



**City of Sherwood
PLANNING COMMISSION**

855 N. Sherwood Blvd

Tuesday, October 21, 1997

7:00 PM

A G E N D A

- 1. Call to Order/Roll Call**
- 2. Approval of Minutes - October 7, 1997**
- 3. Agenda Review**
- 4. Community Comments:** are limited to items NOT on the printed agenda under Public Hearings.
- 5. Public Hearings:** (Hearing Disclosure Statement. Also, declare conflict of interest, ex-parte contact, or personal bias)
 - A. SP 97-4 Act III Theaters Site Plan:** (cont'd from Oct 7, 1997) a request for site plan approval of a 16-screen theater and 3 commercial pads, located east of Hwy 99W and north of Tualatin-Sherwood Road. Tax Lots 700 and 1100, Map 2S 1 29B.
 - B. PA 97-8 Plan Text Amendments:** (cont'd from Oct 7, 1997) Streamlining the planning process including provisions for expedited land divisions and limited land use decisions.
 - C. SUB 96-6 Sherwood Crossroads Subdivision Preliminary Plat:** (cont'd from Oct 7, 1997) The applicant is requesting a continuance to the **November 4, 1997** Regular Commission meeting.
 - D. SUB 94-9 Cedar Creek Park #2 REVISED Preliminary Plat:** request for preliminary plat approval of a 23-lot subdivision located south of Scholls-Sherwood road and west of SW Lavender Avenue. Tax Lots 1100 and 1200, Map 2S 1 30A.
 - E. MLP 97-1 Lot 48 Wildflower:** a request by Robert Howard for a minor land partition to divide an 8114 sf lot located at 16789-16791 Daffodil St into two lots. Tax Lot 4900, Map 2S 1 30AD.
 - F. MLP 97-2 Lot 49 Wildflower:** a request by Robert Howard for a minor land partition to divide an 8069 sf lot located at 16763-16765 Daffodil St into two lots. Tax Lot 5000, Map 2S 1 30AD.
- 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
October 21, 1997

1. Call to Order/Roll Call

Chairman Whiteman called the meeting to order at 7:04 PM.

Commission Members present:

Allen Baker
George Bechtold
Susan Claus
Scott Franklin
Angela Weeks (7:08PM)
Bill Whiteman

Staff:

Sue Engels, Development Director
Greg Turner, City Planner
Jason Tuck, Assistant Planner
David Brooks, Planning Intern
Roxanne Gibbons, Recording Secretary
Jon Bormet, City Manager

Commission Member Douglas R. Saxton (1943-1997)

Chairman Whiteman announced that Commission member Doug Saxton, passed away last week. Services will be held on Thursday, October 26, 1997 at the Rolling Hills Community Church, 7:30 PM. The family asks that remembrances be made to the Rolling Hills Community Church. Mr. Saxton was one of the newer members of the Commission, but his past experience on other commissions and knowledge is something each of the Commissioners are going to miss. A moment of silence was observed for Doug Saxton.

2. Minutes of October 7, 1997 Regular Meeting

Chairman Whiteman asked if there were any corrections, additions or deletions to the minutes of October 7, 1997. There were no comments.

**Susan Claus moved the Planning Commission accept the October 7, 1997
Planning Commission minutes as presented. Seconded by Scott Franklin.**

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

Angela Weeks arrived at the meeting.

3. Agenda Review

Chairman Whiteman announced it is anticipated that Agenda Item 5A, SP 97-4 Act III Theaters Site Plan, will take up the majority of the meeting. The Commission will deal with the other requests for continuance when that point on the agenda is reached. There were no other Commissioner comments regarding the Agenda.

4. Community Comments

Chairman Whiteman said a representative of Tri-Met had planned to be in attendance, but had not yet arrived. Sue Engels reported Tri-Met is involved in a process to do their planning for the next 10 years in terms of capital improvements and transit services. "Transit Choices for Livability Workshops" will be held throughout the region. The SW Cluster workshops will be held on October 23 at the Richard Brown Auditorium in Tigard, and November 6 at the Tualatin High School Commons in Tualatin. The workshops will run from 6:30 PM to 9:00 PM at each of these locations. Informational brochures were made available to the Commission.

Chairman Whiteman asked if there was anyone else who had any comments regarding items that are not on the printed Agenda.

Becky Read, 555 SE Mansfield Street, Sherwood, Oregon 97140, addressed the Commission. Ms. Read asked for clarification regarding the October 28 meeting to discuss the YMCA on how this meeting was being advertised to the public. Jon Bormet, City Manager, responded the City Newsletter will be mailed out Friday (October 24) announcing the YMCA meeting on Tuesday. This will be a part of the regular City Council meeting.

There were no further community comments.

5. Public Hearings

Chairman Whiteman explained the public hearing process. The schedule will be as follows:

- Presentation of the Staff Report by City Staff.
- Testimony from other Agencies (State or County).
- Presentation/testimony from the Applicant and their representatives.
- Report from Staff regarding the written record received to-date. All of this information will become part of the written record.
- Testimony from the Public, limiting comments to 5 minutes or less, keeping in mind the Commission is dealing with a land use issue which must meet certain Development Code criteria. If someone precedes you or has said what you feel, identify yourself and indicate that you agree with that individual. This will then become a part of the record.
- Rebuttal by the Applicant.
- Deliberations by the Planning Commission.
- Any appeal will be based solely on what is in the record.

He asked Staff, agency representatives, and the applicant how long their presentations would be.

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.

Greg Turner advised there were about six (6) new items placed before the Commission tonight. The Commissioners agreed a recess would be in order to review these items.

Susan Claus announced she would not be participating in the public hearing for Agenda Item 5A, SP 97-4 Act III Theaters Site Plan since she had a potential conflict of interest.

George Bechtold announced he had ex-parte contact with Washington County, the Oregon Department of Transportation, and citizens in town. He had also driven by the site for the proposed Act III Theaters.

Scott Franklin announced he had ex-parte contact with Washington County regarding the proposed Act III Theaters.

Angela Weeks announced she attended the Act III Theaters Open House last Wednesday where she asked the Act III representatives the following questions: How did they chose Sherwood, what would the construction time be, information regarding contributions to schools on a corporate level, and comments about the traffic study.

Allen Baker announced he had ex-parte contact with ODOT about faxing a copy of their response to him.

Chairman Whiteman recessed the meeting at 7:20 PM to allow the Commission time to review the information which was placed on the tables tonight. Chairman Whiteman reconvened the Planning Commission meeting at 7:32 PM.

5A. SP 97-4 Act III Theaters Site Plan (continued from October 7, 1997 PC Mtg)

Chairman Whiteman opened the public hearing on SP 97-4 Act III Theaters Site Plan and called for the Staff Report. Jason Tuck referred the Commission to the Staff Report dated October 21, 1997, a complete copy of which is contained in the Planning Commission's minutes book. He reviewed the report, showed aerial slides of the site, and specifically noted:

- The applicant is Act III Theaters and the owner is Steve Morse. The applicant is requesting site plan approval for a 16-screen theater with a total of 2,882 seats. The application includes three building pads for future development. Each pad will have a site plan review when they come in for development.
- Access is proposed off of Tualatin-Sherwood Road and Highway 99W. There are a total of 882 parking spaces for the theater and three pads. General landscaping has been provided around the perimeter and within the site.
- The site is located at the northeast corner of Tualatin-Sherwood road and Highway 99W, Tax Lots 700 and 1100, Map 2S 1 29B. The site consists of 12.8 acres with 11.8 net buildable acres. The site is zoned General Commercial (GC) and the proposed use is permitted outright within the current zoning designation. The use is categorized as "motion picture theater."
- The proposed development meets all of the applicable zoning district standards of Chapters 2, 5, 6, 8 and 9. There are no residential zones within 100 feet of the site so there are no setback requirements.
- The building height limitations are fifty (50) feet, except that structures within 100 feet of a residential zone shall be limited to the height requirements of that residential area. The applicant is proposed a 50 foot high building.

