an opportunity to do so. Mr. Claus said there are two separate issues, continuing the public hearing and leaving the record open.

There was considerable discussion regarding the public hearing process and leaving the record open for additional information. The Commission agreed a legal opinion from the City Attorney would be beneficial to clarify any questions regarding the public hearing process.

Mike Monical, OTAK, Inc., 17355 SW Boones Ferry Road, Lake Oswego, Oregon 97035, addressed the Commission. Mr. Monical commented on the continuance and noted:

- Time is of the essence for a construction program. Pushing the application back 3-4 weeks is tough on the planning.
- They would like the Commission to close the record so there would not be more requests to leave the record open for another seven days.
- He thought the Commission could request additional information without reopening the entire public record.

Mr. Bechtold said his understanding is that for the information to be considered by the Commission and appropriate Staff, the public hearing is left open. If the public hearing is closed while this information is brought before the Commission, this information is not available on appeal. The public hearing is either open or it is closed. Mr. Turner concurred with Mr. Bechtold's interpretation.

Chairman Whiteman said the question concerning the tree inventory, after going through the amendment process is valid and requires additional attention. The other Commissioners should be involved in this discussion. Mr. Bechtold said he would support this position and asked if the Commission needed more testimony or the opportunity for debate.

In response to Mr. Franklin's question, Chairman Whiteman said if the public hearing were closed at this meeting, to re-open the hearing at a subsequent meeting would require 20 days noticing to the appropriate property owners and newspaper publication.

Steven Weeks, 21970 SW Pacific Highway, Sherwood, Oregon 97140, addressed the Commission. Mr. Weeks said he was offended by the testimony that some of the Commissioners did not show up because they did not care. He knew for a fact that this was not the case. He suggested the public hearing be left open for discussion.

Conrad Claus said he agreed with Mr. Weeks' comments. He discussed the process used by the Council in hearing the final development plan amendments. It is the Commission's choice to continue the application or make a decision on the application.

Mr. Bechtold said the public testimony should be kept to the findings of fact and staff report and leave the personal things out. The Planning Commission is responsible to review certain criteria, findings of fact and the Staff Report information. It would help if testimony was limited to this type of information and to try and leave the emotional comments out of the testimony. This would make the Commissioner's deliberations easier.

Phil Nachbar, Genstar Land Company NW, again addressed the Commission. Mr. Nachbar said the Commission has three good minds here that have the ability to review the application. He has not seen any attempt by the Commission to do this and he understands the reason why is because the other Commissioners are not in attendance and therefore, there is not sufficient coverage or representation. If the absent Commissioners felt the need to respond, they could



have provided written comments for tonight's meeting. He encouraged the Commission to think about this being a two-way street between a developer and the community and they have something to offer the community and the City has the responsibility to work with them. In terms of the tree ordinance, the Commission could include a condition which would take care of any concerns. There is nothing presented tonight which would prevent the Commission from taking action on this land use application. They have done nothing to suggest they want special treatment, separately with the City Staff. Their only interest is in providing a well designed development that is efficiently managed. They asked for the Commission's direction as well as the City Council's direction. Once the direction is set, the details remain to be worked out and there is nothing wrong with a developer working hand-in hand with the City Staff. The policy and decisions are the Commission's and Council's purview.

Chairman Whiteman asked if any of the Commission members wished to move for reconsideration of the motion to continue the public hearing. There was no motion.

**Chairman Whiteman announced the public hearing SUB 97-3 Woodhaven Phase 4 Preliminary Plat was continued to the May 6, 1997 Commission meeting, and the public hearing will remain open.**

**5B. SUB 97-4 Woodhaven Phase 6 Preliminary Plat**

Chairman Whiteman asked the Commission how they wished to proceed regarding Agenda Item 5B SUB 97-4 Woodhaven Phase 6 Preliminary Plat.

In response to Mr. Bechtold's question, Mr. Turner said at this time there are two other land use applications scheduled for public hearing on May 6, 1997. In response to Chairman Whiteman's question, Mr. Turner said the two Woodhaven plat applications were submitted on March 26, 1997. He explained that Staff reviews land use applications as they are submitted and deems them either incomplete or complete. If the project is deemed complete, it is then scheduled for a public hearing. There are some projects which were submitted prior to the Woodhaven plat applications, but there were problems with those projects and they were deemed incomplete. The Woodhaven preliminary plats did not have any problems, they were deemed complete and scheduled for tonight's Commission meeting.

Chairman Whiteman said it is important to note that he would have moved to continue any land use application tonight because of the lack of Commission members in attendance. One Commission member had indicated to him that they were going to contact Sue Engels to see if their proxy could be represented tonight regarding the two Woodhaven preliminary plats. He was not aware that Ms. Engels would not be in attendance tonight. He was confident with the Commission's decisions tonight.

In response to Mr. Nachbar's question, Chairman Whiteman said the two Woodhaven preliminary plat applications would definitely be scheduled for public hearing on May 6, 1997.

**Chairman Whiteman moved the Planning Commission continue SUB 97-4 Woodhaven Phase 6 Preliminary Plat to the May 6, 1997 Commission meeting. Seconded by Allen Baker.**

**Vote for Passage of Motion: 3-Yes, 0-No, 1-Abstain (Bechtold)**

Chairman Whiteman asked if the City Attorney could be contacted for an opinion regarding the public hearing process, in particular leaving the public record open for seven days and how a vote of the Commission would be affected.

**6. Other Business - Election of Chair and Vice-Chair**

The Commission agreed to continue this item to the May 6, 1997 Commission meeting.

Chairman Whiteman stated he would like the Commission to consider scheduling a joint work session with members of the Planning Commission, City Council and possibly the Parks Board. The work session could be used to more clearly identify the roles of the particular Boards and Commission as well as their relationship with Staff. The Commission concurred with this suggestion. Mr. Bechtold said the last time the Commission and Council held a joint meeting following a Commission meeting, it was so late when they convened there were no Council members still in attendance.

Allen Baker reported that the training seminar held on March 29 was very informative and well worth attending. Commissioners Baker, Bechtold, Franklin and Weeks attended the seminar. He asked if the Staff Reports could identify the 120 day timeframe for each application, as well as the date the application was received. Staff will provide this information on future Staff Reports.

There being no further business to discuss, the meeting was adjourned at 8:25 PM.

Respectfully submitted,

Planning Department