

City of Sherwood, Oregon
Planning Commission Meeting

March 15, 1994

1. **Call to Order/Roll Call.** Chairman Birchill called the meeting to order at 7:00 p.m. Commission members present were: Chairman Eugene Birchill, Marge Stewart, Glen Warmbier, Marty Ruehl, Susan Claus. Rick Hohnbaum arrived at 7:35 p.m. Chris Corrado was absent and was excused. Planning Director Carole Connell and Secretary Kathy Cary were also present.
2. **Approval of minutes of previous meetings:**

There being no corrections or additions, Mr. Warmbier moved, seconded by Ms. Stewart, that the minutes of the March 1, 1994, meeting be approved as presented. Motion carried with Ms. Claus abstaining, due to absence at the March 1 meeting.

Chairman Birchill announced that Agenda Items Nos. 4 and 5 are not subject to public hearing, and for that reason Item 4, SUB 93-3 Madrone Village Final Plat and Item No. 5 SUB 93-7 Meadow View Heights Phase 1 Final Plat, will be considered prior to opening of the public hearing.

SUB 93-3 Madrone Village Final Plat: an 18-lot subdivision on South Sherwood Boulevard:

Chairman Birchill called for a staff report.

Ms. Connell reported that the Commission is reviewing the Final Plat for Madrone Village, an 18-lot single family subdivision on South Sherwood Boulevard. She pointed out that final plat approval does not require public hearing, the development is basically complete, including the road and utilities. The only remaining improvements are street trees.

Ms. Connell reviewed the Staff report dated March 8, 1994, a complete copy of which is contained in the Commission's minute book, and recommended that the final plat be approved subject to the conditions outlined in the Staff report.

After a brief discussion, Mr. Warmbier moved, seconded by Ms. Stewart, that based upon the findings of fact outlined in the Staff Report dated March 7, 1994, SUB 93-3 Madrone Village Final Plat be approved subject to the following conditions:

1. Provide a preliminary title report showing the interest of all parties.

2. The intersection improvements at Sherwood Boulevard shall include a minimum of two (2) street trees and ground cover to City standards. A street tree shall also be uniformly planted in the front yard of each lot, to be installed after the homes are built in cooperation with the home owner.

Motion carried unanimously.

SUB 93-7 Meadow View Heights Phase 1 Final Plat: a 64-lot subdivision on Sunset Boulevard and Ladd Hill Road:

Chairman Birchill called for a staff report.

Ms. Connell reported that the Commission is reviewing a final plat for Phase 1 of a 176-lot subdivision on approximately 40 acres. Ms. Connell noted that the phase being considered contains 64 single-family lots and contains fewer lots than the previously proposed 73 units. Ms. Connell pointed out that the public improvements are described in the Staff report dated March 8, 1994, and noted that utility easement location and width questions must be resolved in order to avoid future damage to properties should there be a need to repair any utility service.

Ms. Connell provided an in-depth review of the Staff report dated March 8, 1994, and the conditions outlined in the Notice of Decision dated October 20, 1993, for approval of the preliminary plat, complete copies of which are contained in the Commission's minute book. She recommended that SUB 93-7 be approved subject to the conditions outlined in the Staff report.

There was extensive discussion of the easement problems created by steep slopes and bedrock, storm water facilities, and street slopes and improvements. Mr. Ruehl moved, seconded by Mr. Warmbier, that based on the findings of facts outlined in the Staff report dated March 8, 1994, PUD 93-7 Phase 1 final plat be approved subject to the following conditions:

The final plat shall not be recorded until:

1. The City, USA, DEQ and Washington County have approved the engineered construction plans for all utilities. The applicant shall enter into a subdivision compliance and maintenance agreement with the City and a cash bond escrow agreement for 100 percent of the public improvement costs. In particular and in addition to

standard requirements, half-street improvements to Ladd Hill Road and Sunset Boulevard, adequate erosion control, proper utility extensions and easements, adequate stormwater treatment and detention, an access permit onto Sunset Boulevard, and street lighting at the intersection of Ladd Hill Road and Sunset Boulevard shall be provided.

2. As shown on the preliminary plat, construct a pedestrian path in Tract "D" to City standards.
3. Close the existing driveway onto Sunset Boulevard.
4. Provide sanitary and storm sewer to the adjoining Tax Lot 3002:30C.
5. Provide a tree survey of Phase 1 and defined which trees will be preserved. Provide one (two on corner lots) street tree per lot, uniformly planted in the front yard of each lot in compliance with City standards.
6. Street grades shall not exceed 15 percent.