- Additional setbacks are required along Tualatin-Sherwood Road, 45 feet from the centerline. The applicant has met this criteria.
- The landscape plan indicates approximately 15% of the lot area used for the display or parking of vehicles will be landscaped.
- The applicant has provided interior parking lot landscaping as required by Code. Adequate sight distance has been provided for at the intersections of all accessways to public right-of-way.
- Off-street parking standards for a theater is 1 stall per 4 seats or 8 feet bench length. The proposed theater will use approximately 721 parking spaces for 2,882 seats. The proposed use of the pads has not yet been determined. The pad parking will include a total of 160 stalls which was based on one stall per 100 square feet of floor area. The total number of spaces being provided is 883 when 882 are required.
- The site plan indicates 206 parking spaces, or 23% of the parking stalls provided, will be designated as compact car stalls. The remaining 677 spaces will be full size, with 22 for handicapped parking.
- The applicant is proposing 44 parking stalls for bicycles located adjacent to the front entrance to the theater.
- A loading area of more than 750 sf is provided behind the theater. These areas are separated from the regular vehicle moving areas as required by the Code.
- Access for the proposed uses will be directly to a public street. The proposal is two access points, Tualatin-Sherwood Road and Highway 99W. There is also the possibility of access to the north connecting to a future loop road. Staff recommends a fourth access to the east of the site through the lumber yard parking lot. A representative of Lancaster Engineering will discuss this later.
- The applicant will be required to comply with the standard to provide a sidewalk to link the public and private sidewalks.
- Solid waste receptacles are illustrated as being screened by an eight foot high sight-obscuring fence or masonry wall. Pride has indicated the proposal would meet their requirements. Staff has talked with the applicant and another location may be more desirable, out of view from motorists on Highway 99W.
- The applicant is not proposing a free-standing sign at this time and has communicated there will be no need for such a sign for the theater.
- A 154 sf marquis will be incorporated into the building facade which meet the sign code.
- The site plan illustrates a six foot wide sidewalk along Tualatin-Sherwood Road which meets the standards of the Code.
- The applicant is proposing to connect to the sanitary sewer main located on the south side of Tualatin-Sherwood Road. There is adequate capacity within the system to accommodate the new development.
- The applicant is proposing to extend the 8-inch water line throughout the site. The line will be extended across Tualatin-Sherwood Road. There is adequate water to service the proposed development. The theater will have a separate fire sprinkler system as will all of the pads.
- The proposed water quality/detention pond facility is located within the BPA easement to the north. Discharge from the facility will be to the existing Highway 99W ditch.

- The maintenance of the landscape corridors will be the responsibility of the applicant and future owners of the building pads.
- The trees on the site were planted as a tree farm. City tree mitigation requirements are not applicable for trees planted for commercial purposes.

In conclusion, based on a review of applicable code provisions, agency comments and Staff review, Staff recommends approval of SP 97-4 Act III Theaters Site Plan with the conditions contained in the Staff Report.

George Bechtold asked if the BPA had been contacted about the possibility of the water detention on their property. Mr. Tuck said the applicant has indicated they have an agreement to do this.

Greg Turner referred the Commission to a memo from Staff dated October 21, 1997, which recommended amendments to Condition #11B regarding access to Tualatin-Sherwood Road. He read the revised and additional conditions into the record as follows:

2. The first eastbound left turn on Tualatin-Sherwood Road into the subject site (across from Albertson's) shall be removed when, in the judgment of the City, traffic conditions warrant the removal, so long as a loop road or other primary access from Tualatin-Sherwood is provided to the site.
3. A second eastbound left turn lane into the subject site (at the Albertson's traffic signal) will be provided by the applicant. Should this left turn lane into the site subsequently impede traffic on westbound Tualatin-Sherwood from moving through the 99W intersection, a traffic study commissioned by the City and paid for by Act III will be undertaken.

Should the study determine that traffic movement on Tualatin-Sherwood through the 99W intersection is significantly impaired by the existence of this left turn lane, the City may, after consultation with Act III, eliminate all left turn access into the site at this location. In so doing, a loop road or other adequate access from Tualatin-Sherwood to the site must be available. While these decisions will be undertaken with the advice of Act III, the final determinations will remain solely with the City.

Chairman Whiteman asked if this meant these conditions could not take place if the loop road is not in place. Mr. Turner responded the closure would be based upon the loop road being in place. Mr. Bormet said the condition states loop road or other primary access to the site does not happen. The City has to provide access to the site. A representative of Lancaster Engineering would be making a presentation. Lancaster Engineering was hired by the City to do an independent traffic study of this application and the Lucas application heard at the last Commission meeting.

Todd Mobley, Lancaster Engineering, 800 NW Sixth, Portland, Oregon 97209, addressed the Commission. Mr. Mobley referred the Commission to the overhead slides in identifying the specific proposed access locations. He noted:

- A full access is proposed at the Albertson's signal on Tualatin-Sherwood Road.
- A right-in from Highway 99W is proposed.

- The proposed loop road extension would go around the BPA substation and out onto Highway 99W.
- In doing the study, Lancaster took into account the Act III Theaters proposed development and other neighboring developments to determine how the area would operate to the year 2005.
- In looking at the existing conditions, they reviewed the traffic study done by Kittelson & Associates. Lancaster agreed with the Kittelson findings for accesses.
- He understands there is a conflict with the right-out access to Highway 99W. They assumed this to be in place or necessary for traffic circulation on Tualatin-Sherwood Road.
- The left-in to the site from Tualatin-Sherwood Road would have a pretty high traffic volume.
- The right-in to the site from Highway 99W would allow traffic to travel through the Tualatin-Sherwood Road intersection and go right into the site.
- As long as there is a double eastbound left turn lane into the site from Tualatin-Sherwood Road, there would be adequate storage for vehicles traveling westbound on Tualatin-Sherwood Road and turning left, southbound on Highway 99W.
- The proposed amendments to the conditions discussed by Mr. Turner are a result of concerns for a potential conflict of traffic backing up for the westbound left turn to Highway 99W.
- They determined that a loop road connection or some other primary access would be necessary to keep traffic circulating in this area of Tualatin-Sherwood Road by the year 2005.
- With the loop road, vehicles could access the site from back and avoid the Tualatin-Sherwood Road/Highway 99W intersection and Albertson's intersection all together.
- By 2005, they determined the right-in to the site from Highway 99W would need to be in place, as well as the loop road connection to allow access to the site.

Scott Franklin asked what would happen if the right-in, right-out from Highway 99W was not obtained. Mr. Mobley said if the right-in, right-out was not granted, it does not look like there would be adequate room for the left-turn traffic volumes on Tualatin-Sherwood Road traveling eastbound. Mr. Turner clarified that Staff is recommending a right-in to the site from Highway 99W and not a right-out from the site to Highway 99W. Mr. Mobley said this was correct, the right-in to the site from Highway 99W would really reduce the traffic volumes on Tualatin-Sherwood Road trying to gain access to the site. Without a right-out from the site to Highway 99W, all the traffic would go through the Albertson's signal intersection. Mr. Turner said traffic would use that signal and there is a cross easement across the lumber yard, east of the property across from Langer Drive.

Mr. Franklin asked for clarification on the proposed Condition #11B.3 and the traffic study being commissioned by the City and paid for by Act III regarding left turn movements to 99W southbound and whether this was already done by the County. Mr. Bormet said he did not believe Washington County anticipated a dual left turn lane to Highway 99W southbound. The future anticipates the approval with Staff recommendations that the left turn lane will work. If it does not work in the future, the reason it will not work is not because of traffic stacking up going westbound, but traffic going the opposition direction stacking up at 99W going westbound onto Tualatin-Sherwood Road. At that point, if there becomes a conflict, the City would go forward with the traffic study.

Allen Baker asked about the loop road and the right-in to the site from Highway 99W and whether all of this would be required prior to the theater opening. Mr. Bormet said before the theater would open, the City would require everything, but the loop road. The proposed loop road is the City's responsibility to get through the process. There are questions whether this loop road can be built, but the City thinks the loop road is very good idea, traffic engineers think it is a good idea, but the City has not yet convinced ODOT of the need. It does skirt the UGB and the road may get into the UGB, depending upon the ultimate alignment of the loop road. There would be more comments for a loop road through the Transportation System Plan (TSP) process the City is currently involved in.

Mr. Franklin asked if the Commission could make a bond for a road which is not yet on the City's Transportation Plan. Mr. Bormet said the loop road would be complicated and it does not matter. If the loop road went through, it would be a road that was creditable with TIF funding. The applicant will pay approximately \$500,000 in fees. Whether the City uses this money on the loop road or not would be something the applicant would rightfully have a credit back to these fees, so it would be offset.

Mr. Baker said if cars can't get out of the site, then cars can't get into the site, and there would be a major traffic problem. Mr. Bormet said the City may want to rethink the idea of a right-out onto 99W from the site. This would possibly address Mr. Baker's concern.

Chairman Whiteman asked if there were any agency representatives who wished to testify regarding the SP 97-4 Act Theaters Site Plan.

Leo Huff, Planning Mgr, Oregon Department of Transportation, Region 1, 123 NW Flanders, Portland, Oregon 97209-4037, addressed the Commission. Mr. Huff said a lot of the site plan is predicated on the need for the right-in, right-out access onto Highway 99W. He felt compelled to testify and apprise the applicant and the City one more time of the validity of the assumption that the right-in, right-out access would be and base a decision on this information. He noted:

- The assumption is that this would be granted to the applicant, and ODOT believes they have no legal obligation to grant the access. Since they really see no benefit of the operation of the Highway for allowing it, ODOT is doubtful they would grant it.
- When the Six Corners, Tualatin-Sherwood/Edy Road project was done, it was assumed that development would occur off of Tualatin-Sherwood/Edy Road and that the access along there would be adequately provided for access to the property on this site.
- When ODOT did the Six Corners project, they acquired a lot of access and property rights along the highway and compensated property owners on the assumption there would not be access because ODOT has to operate the highway and maintain some reasonable level of service.
- It is now the stated policy of the Governor, ODOT Director, ODOT Commission and Highway Manager that ODOT should scrutinize and tighten their access policies, not to lessen them.
- He did not believe it would be a valid site plan without the access to Highway 99W.

- Regarding the loop road not being a part of the site plan, he thought the loop road actually has merit, but at this point it would be hard to say it might actually have a positive effect on the other two intersections in the Six Corners area. It is a little premature to say one way or the other. It may turn out there are so many people wanting to use it the problem would just be moved to that new intersection.
- The TSP process the City is undertaking right now is a good way to address these issues, but right now the loop road is a “paper” road which requires a lot more analysis. Who would pay for all of the improvements. What if the demand is actually for a four-lane road there because there are so many people wanting to use it. If you don’t build a four-lane road, what do you have. You have a problem at the intersection and the demand too great for a narrow road that is undersized. The loop road has merit, but it is a couple of years away.
- Assuming time lines, the proposal for the loop road is to go out of the Urban Growth Boundary (UGB) a little bit. ODOT’s experience in dealing with DLCD and siting roads outside the UGB has been a long and expensive process.

Mr. Baker said he understood ODOT’s concerns for a right-out from the site to 99W, but he thought a right-in from 99W to the site would benefit 99W because it would lessen traffic using the Tualatin-Sherwood Road access. Mr. Huff said only if you assume that the site plan stays as it is. If you don’t have the right-in from 99W, then you have to look at the whole concept of the site plan and come up with something different. The problem is only there if the Act III Site Plan remains configured as it is being presented.

Mr. Bechtold asked if everyone agreed that the loop road was not part of the site plan. Mr. Franklin said it was not part of this particular site plan the Commission is approving because it is not part of the applicant’s property. Mr. Bechtold said then this would not be something the Commission would consider in reviewing this site plan. Mr. Franklin said the Commission could not make that decision because the loop road would be a part of the TSP. Mr. Turner said the loop road was part of the Staff Report and is part of the conditions that have been proposed. Chairman Whiteman said the conditions are “if” conditions, that is if it ever happens. Mr. Turner said Staff is saying the applicant would construct or bond for the loop road. Mr. Bormet said it is the City’s responsibility to get the loop road done, they are not putting this on the applicant. The only thing being put on the applicant is the responsibility to pay for the loop road, which is TIF creditable, but if not TIF creditable and out of pocket, say the City got to the point if there was a traffic signal at the loop road, then the applicant is held responsible for half of that traffic signal. The improvements on Highway 99W are not TIF creditable.

Mr. Bechtold said what he heard Staff say is that the loop road is part of the Staff Report and would be considered a part of this site plan.

Mr. Bormet explained that TIF fees are traffic impact fees which this developer has to pay to mitigate the amount of traffic their development puts out. These fees are used to make other improvements to the system. In this case, these fees amount to about \$500,000. The applicant will report on the other improvements they will be responsible for, which is about another \$250,000 to \$500,000.

The Commission thanked Mr. Huff for attending the meeting to provide testimony.

Chairman Whiteman asked Staff to report for the record who had responded in writing regarding this site plan application.

Mr. Turner summarized the following information received by the City:

- October 14, 1997 letter from Washington County reiterating their position to allow only a right-in and right-out access across from Albertson's on Tualatin-Sherwood Road and not a full access.
- October 14, 1997 memo from Lancaster Engineering regarding dual-left turns into the site which would work until the year 2005.
- October 17, 1997 letter from Department of Land Conservation and Development (DLCD) restating ODOT's position of not allowing a right-in to the site from 99W and to encourage the City and Act III to resolve the transportation issues through the City's Transportation System Plan (TSP).
- October 21, 1997 letter from ODOT recommending denial of the Act III Theaters Site Plan application. That the City Staff findings are inadequate, specifically adequate access, parking and facility improvements mitigation of the proposed development have not been resolved.
- A letter which was distributed at the October 15, 1997 Act III open house entitled, "Should Sherwood Really Have the First Act III Megaplex Entertainment Center?"
- October 20, 1997 letter to Washington County from Kittelson & Associates regarding access to the site from Tualatin-Sherwood Road, stating that this access would work.
- October 16, 1997 letter from Metro to Marah Danielson, Region 1, ODOT, regarding the proposed loop road which would run outside the UGB and the process the City would have to go through to get approval of building the loop road.
- October 14, 1997 letter attached to the Staff Report from Sheri Shaw to the Commission strongly against the construction of the Act III Theaters.
- September 29, 1997 letter from John Shaw also voicing concern about the Act III Theaters.
- October 13, 1997 letter of support for the application from Tom Caster and family.

Chairman Whiteman said this is the written communication the City has received and provided to the Commission for review.

Chairman Whiteman asked if the applicant wished to provide testimony.

Tim Reed, Vice-President Real Estate, Act III Theaters, 919 SW Taylor, Suite 900, Portland, Oregon 97205, addressed the Commission. He thanked Staff for all of the work they had put into this site plan application. He thanked everyone who attended the open house last week for the Act III Theaters. He presented a history of Act III and noted:

- The company was started in 1987 and they currently operate about 800 screens through 140-150 locations around the country, from Fairbanks, Alaska to San Antonio, Texas.
- They are based in Portland and have been here for about 8 years. Portland is their corporate headquarters.