The motion carried unanimously.

3. **Public Hearings:**

Chairman Birchill read the hearing disclosure statement and commented that due to the length of the agenda, public testimony will be limited to five minutes each. He requested that persons testifying on the same issues with the same facts, please combine the testimony. Chairman Birchill reminded the audience of the agenda statement that any item not completed by 11:00 p.m., will be continued to the next regularly scheduled Commission meeting.

Chairman Birchill stated that the public hearing will be held as follows: staff will present a report, the proponents will have an opportunity to testify; opponents will have an opportunity to testify, after which the applicant will be allowed rebuttal; after rebuttal, the public hearing will be closed and the meeting will be opened for comments, questions and discussion among the Commissioners. He noted that the public hearing may be reopened at the request of a Commissioner. Chairman Birchill requested that Commission members advise of any ex-parte contact, possible conflict of interest, or personal bias on items contained in the Agenda.

Ms. Claus stated that she will not sit for consideration of

Agenda items 3 A, PUD 93-2 Wyndam Ridge, and 3 D a Plan Text Amendment revising non-conforming use provisions.

Chairman Birchill advised that he had met with Planning Director Connell and discussed several items; however, believed there was no conflict or bias on any item.

A. Continued PUD 93-2 Wyndam Ridge: a Preliminary Development Plan and Preliminary Plat for a 123-lot single-family development on Pacific Highway.

Chairman Birchill advised that PUD 93-2 Wyndam Ridge had been continued from the last Commission meeting due to the lateness of the hour. He noted that the public hearing has been closed, and inquired if any Commission member would like to re-open the public hearing. There being no request for the hearing to be re-opened, Chairman Birchill stated that the Commission will then continue their discussion and ask questions of the applicant.

Mark Dane, Alpha Engineering, 9600 Oak, Suite 230, Portland, addressed the Commission. Mr. Dane advised that he is representing Centex, applicant of the PUD, and there are two issues that he would like to address. He noted that after the last Commission meeting, there had been some revision to Condition No. 4, which had been suggested by Alpha Engineering and agreed upon by City Staff. Mr. Dane commented that there were two conditions of approval that were of concern to the applicant; specifically condition No. 6 (c) 5 and Condition No. 10. Mr. Dane stated that condition No. 6 (c) 5, which relates to B Street. He noted that the applicant had requested that the standard street be retained as a local street, but that parking be limited to one side to allow a 28-foot travel lane; however, the condition has not been revised. Regarding Condition No. 10 requiring 7,000 square-foot lots adjoining the urban growth boundary, Mr. Dane stated that the basis of the request by the City was based upon a previous subdivision adjacent to the urban growth boundary with the intent of providing some form of transition with the size of the lots. Mr. Dane commented that the issue of a fence along the boundary had also been raised at the last meeting. He remarked that the applicant had agreed with a fence along the urban growth boundary similar to that of other jurisdictions in order to provide a buffer between the rural and residential uses; however, the applicant believes the requirement of a fence along with 7,000 square foot lots will act as a double transition. Mr. Dane commented that a fence is all that is necessary and is all that should be required. He pointed out that under the City's Codes there are no requirements for 7,000-square foot lots, no requirement for fences; however, the applicant believes a fence would be appropriate. Mr. Dane stated that the non-residential portion of the City PUD Code requires

reasonable privacy at the perimeter and screening from the residences in the PUD. He stated that he felt this portion of the Code would be appropriate to the residential portion of the Code and that a six-foot fence would be appropriate and a sufficient buffer between the residential area and the urban growth boundary.

Chairman Birchill advised Mr. Dane that a list of six questions had been raised at the last meeting and requested that Mr. Dane address those issues. Mr. Dane advised that he had not received a list of questions, and requested that he be provided with the questions and allowed to discuss them with the applicant. Ms. Connell provided a section of the minutes of the March 1 meeting containing the questions.

During the applicant's review of the proposed questions, Ms. Connell advised that condition No. 8 of the revised recommendation dated March 7, 1994, a copy of which is contained in the Commission's minute book, must be revised. She pointed out that the City Parks Board, at their meeting of March 7th, had accepted the open space dedication proposed by the applicant; however, SDC credits can be applied only to the floodplain and greenway identified in the Parks Master Plan. Ms. Connell noted that Commissioner Hohnbaum had also requested that the applicant be required to construct the storm water facilities, and pointed out that condition 6 c requires construction.

Ms. Connell commented that one of the residents had requested a fence be installed at his property line. She indicated that the property owner had called and requested that the fence be a sight-obscuring, chain link, which he felt would be more easily maintained. Ms. Connell commented that the condition states a chain link fence; however, the applicant is more interested in a cedar fence and would prefer that each lot be fenced so that the fence becomes the property of and is maintained by the home owner.

Ms. Connell remarked that conflicting letters had been received from the Fire District. She noted the Fire District has no objection to the proposal; however, the City does limit the approval to Phase 1 until there is an alternate access to the project; or a permit from ODOT to make improvements on Highway 99 at the site.

Mr. Dane again addressed the Commission and advised that the list of questions had been reviewed by the applicant and himself, and have the following comments:

1. Cost of signalization - the applicant is agreeable to payment of proportional cost of signalization in accordance with traffic generated and as outlined in the Kittleson report.
2. The applicant agrees to assume cost for construction of storm water treatment facility.
3. Clarification of access to Edy Road crossing the wetland. Mr. Dane requested that the question be clarified since crossing is not anticipated at this time. He commented that there may also be a cul-de-sac in the area of the wetland near Edy Road.
4. Requirement for an easement for a stubbed street at Lots 75 and 78 - the applicant is agreeable to stub a street at the north-west corner of the development; however, the condition should not be site specific since the lot numbers may change.
5. Assure adequate water pressure to the development. Mr. Dane stated that this is a standard requirement for a final plat approval, and the applicant is agreeable.
6. Addition of a water storage system on the site - Mr. Dane commented that provision of adequate water pressure and a looped water system as required by the fire district should be sufficient, and a water storage site is not relevant at the site. Ms. Stewart clarified that the intent of her comments was that the City should be looking at some type of water storage site at the same elevation as the other City systems for that area, and it was not intended for the applicant to provide such.

Considerable discussion ensued as to whether a fence should be required along the urban growth boundary, the existing nursery area, and the wetlands, which are public open space.

Mr. Ruehl suggested that the applicant, City staff and property owners meet and agree upon the areas to be fenced and the type of fence. Commission members concurred.

After further discussion of the lot sizes at the urban growth boundary line, length of dead-end cul-de-sac, street width and parking, Mr. Warmbier moved that PUD 93-2 Wyndam Ridge preliminary plat be approved based on the findings of fact in the Staff report dated February 22, 1994, subject to the following conditions:

Prior to submittal of a Final Development Plan, or in conjunction with engineered construction plans provide the following:

1. Approval of PUD 93-2 is subject to approval and recording of the associated partition plat MLP 93-6 Handley. Approval is also subject to City Council adoption of PA 93-5, a Plan/Map Amendment zoning the property LDR, and the adjoining parcel GC.
2. Certify Division of State Lands and Corps of Engineers verification of the floodplain and wetlands delineation, of permitting for utility and road improvements, and their approval of the wetlands mitigation plan. Provide a professional survey of the wetlands. Provide a plan for reporting wetlands mitigation monitoring to the City.
3. Legally define and dedicate the 9.5 acres of open space to the City. Include Tract "F" in the dedication.
4. Obtain an access permit from the Oregon Department of Transportation to provide access to Pacific Highway and construct the interim improvements at the Meinecke Road/Pacific Highway intersection as described on page 21 (and depicted in Figure 7) of the February 18, 1994 letter from Gary Katsion of Kittleson & Associates, Inc. to Mr. Jim Rapp regarding the Highway 99W/Meinecke Road Intersection Study. Phase 2 may not commence until there is an alternative access to the project, or a permit from ODOT is obtained to construct the additional improvements to the Meinecke Road/Pacific Highway intersection depicted in Figure 1 of the February 24, 1994 memorandum from Gary Katsion of Kittleson & Associates, Inc. to Mark Dane of Alpha Engineering. At Phase 2, the applicant shall fund a proportional share of the cost of rebuilt approaches, intersection improvements and signalization for Meinecke at Pacific Highway. The "share" shall be calculated on traffic generations indicated by the Kittleson & Associates reports, including predicted "background" traffic.
5. Provide a landscape corridor plan for the Pacific Highway frontage.
6. Provide engineered construction plans for public utilities and roads, including costs, maintenance and bonding provisions in compliance with City standards. The plans shall include provisions for streets, trails,

sanitary sewer, water, fire protection, storm water runoff, erosion control, street lighting and street trees in compliance with the City, USA, TVFRD and shall include at a minimum:

- a. Utility extensions to all adjoining properties.
 - b. Pedestrian trail alignment and construction plans to the creek, including a trail paralleling the creek.
 - c. Provide additional data and construct storm water quantity and quality facilities in compliance with City standards including:
 1. Determine runoff impact to downstream properties.
 2. Provide calculations for on-site quality facility showing standards are met.
 3. Provide a landscape/maintenance plan showing plantings, fencing, access and pedestrian easements on Tracts C", "D", and "E".
 4. Locate facilities and manage storm water so that quantity and quality are fully preserved for flows into wetlands in the dedicated area and to areas north and east of the PUD.
 5. The "B" Street section shall be constructed to a local street standard with no parking permitted on the west side.
 - d. Provide "No Parking" signs on one side of all streets, except the entry road.
 - e. Provide street names in accordance with City standards.
 - f. Provide one street tree per lot (two on corner lots) uniformly planted in the front yard or in a planter strip in accordance with City street tree standards.
 - g. Provide adequate water pressure and looping of water lines to City standards.
7. Tree cutting in the dedicated open space is prohibited. In addition, preserve the existing stand of trees adjoining Tax Lots 900 and 1000 on the southern boundary.
 8. The City Parks Board has accepted the public open space

dedication as proposed. Parks SDC credits can be applied only to floodplain/greenway identified in the Parks Master Plan.

9. Standard building setbacks apply to each lot, except that lots may have a minimum ten (10) foot setback where adjoining dedicated open space.
10. All lots adjoining the urban growth boundary shall be a minimum of 7000 square feet.
11. Construct a six (6) foot high sight-obscuring fence adjoining the Urban Growth Boundary on all sides as agreed upon by the property owners, the City and the applicant.
12. When substantial construction or development of the PUD, or any approved phase of a PUD, has not taken place within one (1) year from the date of approval of a Final Development Plan, the Commission shall hold a public hearing to determine whether or not the PUD's continuation, in whole or part, is in the public interest. Any PUD which requires more than 24 months to complete shall be constructed in phases that are substantially complete in themselves and shall conform to a phasing plan approved as part of the Final Development Plan.

The motion was seconded by Mr. Hohnbaum and carried unanimously. (Note: Ms. Claus had removed herself from discussion and voting.)

B. PA 94-2 Gray: a Plan/Zone Map Amendment to re-zone 1.28 acres on Borchers Drive from Retail Commercial (RC) to High Density Residential (HDR):

Chairman Birchill called for a staff report.

Ms. Connell reported that the Commission is considering two requests: one is a request to re-zone a 1.28-acre parcel to High Density Residential from Retail Commercial; and, one is a request for a preliminary plat approval to construct a 57-lot duplex and four-plex subdivision on the parcel if the re-zone is approved. She pointed out that both requests are contained in a staff report dated February 22, 1994, a complete copy of which is contained in the Commission's minute book. Ms. Connell requested that both reports be considered together, but acted upon separately.

Ms. Connell commented that the 1.28-acre parcel is a small

parcel that could be zoned either with another tax lot to the north or one to the south, and can be re-zoned High Density Residential or remain as commercial. Ms. Connell pointed out that the applicant plans to construct multi-family dwellings, which is an appropriate use and would be a good transition to the commercial land to the south. She noted the change will help the City meet its goal for more multi-family housing.

Ms. Connell reviewed the staff report, and in conclusion suggested that the application be forwarded to the City Council with a recommendation for approval.

Chairman Birchill opened the hearing for comments from the applicant or proponents.

Don Holly, 1750 SW Skyline, Tualatin, addressed the Commission. Mr. Holly stated that he is representing Mr. Gray and Mr. Lucas in the application. He commented that Ms. Connell had explained their request very well and noted that he had nothing further to add, except that the parcel cannot be developed by itself due to the small size. He offered to answer any questions the Commission may have.

Chairman Birchill opened the hearing for comments from opponents. There being no one wishing to testify, Chairman Birchill closed the public hearing and opened the meeting for comments and questions from Commissioners.