- They are currently in a fairly extensive expansion plan throughout the area they operate in. They are doing construction in Gresham, Tualatin-Valley Highway and 234th, and 165th and Division.
- They received a lot of good input from the open house; from the architectural design of the building, the size of the building, traffic and parking concerns. It helped them analyze what and how they were doing.
- The facility is 16-screens with 2,883 seats. This averages 170 seats per screen. The largest auditorium is right at 300 seats. It seems like a large number of seats, but the key is the number of screens.
- The industry has, through ancillary outlets, video tapes, cable, satellite and all the various venues have created a tremendous amount of production money for movies to be made. Much more product is available and the ability to have these services in the community and to provide a film product so everyone has an opportunity to see it, you need multiple screens, not necessarily with a large number of seats. In comparison is the Lloyd Center with 10-screens which seats over 3,000, with one auditorium that is over 800 seats. The efficiencies with theaters like that are not there any more.
- With this application, you are looking at 16 small auditoriums that will be playing a variety of films, some good and some bad.
- Regarding the question of why are you coming to Sherwood, everyone in Oregon realizes what is going on with land use laws and the desire by everyone to have the services go out to the community. It is a situation that when services are closer, the context is that traffic will be using shorter traffic distances and shorter time distances.
- Land acquisition for commercial development is going to become very expensive, very quickly. For them, the ability to construct facilities like this is going to tighten up. It is pure economics.
- They have targeted areas where they believe the citizens are looking for services like this and they propose a new theater in Sherwood.
- The applicant had proposed a right-out to 99W from the site. The Lancaster study shows the system would operate with the right-in only, but they have proposed both a right-in and a right-out.
- Kittelson & Associates would provide information with regard to traffic and then the project architect would provide design information.
- The applicant accepts the conditions that have been recommended by Staff, as amended. These include the reality of asking the City of Sherwood if they would like them to be here. The applicant will then take the issues up with ODOT and Washington County with regard to access onto 99W and the left turn situation, keeping in mind the conditions of approval require such.

Chairman Whiteman asked what would happen if the application was approved and they could not work out the access problems. Mr. Reed said they would say thank you to the City of Sherwood and if they cannot work it out with ODOT or Washington County, it is the condition of approval that they have to be responsible for. By the conditions, the City has become an advocate that if they want this project done properly, they agree with the applicant on what they propose is this access point and the left-in situation.

Angela Weeks asked if the applicant wanted to see a condition regarding the right-out onto 99W. Mr. Reed said certainly as far as they have proposed the right-out. That would be the Commission's prerogative.

John Ringert, P.E., Kittelson & Associates, 610 SW Alder, Suite 700, Portland, Oregon 97205, addressed the Commission. They performed the traffic study for the proposed Act III. He noted:

- They coordinated with both ODOT and Washington County when the study was started and pretty much received all of their buy-offs. There has been a lot of coordination.
- He discussed how theaters operate. Most theaters operate at under one-quarter of all the seats being full at any one time or one hour. If you have 16 screens, probably only 2 or 3 would be really packed.
- He presented a graph showing Portland Area Theaters, Friday peak occupancy. The average occupancy for the Tigard Act III is 31%, and without including Tigard, the average occupancy rate is 22%. The Tigard theater is pretty much an anomaly and serves a huge market. The theater occupancy studied is about 28%.
- He discussed the Level of Services Comparison. They looked at the background conditions, what happened when other areas are built out, what would need to be done to put in the theater and make everything work good or better, and the loop road. They found everything is operating fairly well, except there is some queuing on Tualatin-Sherwood Road. One reason is due to the way the signals are operating right now.
- The level of service in 1998 will be little worse than now, but nothing substantial. What they propose with Act III will actually improve traffic operation in this section. They would be widening the lanes along Tualatin-Sherwood Road. With the loop road they could actually get by with a little less improvements. This has been verified by Lancaster Engineering.
- Traffic reports basically look at three venues. The volume over capacity ratio (v/c) is the amount of traffic on the road versus its capacity. Today, 80% of the Highway 99W, Tualatin-Sherwood Road capacity is being used. This is at the intersection.
- While Act III and its 16 screens develops a lot of traffic, you could fit a 160,000 sf shopping center on the site which would generate approximately 40% more traffic during the PM peak hour. The theater definitely will generate more traffic during the 8:30 PM, Friday peak than a shopping center. There is not much traffic on Tualatin-Sherwood Road at 8:30 PM or 9:00 PM at night. This is something to keep in mind.
- If you look at the percent of occupancy at a theater, there are very few times would it even get above about 30% occupancy. They have enough proposed parking to get the theater with 721 spaces up to about 54% occupancy. That would mean the Sherwood theater would be able to operate at the Tigard theater level. The Tigard theater occupancy is one of the highest in the chain of about 150 theaters.
- They believe the proposed parking is reasonable. Of course, if the theater was 100% full, there would be a parking problem, but the chances of this happening are pretty low, or at least they would make so much money they could build a parking structure on the site.
- He presented a schematic showing the theater and estimated parking demand.

Chairman Whiteman said the date discussed is 1998, but have they done any projections for 10 years from now. Mr. Ringert said for this site they did not look at this. Lancaster looked at the

horizon years. You have to look at what other development you see happening within the City and the area, as well as other issues such as a bypass. The Lancaster study found basically the same thing, improvements would be needed on Tualatin-Sherwood Road, the loop road will work, and in the long, long term, you would need to look at some major mitigation. The systems are not going to last for 20 years without some major transportation improvements. Highway 99W is primarily important to a County Road, the Tualatin-Sherwood Road. The site can function without the access to Highway 99W, but it loads up all the traffic on a single access onto Tualatin-Sherwood Road which both the County and the residents have concerns about. The site would function, but this would mean an extra double turn lane into the site off of 99W, a double left turn would mean extensive widening on Tualatin-Sherwood Road.

Chairman Whiteman asked what the impact would be if the right-out to 99W was removed and all traffic would go through the one intersection on Tualatin-Sherwood Road. Mr. Ringert said the most important movement would be the right-in from 99W. From a general circulation point, the right-out to 99W reduces traffic on Tualatin-Sherwood Road and would have a lot of merit.

Doug Walton, WPH Architecture, 513 NW 13th Avenue, Suite 300, Portland, Oregon 97209, addressed the Commission. They have been the architects for several of the Act III theaters. Act III does not build an inferior quality facility. Their theaters have tremendous video and audio capabilities. He noted:

- The main floor of the building is just under 60,000 sf and will have 721 parking spaces.
- The rest of the building is steel trusses with an emphasis on the front door. They want the building to be a really good piece of architecture for the community.
- They were very careful about interior lighting and interior detail. The building will be seen from the surrounding areas, so it is very important that the building be well landscaped, be well lit and have the quality, texture and color that the community would accept.
- They have added a covered pedestrian connection to the parking lot. Parking lot lighting will meet code requirements.

He presented a 4-minute video to the Commission. The video showed how the site would look with the building, landscaping, and lighting. The building is placed at the north end of the site and sits far enough back that it does not crowd the road. The lobby of the building is within the 50 foot height restriction. They are not requesting any variances for the building. The lobby will be made up of different types of glass. The design of the theater is contemporary in nature. The interior of the corridors is made of materials which do not require a lot of maintenance, wear really well and are user friendly. The building will have a similar type pattern to the exterior as the one in Wilsonville. In response to comments from the open house, they are extending the canopy system all the way across the front of the building. They will soften the building by having some vegetation on it and have added some trellis work. Although the building is contemporary in design, when the original theater was built in Old Town, it was probably a lot more avant-garde for its time as well. The Act III theater may look very contemporary now, but some day it won't because other things around it will be built with the same type of design.

Tim Reed said this concluded their brief presentation and they would answer any questions. The majority stockholder of Act III has been Norman Lear and he wished to divest himself. The sale of Act III to Kohlberg Kravis will not have an effect with this application. The company and management will remain in Portland.

Chairman Whiteman asked if there were any other state or county agency representatives who wished to provide testimony. Following another break, the Commission would hear testimony from the public.

Chairman Whiteman recessed the meeting for a break at 8:50 PM and reconvened the meeting at 9:00 PM.

Chairman Whiteman announced the Commission would hear testimony from the public. He said Mr. Claus had asked to speak first.