Ms. Stewart commented that the zoning on this particular piece of property had been changed more times than any other property in the City.

Mr. Ruehl moved, seconded by Mr. Hohnbaum, that based upon the findings of fact a recommendation be forwarded to the City Council to approve PA 94-2. Motion carried unanimously.

C. SUB 94-1 Lucas: a preliminary Subdivision Plat for a 57-lot, 130-unit duplex and four-plex subdivision on Scholls-Sherwood Road and Borchers Drive:

Chairman Birchill called for a staff report.

Ms. Connell advised that the application before the Commission is a request for a subdivision contingent upon approval of Plan Amendment PA 94-1, which must be forwarded to the City Council for review.

Ms. Connell commented that the request is for the purpose of constructing 49 individual-owned parcels for duplexes and eight parcels for individually owned four-plexes. She

reviewed the criteria for a subdivision contained in the Staff report dated February 22, 1994, a complete copy of which is contained in the Commission's minute book. Ms. Connell

pointed out that there are no planned connections to the existing Lynnly Way and recommended that a condition be added to require a road to the west.

Ms. Connell entered into the record, a memo dated January 26, 1994, from Roger Harris, Chairperson of the Sherwood School Board, providing school enrollment data. She noted that the School District had no particular comments.

In conclusion Ms. Connell recommended that SUB 94-1 Lucas be recommended for approval based on the findings of facts and subject to the seven conditions outlined in the Staff report dated February 22, 1994.

Since SUB 94-1 had been continued from the last meeting of the Commission because of the time constraints, Ms. Connell entered into the record: 1) a letter for J. C. Reeves Corporation objecting to the proposal because of his perceived lack of school facilities; 2) a condition from the County incorporating their conditions for Scholls-Sherwood Road. Ms. Connell noted that the Department of Transportation had also provided a response by telephone which indicates that they have no comments or requirements for this project due to the new signalization of Highway 99W near the site

Chairman Birchill opened the public hearing for comments from the applicant and proponents.

Don Holly, 1750 SW Skyline, Tualatin, again addressed the Commission. Mr. Holly advised that he is representing Mr. Lucas on the application. He advised that a street extension is proposed for Lot 7 to connect to Lynnly Way. Mr. Holly commented that the applicant is in agreement with all of the requirements. He pointed out that one lot will be eliminated, thereby enlarging the lots for the four-plexes. Mr. Holly noted that there are total of 55 lots for the development. With regard to the questions relating to the sanitary sewer, Mr. Holly stated that he spoken with City Engineer Ron Hudson and noted that the sewer could be extended only 700 feet, or to the boundary of the parcel. He remarked that the applicant will comply with all of the requirements.

Chairman Birchill opened the public hearing for comments from opponents. There being no further testimony, Chairman Birchill closed the public hearing and opened the meeting for questions, comments and discussion among the Commissioners. He noted that the public hearing may be reopened at any time at the request of one of the Commissioners.

During discussion of the 10-inch water line, Mr. Hohnbaum suggested that the water line be looped so that property owners may hook up to the water service at a future date. Mr. Holly commented that during discussions of the water lines with Public Works, the question of looping the line never came up. He pointed out that water lines are generally brought to the edge of the next property so that the owner/developer is able to finish the loop. Mr. Holly stated that requiring the applicant to finish the looping for this project would create a hardship on the developer. Mr. Holly remarked that Public Works personnel required that the water be extended only to the development.

In response to Mr. Hohnbaum's question, Ms. Connell stated that the Commission could require additional information as part of a condition of approval. The Commission concurred that condition No. 6 (a) should be revised to include a statement that water and sewer lines are to be extended as determined by the City Engineer.

After further discussion of the water and sewer lines and the storm water facility and treatment, Mr. Hohnbaum moved that SUB 94-1 be approved based on the findings of fact outlined in the Staff report dated February 22, 1994, with a revision to condition No. 6, subject to the following conditions:

Prior to Final Plat submittal:

1. The three (3) phase development shall commence within one (1) year and all phases shall be completed within five (5) years, unless an extension is approved by the City.
2. All duplex lots shall be a minimum of 8,000 square feet and four-plex lots a minimum of 12,400 square feet. The final plat shall indicate parcel square footages.
3. The final plat shall be revised illustrating a street stub extension west to Lynnly Way in the approximate location of Lot No. 7, Phase 1.
4. Street right-of-way dedicating 45 feet from Scholls-Sherwood Road centerline and 30 feet from Borchers Drive centerline shall be included on the final plat. Street improvements shall include the following:
 - a. Sign and record a waiver not to remonstrate against the formation of a local improvement district (LID) or other mechanism to improve the base facility of Scholls-Sherwood Road to County

standards between Borchers Drive and Elsner Road.