Robert James Claus, 22211 SW Pacific Highway, Sherwood, Oregon 97140, addressed the Commission. Mr. Claus said the application should not be before the Commission. He believed it is illegal. He would go over some of the remarks and incorporate, for appeal purposes, any remarks into his comments. He noted:

- Act III is in the process of being purchased. To suggest they are a Portland based company now is wrong. They are not based in Portland, they are now New York finance people.
- There is not one megaplex in Oregon, all of the others are multiplexes. They have delighted in saying to the Wall Street Journal that megaplexes in a predatory, capitalistic system will eliminate the independent theaters. Magic Johnson and other people are building them and they are experimenting with them.
- When they give you data on occupancy, ingress, egress, and origin destination trips these are statistics that a liar would use.
- The 24% thing is nonsense. He was shocked to hear a transportation engineer attempt to tell you that Act III would be like a shopping center. They have seasonal differences and they have peaks that are different. There is nothing in the transportation data that they can supply to tell you it is accurate. What they can tell you is that this is a business made out of blockbuster activities and where theaters make their money is when they have blockbuster films. When the streets are going to be plugged is when the theater gets blockbuster films. To treat that like a shopping center is not only foolish, but it is wrong.
- Yet they have load factors and we don't have load factors, and that is where ODOT is right. Get a yearly average from other megaplexes they have built in other places in the United States. Get a yearly average on traffic and occupancy. Use Magic Johnson's theaters, they can do it because they have the money to get these figures.
- If the Commission okays this site plan application based on screen sales, the Commission is handing over to Mr. Lear and his partners about \$5-7 million profit in that sale, if the numbers in the Wall Street Journal are accurate.
- Anyone who calls the theater a good piece of architecture is calling a signature gas station modern American architecture that I.M. Pei could learn from. This is nothing but a canvas

tent with a little awning thrown in front. There is nothing unique about it and if you buy into this, you buy the arguments the Staff will be making about traffic.

- When Pacific Lumber, whose land is being used, came in front of the Commission, they had a plan, and they were going to look like Albertsons. Then they put up their Quonset hut and refused to go with their building permits. They came back to the Commission and Mr. Langer and a number of people made arguments that they had made a mistake. They misrepresented what they said they were going to build. When the Commission told them to go back and do it, you are here tonight with a Quonset hut that was not built. Before the Commission gives a lot division they should call Mr. Dittman and tell Pacific Lumber to do what you told us you would do.
- You are being asked to trust everybody here tonight.
- He presented Code sections to the Commission for the record.
- Send the application back until it is legal. They have no right to be occupying that building or attempting to parcel off land.
- He attended the hearings when the general plan and zoning was written. There was no discussion of categorical killers like Act III or WalMarts or a blockbuster of any kind, including Home Depot.
- The job of saying that it fit the category was not Mr. Bormet's staff's job, it was the Planning Commission's job. This megaplex mess is not a theater. It violates the City's general plan and it will draw business from at least 15 miles. It is the Commission's job to see that it fits the Code, not the Staff's.
- The general plan was done with ODOT standards. No one, unless they have a Southern California mentality, would be coming to Oregon to build megaplexes because we have tried to build buildings here and minimize automotive traffic. This site plan will not do this.
- Anyone can turn around and say, then why have you done that with the YMCA. That's true, but there was a benefit cost analysis done and the City thought they would receive enough benefits from the YMCA. This has not been done with this application.
- The application should be a conditional use permit and there should be conditions attached to it.
- Pacific Lumber should clean up their act and do what they told us they would do before this application can go forward, or at the least it should be a condition of anything being done with Act III. Why should they parcel off ground. And bear in mind that they are still on a septic tank.
- There is nothing in this application to say they will hook to the sewer system and nothing implying they will go back to adjustments they agreed to make in the hearing. Look at the records.
- If you look at the purpose, scope and intent of general plan, it defeats that interpretation.
- If you do decide to allow the use, you need to make it a conditional use permit and attach conditions so they have to come back to you. The Morse brothers may have bought the whole piece and they are leasing the land back to Act III. In that situation, with a megaplex and an entertainment complex, even if it beneficial for the City, if you do not have a conditional use on it, you cannot control it. You do not know how these megaplexes operate in terms of traffic. Anyone who makes a statement about them are just guessing.

- You do not know what is going on inside the theater. They can operate delis or any number of things. If you do not make this a conditional use permit, you will not have control over those things.
- If the Commission votes for the application, it is not going to change their attitude, it is something that the majority of the citizens, through the Commission's representation wants. Because the community has been concerned and because Act III is beginning to relate to that concern, they have agreed to contribute to turn the Robin Hood Theater into a community arts center for \$200,000. This is assuming they (Claus) won't take the offer they have with anyone else and they will contribute more money than that.
- He is willing to consider this and will continue to do that, but he wanted to make sure this is discussed openly here. He does not want any suggestion that this is not going through the normal zoning process. If the citizens will back this with that kind of trade-off, that is what zoning is about. If a condition is not attached so that it has to go past the City Council deadline and LUBA deadline and cannot be appealed with change of ownership and with the private and prior experiences with Pacific Lumber, the City may have just bought themselves a traffic nightmare.
- There is a man named Ted Francis, who in Mr. Claus's opinion, has done more for the movie industry in Oregon than Moyers or Act III ever hoped to do. Mr. Francis kept it live, worked it and showed people how to run theaters. If the City puts in the 16-plex you should think long and hard about the consequences and you'd better get the conditions straight. In his opinion, you would be putting Mr. Francis out of business. It would take time, but it will happen.
- If the City is not careful, they will end up with these "WalMart" type theaters as the only theaters left.

J. Patrick Lucas, 23861 Dewberry Place, Sherwood, Oregon 97140, addressed the Commission. Mr. Lucas said he was in favor of the application and thought it would be a great addition to the City. He asked for clarification regarding the water line. There has been a lot of talk about extending water lines. He is developing a piece of property across the highway and Mr. Tuck talked earlier about Act III needing to extend an 8-inch water line up Tualatin-Sherwood Road, but as part of the City's Water Master Line, it shows a 12-inch water line coming up that road. He asked who is going to do what, who is going to pay for it and are they going to participate in the repayment of the extension.

Chairman Whiteman said Staff would be asked this question.

Sanford Rome, 1780 E. Willamette, Sherwood, Oregon 97140, addressed the Commission. Mr. Rome distributed two pages of information and questions about Act III. Mr. Rome noted:

- Over the years, the citizens have been told by City Staff that you can't build a city based upon residential development. You need commercial development. This is a chance for commercial development to come to town which helps the taxpayers, not necessarily by reducing the tax base, but by reducing the personal, individual taxes because the commercial property picks up a large chunk. Looking at the application from a tax base and convenience aspect, he thought a multi-screen theater would be a good addition to the town.

- He distributed a “fact sheet” which discussed a number of things, some of which had been brought up by Mr. Claus and the applicant. These figures were from Billboard and Box Office magazines. There are 28,000 screens across the U.S. which amounts to about 1 screen per 10,000 people. Newberg has 3 screens, Sherwood has 1 screen, and Tualatin has 2 screens. Six theaters in the area are only slowly making money or at break-even.
- This is all about building dollars and being able to make a profit.
- He continues to say, “Don’t cost me or the other citizens of this town money to bring the theater to town, not today, not tomorrow or 2000, or 2005.”
- The Commission needs to take care of this now.
- The first paragraph of the ODOT letter states, “ODOT recommends the City deny the application because....”. There are issues of address and staff findings.
- He did not know what communication, negotiations, workouts, give-away, trade back, or other things have been done by Jon Bormet. He does know what happened to the citizens with Woodhaven under Jim Rapp. We have a lovely entrance to Woodhaven and that is where it stops. The rest of Sunset is a mess.
- The Tualatin-Sherwood Road looks good once you get past the lumber company.
- When Senate Bill 100 was passed, it was the public process for hearings that set aside the issues of public input. When it was stated earlier that they would not get onto the emotional side, SB 100 specifically goes into this, they want all the issues, including emotions and people’s feelings. That is what SB 100 is about.
- In 1986, when none of the current City Staff or Commission were present, he came before the Commission to talk about development and LIDs for much of this town which have now been passed on to the people.
- If there are only 150 good, usable movies a year with an average life of 3 weeks, that would be 9 screens. There would be 7 screens left over with a 16-screen theater.
- The Tigard theater has 9 screens with 800 parking spaces with 200 park and rides spaces next door. This equals 1000 spaces. The applicant is proposing 16 screens plus 15,000 sf of retail space with only 750 parking spaces.
- Mr. Claus has 22 published books and articles and more degrees than the people who do the traffic engineering and people here tonight. When you talk about credibility, he pats Mr. Claus on the back for what he has done and where he is at.
- He discussed the TIFs credits in the past and future.
- There is going to be an interchange problem.
- He discussed the lumber yard, their contribution to the sewer fund and parking problems. The words “trust me” have not worked in the past.
- The City just put in a nice bridge on Sunset near Arbor Lane. There should be two more lanes there. Why spend the money on a bridge and a bike path. It is nice, but does it move the people in to or through town. Was Willamette Street ever fixed. The bottom line is roads are not a priority to get done.
- There is something with the application that is fatally flawed. There is one entrance, a smaller parcel than Tigard with more screens and the potential for more customers. If you have the worst case scenario of 1000 cars existing in the parking lot, and the average car is 20 feet long, and if because of some stupid scheduling, there would a line over 20,000 feet long. This would be ridiculous, but there is the real potential for this to happen.

- He said Act III would be a great neighbor and he would like to go to the theater there, but it has to be done with Tualatin-Sherwood Road being done, 99W being done and the property being zoned right.
- When you talk about large parking lots, whether it be Washington Square or a shopping mall or WalMart, when you bring in that many cars, talk to the Wilsonville or Sherwood police departments and find out how theft increases. You can put up all the lights with security personnel, you still will have theft. He does not want this type of potential problem to occur.
- The use for the building pads could be an adult book store which the zoning would allow.
- He still likes popcorn and movies, but he does not want to have to pay more than just the ticket price to have Act III in Sherwood.

Mr. Rome asked that before the hearing was closed tonight, either the hearing be continued or the record be left open for two weeks for additional written comments.

Greg LeBlanc, 16018 Red Clover Lane, Sherwood, Oregon 97140, addressed the Commission. Mr. LeBlanc said he was representing the Robin Hood Festival Association, the group which was part of recent negotiations with Act III, Council Member Mark Cottle and the Claus and McClure families. He was not speaking in favor or opposition to the application, but would like to answer some of the questions that came up on behalf of the public interest and community support. Two weeks ago the question was asked about community relations with Act III. He said for the record that all the parties involved have acted in good faith on behalf of the community to preserve the Robin Hood Theater. This appears to be a step toward preserving community live theater in Sherwood. The Association is not taking a position in support or opposition. They are aware that the Commission will make a decision based on the facts and the laws and as an Association they ask the Commission to do so when a decision is made.

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

- He was present at the town hall meeting with Act III. Mr. Reed and Act III presented their Act III Theaters to the community.
- Mr. Reed said on a Friday night, 70-75% of the business occurs after 5:00 PM, with only 3 shows occurring after 5:00 PM, including the 5:00 PM show. This seems to defunct the 20% notion.
- Mr. Reed said the Act III 16-plex would have a trade area of at least 80,000 people. According to their traffic engineer, the Tigard theater has a trade area of over 100,000 people. Therefore, this is a regional facility and it cannot be in any way construed to be a local theater. There will be people from Tualatin, Newberg, Wilsonville and Tigard using the theater.
- This is a “WalMart” for the theaters.
- 2.7 people arrive in an average car, not 4.
- The Tigard theater has 750 parking spaces with 200 spaces overflow for use at peak times, for a total at peak times of about 1000 parking spaces. The Tigard theater has 2700 seats.

- The Sherwood 16-plex will have 2980 seats and they are proposing 741 parking spaces. These are the facts.
- He has been heavily involved with the Robin Hood Theater. At the outset an undebatable point has been made several times. It was confirmed by Act III at the town meeting and it is undebatable. When Act III opens their doors, the Robin Hood Theater might as well close theirs. They will not be able to get product. There is no question about this. His family has no problem with this and they are fully prepared to deal with the eventualities. In terms of the gift, they have stated their position from the beginning. He heard the word “extortion” about this gift from Act III. This is not. If Act III does not, as a good citizen, want to do this, that is their business and the Claus family does not care. They do not care. When they get this great amount of money, \$200,000 for the theater, Act III would not be buying the theater, the family would be giving it to the City. They will be giving as much or more than they are getting.
- This is not extortion, this is a gift and is being made solely for the people of Sherwood. If the people of Sherwood do not want it, that is fine. If the people of Sherwood do want it, and Act III does not want to give it to them, then that is something the people have to work out with Act III. If the people of Sherwood want it and Act III is willing to help them realize that goal, the Claus and McClure families have stated from the outset in public record that they are willing to accommodate them.
- He does not have a great deal of planning expertise like his father, Dr. Claus, he believes that when the Sherwood Code says theater, it is referring to the Robin Hood Theater and its related uses. It is not referring to an Act III 16-plex. An Act III 16-plex is an entertainment center and goes to the purview of the Commission.
- If the Commission makes a decision, they will abide by that decision.

Conrad Claus, Attorney speaking on behalf of his father, 12900 SW Pacific Highway, Tigard, Oregon 97223, addressed the Commission. Mr. Claus said he would like to incorporate the statements made by ODOT put into the record for appeal purposes. He reiterated the request that Mr. Rome made and asked that the application be continued with additional public comments, but if not that the record remain open for an additional seven days, or longer, for additional written comments. He noted:

- His younger brother, Thomas, stated the family doesn’t care what happens with the Robin Hood Theater. He does not believe this is exactly true.
- For quite some time they have maintained the Robin Hood Theater as a community service at a loss. They did this because they thought it was extremely important for Sherwood.
- Certainly, financially, you could say they don’t care. There are plenty more options for the theater, but they would very much like to see this theater here for the community. It is very important.

Laurie Nicholson, 23243 SW Cinnamon Hills Place, Sherwood, Oregon 97140, addressed the Commission. She believed the City Staff is not acting in good faith in cooperating with the other agencies. ODOT is paying \$70,000 for a transportation system plan for the City of Sherwood and she did not feel the City is cooperating with ODOT in recommending approval of this

development without agreeing with ODOT on the access issues. She asked the following questions:

- Could Staff state in layman's terms what they are proposing the Commission to approve in terms of the access for the theater.
- The Lancaster study showed a full access to Tualatin-Sherwood Road, but according to the Washington County letter, the County will only allow a right-in, right-out.
- Mr. Huff from ODOT said right now they do not support access to 99W.
- There is the issue of the Adams extension. The Metro and DLCD letters state this road would go outside the UGB. So this is not a sure thing. It would be a long process in order to extend this road.
- Regarding the visual corridors and landscaping, what kind of SDC fees are they talking about, fees for transportation improvements or parks.
- From reading the article in the Oregonian, the City has been negotiating with the Claus family and Mark Cottle for the purchase of the Robin Hood Theater. She would like to hear from Staff whether or not taxpayers of the City of Sherwood are going to be paying in some form for that theater.

In conclusion, she felt the City was jumping the gun here, the City needs to work with the State and other agencies regarding access to the site so that it operates safely. The Commission should not be approving this application based on things that may or may not happen. This is not good planning.