- b. Dedicate additional right-of-way to provide 45 feet from centerline of Schools-Sherwood Road adjacent to the site, including adequate corner radius. Construct a sidewalk along the frontage of Scholls-Sherwood Road to County standard.
 - c. Construct half-street improvements along the frontage of Borchers Drive to City standards, including curb, gutter and sidewalks.
 - d. Provide adequate sight distance at the intersection with Scholls-Sherwood Road (450' to east and 550' to west). Provide adequate sight distance at the intersection with Borchers Drive (350' both directions).
 - e. Establish a one-foot non-access reserve strip along the site's frontage of Scholls-Sherwood Road and Borchers Drive, except at approved access locations.
 - f. An access spacing variance must be requested and granted by the County to allow access to Scholls-Sherwood Road within the required 600 feet of separation.
 - g. Clean, grade and shape drainage ditches along the frontage of Scholls-Sherwood Road.
 - h. Provide a new access from Tax Lot 900 to the proposed internal street.
 - i. Comply with any additional requirements of the County as a result of the Access Report. Obtain a facility permit with the County for construction of all required public roadway improvements.
5. Each lot shall be provided with two (2) (except corner lots shall have 3) uniformly planted street trees in the front yard or in a planter strip. The trees shall be planted prior to occupancy unless otherwise approved by the City. Street trees shall be included in the public improvements bond at the time of final plat.
 6. Engineered construction drawings shall be approved in compliance with City, USA, TVFRD and Washington County standards for streets, sanitary sewer, storm water runoff, erosion control, site grading, water service,

fire protection, street lighting including illumination at Scholls-Sherwood and Borchers Drive intersections, street names and street trees. Plans shall be accompanied by a subdivision compliance and maintenance agreement as well as bonding for 100% of the improvement costs. Specifically the plans shall include but are not limited to:

- a. Water and sanitary sewer line extensions to all adjoining properties.
 - b. Individual sanitary and storm sewer connections to each lot.
 - c. An on-site storm water quality facility at the time of Phase 1 construction.
 - d. Fire hydrant locations as approved by the TVFRD.
7. Provide a landscape corridor plan illustrating an easement, fencing and plant materials on the frontages with Scholls-Sherwood Road and Borchers Drive.

The motion was seconded by Mr. Corrado and carried unanimously.

D. PA 94-1 City of Sherwood: Plan Text Amendment considering revisions to non-conforming use provisions, the location of "residential facilities", and manufactured homes:

Ms. Connell commented that the Commission is reviewing proposed changes to the zoning Code: one concerning residential facilities in all residential zones and one regarding the new state law regulating placement of manufactured homes. Ms. Connell noted that changes regarding manufactured housing must be in place by May 1994. She pointed out that the new State law permits placement of manufactured homes on single-family lots; however, the new law will not pre-empt CC&Rs which preclude manufactured housing in subdivision, or adjacent to historical structures.

Ms. Connell stated that manufactured housing must meet all Code requirements, including size, setback, lot size, etc.

Ms. Connell advised that the revision to the non-conforming use section of the Code is to permit an owner to rebuild a residence in a commercial or industrial zone where a fire has destroyed the home. Ms. Connell pointed out that at their meeting of January 12th, the City Council directed staff to draft an amendment that addresses the situation. She noted

that there are many homes within the City that fall into the non-conforming use category. In response to a questions, Ms. Connell replied that she was not certain whether the proposed change should apply to a four-plex in a non-conforming situation. Ms. Connell reviewed comparable standards in neighboring cities. She said the current language is not unconstitutional.

Chairman Birchill opened the public hearing for comments from proponents. (Note: for the record, Ms. Claus excused herself from discussion and voting on PA 94-1.)