Krissie Kizziar, 15729 SW Willow Court, Sherwood, Oregon 97140, addressed the Commission. Ms. Kizziar said she had reviewed the record from the City. It indicated there was correspondence dating back to June and August from ODOT, as well as tonight's letter. These letters from ODOT were not indicated by Mr. Turner earlier. Like the prior speaker, she has a concern of why they are here tonight. There are a lot of people here tonight, a lot of money being spent by being here, and she really did not think this application should be in front of them. They have known about the opposition to the access for quite some time, but in reading the finding it states they are not aware of ODOT's communiqué to them at the City's request. There is no reference in the Staff findings that they are not going to get access to 99W. She did not understand why they receive Metro, ODOT and Washington County communications if they are not going to pay attention to them. The reason they are doing a 16-screen theater now is because there are going to be problems down the road and it will become harder for the applicant. It will also be harder for the citizens to pick up the pieces created by this traffic mess. She lived in a city where planning was great that day, but down the road they had to deal with the development. She uses Tualatin-Sherwood Road and does not want to see the traffic problems that will be caused by this application. She is a citizen of the State, County and Metro Growth Boundary, so she is going to pay for it in one way or the other if the applicant tries to obtain access to 99W and Tualatin-Sherwood Road. If you read the letters there are a lot of points against the access. Why put the burden back on other state agencies to continue to prove why it will not work.

Mike McKillion, 29233 Red Fern Drive, Sherwood, Oregon 97140, addressed the Commission. He just moved to Sherwood and this was his first time at this type of meeting. It is a big issue

and he has been reading a lot about it. He understands the growth potentials. He is hearing these people did a great job and there was a lot of time and effort spent on this application. He also listened to the citizens. Looking at it from the various standpoints, the concerned citizens are the people that live here and want to try and figure out what is really going to happen here. Something is going to be decided and it is on the Commission shoulders. Whether it is going to be a movie theater or WalMart or shopping center, land is valuable. Once you give use to that corner, there is no turning around. He drives down Tualatin-Sherwood Road and there is traffic. There is traffic from Haggens in Tualatin all the way to Sherwood. There is a proposed bypass, that would be great. He listened to the ODOT representative saying the ingress/egress was not going to happen. It could happen, Act III has a lot of money and money speaks. This is not just what the City of Sherwood would get from it, but if something is going to be beneficial, you could have one decision and it could be changed just by how things are lobbied. You see this all the time in politics and in Portland itself. The main issue is what is going to work best for Sherwood and he did not think it should be decided in haste. He would like to have a theater there, but traffic flow is going to change and this must be considered. It is just like the 217 corridor and everyone trying to figure out what to do about the traffic problems.

Mrs. Terry Williamson, 23785 SE Brittany Lane, Sherwood, Oregon, addressed the Commission. She said she was against the theater.

Keith Mays, 23237 Pine Street, Sherwood, Oregon 97140, addressed the Commission. Generally, would love to have the theater here, but traffic is a big concern. The theater may be too big.

Becky Read, 555 SE Mansfield, Sherwood, Oregon 97140, addressed the Commission. She asked if ODOT already have a deeded access on 99W. She also asked that the record remain open.

Bob Bailey, 1745 SW G&T Drive, Sherwood, Oregon 97140, addressed the Commission. Mr. Bailey said it is apparent by the year 2005, the roads are going to become obsolete. This is not just in Sherwood, it is in Clackamas County, Beaverton and the whole metropolitan area. People should be looking at more than just the problems that Act III is experiencing. This is something that everyone should be working towards. No highways are being developed, but about 12-15% more traffic is being added. This means that in about 6-7 years, traffic volumes will be doubled.

Chairman Whiteman asked the applicant if they would like to provide rebuttal testimony.

Tim Reed, Vice-President Real Estate, Act III Theaters, 919 SW Taylor, Suite 900, Portland, Oregon 97205, addressed the Commission. Mr. Reed requested that the applicant be allowed seven (7) days to respond in writing after the record is closed. In response to the previous testimony, he noted:

- This application is not a land partition. The property is available and it is zoned as an outright use for the theater.

- As far as the uses that can be placed on the pads, the pads will be coming back before the Commission for review and approval. Specific uses have not been defined and this is not in the control of the applicant.
- The traffic is a very, very important issue. At the risk of being bombarded, to make this type of investment in any area, traffic has to work for the applicant just as it does for the population of the City. The applicant is willing to pick up that banner, and spend the money to make it right. There have been numerous traffic engineers who have reviewed this situation and the plans. They have a pretty good consensus.
- With regard to ODOT and Washington County, quite frankly, the applicant does not agree with Washington County because initially they did not have the full information. ODOT, simply because they are “ODOT”, they will take a position contrary to anything that they do not like. The fact of the matter is, ODOT is bound by state law and the applicant is willing to pick that banner up and deal with that situation.
- By granting approval for this application, this project is not a “go” until the applicant works those issues out with Washington County and ODOT.

Mr. Reed thanked the Commission and said he would answer any questions. There were no questions.

Chairman Whiteman closed the public hearing on SP 97-4 Act III Theaters for discussion by the Commission.

Chairman Whiteman reviewed the several questions for the staff, as follows:

- Regarding the interpretation between the allowable use theater and what is being proposed and the fact that it shows the potential for it coming before the Commission for that type of interpretation. Does Staff agree or disagree.

Mr. Bormet said if the Code was vague and you had to read between the lines and were not sure, you would come before the Commission for a determination. In this case, the Code specifically states, “Motion picture and live theaters”. Secondly, it is important to note that Staff followed up with the City Attorney, who basically said a theater by any other name is still a theater. This is specifically noted in the Code.

- Concern over the issue of the 8-inch to 12-inch water line on Tualatin-Sherwood Road.

Mr. Bormet said Staff will clarify this with Mr. Lucas. This is simply a misunderstanding. The report discussed an 8-inch line on the site, they have a 12-inch line along the front of the property. Reference was made to Attachment B of the Staff Report, Engineering comments, Item #2, makes reference to a 12-inch line.

- Staff was asked to plainly identify the recommended accesses to this property.

Mr. Turner referenced Condition #11 of the Staff Report and noted:

- Highway 99W - provide a north bound right turn lane on Highway 99W to Tualatin-Sherwood Road. This would be a turn lane to turn right onto Tualatin-Sherwood Road.
- Highway 99W - provide a right-in from Highway 99W to the subject site.
- Tualatin-Sherwood Road - restripe Tualatin-Sherwood Road and dedicate necessary right-of-way for a future lane westbound lane on Tualatin-Sherwood Road as per the Lancaster Traffic Study.

Two conditions were revised/added as follows:

Tualatin-Sherwood Road - Revised Condition #11B.2. The first eastbound left turn on Tualatin-Sherwood Road into the subject site (across from Albertson's) shall be removed when, in the judgment of the City, traffic conditions warrant the removal, so long as a loop road or other primary access from Tualatin-Sherwood is provided to the site.

Added Condition 11B.3. A second eastbound left turn lane into the subject site (at the Albertson's traffic signal) will be provided by the applicant. Should this left turn lane into the site subsequently impede traffic on westbound Tualatin-Sherwood from moving through the 99W intersection, a traffic study commissioned by the City and paid for by Act III will be undertaken.

Should the study determine that traffic movement on Tualatin-Sherwood through the 99W intersection is significantly impaired by the existence of this left turn lane, the City may, after consultation with Act III, eliminate all left turn access into the site at this location. In so doing, a loop road or other adequate access from Tualatin-Sherwood to the site must be available. While these decisions will be undertaken with the advice of Act III, the final determinations will remain solely with the City.

- **The Loop Road - Condition 11C.1.** Construct or bond a loop road from Highway 99W, intersecting with the access drive to the subject site, subject to the approval of the City Engineer. The right-of-way is to be provided by the City of Sherwood.
- **Condition 11C.2.** Provide for payment of 50% of the future traffic signal at highway 99W and the loop road.
- **Condition 11C.3.** Provide the necessary improvements for the intersection of Highway 99W and the proposed loop road, as approved by the City Engineer.

Mr. Turner said these were the traffic conditions. Chairman Whiteman asked if Staff was including a condition for providing a right-out onto Highway 99W. Mr. Turner said this was correct.

Chairman Whiteman asked when Staff was talking about building a lane for westbound on Tualatin-Sherwood Road and if this was only to dedicate the right-of-way. Mr. Turner said this was correct. Chairman Whiteman asked if the responsibility of building this additional lane would be the County's responsibility. Mr. Turner said this would come into play when some of the other developments in the area are built-out further.

Scott Franklin said the update of the Kittelson Report showed the following three alternatives:

- A right-in, right-out access onto 99W. Showing two left hand turns onto 99W southbound from Tualatin-Sherwood Road westbound.
- No 99W access. Showing two left hand turns onto 99W southbound from Tualatin-Sherwood Road westbound.
- The Loop Road configuration.

Mr. Franklin asked if the City was asking the applicant to do one of these alternatives. Mr. Bormet said the confusion is that right now on Tualatin-Sherwood Road there is a left turn lane which also goes straight through and a left turn lane only onto 99W and a right turn lane. The proposal tonight is to make two left turn lanes on Tualatin-Sherwood Road onto 99W. You would have these under the scenarios and then you restripe the curb lane to be a straight through and right. There are not nearly as many people turning right at this point.

Ms. Engels said Condition #13 states, "Provide a cross access easement to the property to the east, which is the lumber yard. This would then allow traffic to come out to Langer Drive as well.

Chairman Whiteman continued with the following questions:

- Would this project develop any SDC fees for parks.

Mr. Bormet said there would be no SDCs for parks. Currently, under City ordinance, businesses do not pay system development charges for parks, the theory being because they do not use them, so they do not get any credits back.

- If the suggested transfer of ownership from the Robin Hood Theater takes place, will there be any taxpayer money involved, as proposed.

Mr. Bormet said as proposed, it is his understanding that this is a donation by Act III of \$200,000 to the Robin Hood Festival Committee. This is, in turn, a donation by the Claus/McClure families of at least \$200,000 to the Robin Hood Festival Association. The Robin Hood Festival Association will own the structure. The answer is no. The Robin Hood Festival Association or whoever they decided, would own and/or operate the theater. The idea is to get the Robin Hood Theater into community ownership, not City ownership.

- Has the City been in communication with ODOT since May 1997 concerning access on 99W. Some people have suggested the City has ignored or actually gone against what ODOT and Washington County have recommended regarding accessibility to that property.

Mr. Bormet said the City has a legitimate disagreement with ODOT and Washington County. He asked if he could show an overhead of the area to the Commission. In showing the overhead, Mr. Bormet noted:

- There is some issue of local control. The City thinks they are the ones that will be harmed the most by it. If 99W and Tualatin-Sherwood Road get gummed up, it is going to be the people in this room that are going to stop it. This is not something that you would simply want to defer to Washington County or to ODOT.
- He gave the Commission a preview of this two weeks ago. The City is going to become involved with their own destiny and this is going to get the City into trouble. It has gotten the City into trouble.
- He identified what the City was proposing regarding accesses to the site with a loop road coming across the back of the property.
- He referenced the Washington County and ODOT reports. Washington County put in the traffic signal on Tualatin-Sherwood Road in the last 24 months. It was spaced out by the County, presumably with the input of ODOT, when the City said they could work it out, the agencies are now saying, in effect, this signal at Albertsons is too close to 99W.
- Washington County is saying there will not be any left turn into the facility off of Tualatin-Sherwood Road.

Mr. Bechtold said the Gramor development was also denied access. Mr. Bormet said they were not, but they were because there is a cut through right before Albertsons that effectively accesses a right-in and a right-out only. Mr. Bormet continued:

- Staff is proposing a loop road. Washington County is saying don't take this left turn in here, come down to the loop road and take a left in there. ODOT and DLCD have said the loop road cannot be built outside the Urban Growth Boundary without going through a process which is a couple of years away.
- It is interesting to note what ODOT said, they don't say it won't work, they don't say it's dangerous, what they say is you can't do it, it is against State regulations.
- The City and applicant have had different engineering firms that have come to the same conclusion, you need to have the right-in, right-out.
- If the City just goes by what ODOT and Washington County say, you won't turn left into this facility, you won't turn right into this facility, you have access to this facility only if you are coming from Tualatin, only with a right in. He suggested that this is nuts, you can't do that to a piece of property. He did not believe it was legal to do this to a piece of property.
- You cannot take away total access to a property. This is 11 acres of very valuable property.
- Washington County and ODOT had to expect that there would be major commercial development here.
- The City believes these agencies have made a huge mistake by allowing Langer to come around the back of the Albertsons store and dead-ending it at the lumber company.
- When this is all worked out, the City may end up having to move some roads.

Chairman Whiteman asked if he could ask a question before they got into what appeared to be more testimony. If ODOT will not allow access off of 99W and the County will not allow a left turn lane off of Tualatin-Sherwood Road, where does the City go with this. Does it end up in Court or with the County Commissioners. What is the process for overcoming this, other than throwing dollars at it. The perception would be if you have enough money, you can get whatever you want.

Mr. Bormet said if the Staff comes to the Commission and what they recommend does not make sense, the Commission would vote it down. Then the applicant would have the right to an appeal. Where is ODOT's and Washington's responsibility. Their word at a staff level is not final. The City believes what they are recommending, based on the traffic reports, makes sense. The City believes ODOT and Washington County staff members are in error and Act III's responsibility is to take that issue forward and prove that to be the case. If they are in error, they will be reversed and if they are not, they will be upheld.

Scott Franklin asked where the deeded access was. Mr. Bormet said he did not know.

In response to Ms. Weeks question, Mr. Bormet said the City believes what the agencies will allow for access is inverse condemnation of the site. They know that ODOT is looking at this corridor for the I-5 connector. They know that ODOT has other loop plans or a ramp for the Tualatin-Sherwood Road and 99W intersection. The fire department would require two access points.

Chairman Whiteman said if the Commission were to deny the application, based on the written testimony of ODOT, Washington County and other agencies, and this was upheld through the appeal process, it would be the property owner's decision as to any additional action. Mr. Baker commented on how speed limits are set on state roadways. Mr. Franklin said the loop road may have a lot of merit, but the City needs to be careful and consider the Transportation System Plan process. The map shows a 25-foot wide deeded access for 99W. He did not know if there was an avenue for adjusting this access. Twenty-five feet would most likely not be wide enough for a right-in and a right-out. Knowing where this access is would be helpful.

Mr. Baker moved a condition be included that if the applicant does obtain a right-out to 99W, this would be closed when the loop road is in place. Seconded by Angela Weeks.

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

Ms. Weeks discussed Condition #11A, #1 and #2, providing the necessary improvements. Mr. Bormet said it is understood this would be done. Chairman Whiteman said the record would show the Commission's concern about this condition.

Jon Bormet asked that the people in attendance become involved in the Transportation System Plan (TSP). These meetings are advertised.

There being no further discussion,

George Bechtold moved the Planning Commission continue SP 97-4 Act III Theaters to the November 4, 1997 Regular Commission meeting. The public hearing is closed, the record will remain open for an additional seven days for written comments, and at the request of the applicant, after the record is closed to all other parties, the applicant will be allowed at least seven (7) additional days to submit final written arguments in support of the

application. The applicant's final submittal shall be considered part of the record, but shall not include any new evidence. Seconded by Scott Franklin.

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

- 5B. PA 97-8 Plan Text Amendments**
- 5C. SUB 96-6 Sherwood Crossroads Preliminary Plat**
- 5D. SUB 94-9 Cedar Creek #2 Revised Preliminary Plat**
- 5E. MLP 97-1 Lot 48 Wildflower Minor Partition**
- 5F. MLP 97-2 Lot 49 Wildflower Minor Partition**

Scott Franklin moved the Planning Commission continue the above-referenced land use applications to the November 4, 1997 Regular Commission meeting. Seconded by Susan Claus.

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

Chairman Whiteman asked Staff to verify whether any of the 1997 Legislation would change the proposed Plan Text Amendments for PA 97-8 Streamlining the Planning Process.

There being no further business to discuss, the meeting was adjourned at 10:46 PM.

Respectfully submitted,

Planning Department