Susan Claus, 22211 SW Pacific Highway, Sherwood, addressed the Commission. Ms. Claus stated: "What I want to say, along with what Carole has talked about, one of the problems that you have with a non-conforming use statute is when someone goes in for financing and they happen to be located in a zone that is not residential and the way that our Code is written right now, we have uses and we have structures. If they become non-conforming, the problem is you will have a statement from the City which the City says our statutes says thus-and-such, but like in the case of the City of Sherwood we are fairly liberal in that if uses go back and forth between zones, but if a lender calls or if you have an insurance company call, they get a straight answer from the City that says no, you can't do this or you can't do that and so that is one of the reasons that you cannot. The problem, and there are some cities, Carole named some cities, you can name the same amount, or more, cities that are, they recognize that when zoning goes in, the zone part is not necessarily ready in the market time, and so we have a lot of grandfathered residential uses, a lot of properties that are located in our town that are not going to go commercial for awhile, or they are not going to go industrial for awhile, and if they have the unlucky fortune that they get burned down, you are going to have a vacant parcel sitting there. And, the land owner has no way to either continue their use and they may not have the market, the market might not be there, so you've got property out of production. And another thing is when you've got a non-conforming four-plex or a non-conforming duplexes, you're also talking about affordable housing that if it happens to not fit in the zoning at that time and you have a burn-out, you've lost some more units, and there is nothing that can be done about it. In the world of appraising, what happens is when we appraise, we ask, "what is the zone of the house that you are appraising?" And, if they say, you need a lot size that is bigger that what it is on, so it's non-conforming, and the next question that you ask is: "can you rebuild the improvements?" And, if they say, "no, you can't rebuilt the improvements", then

immediately those people can't get financing. It's a policy decision that the City makes and actually the fact is the City is very reasonable right now. I think we could all name uses or structures that have been burned or uses abated for 120 days, technically they can't go back to that use; i.e., the Mane Attraction (a beauty shop) was in a tri-plex for awhile, and it was in a retail commercial, when Mane Attraction moved, the tri-plex was converted back to residential uses. Technically, they are not supposed to be able to do that, but you know I think everybody recognizes, especially that nature of commercial you will not have a lot of, you know, you have tenants come and tenants go. That's just a little bit of the background for what we are talking about here. The City really operates in that nature anyway; you know, being liberal. We don't really go after people. But, it is a technicality when you have a lender call up or an appraiser call up or an insurance person call up. When they ask what is your policy, the City policy is thus, so and it happens like Carole says, there are other residential uses along the highway that when you go to get financing, at this point you can't do it under residential programs because of the zoning and the non-conformance." Ms. Claus offered to answer any questions Commissioners may have.

Clyde List, 21235 SW Pacific Highway, Sherwood, addressed the Commission. Mr. List stated that he would like to testify in favor of the non-conforming use change that is under consideration. I read up on many subjects, I'm not an expert on very much, but I do recall from a book that I read by Herbert Mayer, entitled "The Builders" who referred to the concept called the iron law of real estate, which if I remember it correctly, it states that, if the property a structure sits on becomes worth more than the structure itself, the structure goes. There is nothing anyone can do, there is no ordinance, no law that can save that structure. And I think that iron law of real estate is valid, what protects the community from the danger implied here, which is if an existing structure burns over 60 percent and the builder rebuilds it as if it were new, somehow he perpetuates the use. In fact, the property becomes worth more than that structure, the structure is going to disappear, no matter how much money he puts into it. And, in consideration of the fact that many of these structures are owned by elderly people for whom a fire would be very stressing, and the fact that they would have to move off of that property because of that fire, that would make that fire all the more distressing, and I don't think any of us really mean to put that kind of hardship on our elderly population.

Chairman Birchill opened the public hear for opponent

testimony. There being no further testimony, Chairman Birchill closed the public hearing and opened the meeting for comments, questions and discussion among the Commissioners.

Considerable discussion ensued as to whether a non-conforming structure could be rebuilt if the structure had been abandoned, whether the change should apply to duplex/triplex/four-plex or only single-family dwellings, whether the change applies only to owner-occupied structures.

Mr. Warmbier moved that based on the findings of fact stated in the Staff report dated February 22, 1994, that PA 94-1 be approved with an amendment to limit the change to not more than a duplex (two units). The motion lost due to lack of a second.

Mr. Hohnbaum moved to recommend to the City Council approval of PA 94-1 based on the findings of fact outlined in the staff report dated February 22, 1994, with the following modifications:

1. That the provision apply only to single-family residential and duplexes, not four dwelling units [Item 3 (c)].
2. A revision to the language so that it does not apply to abandonment.

The motion was seconded by Mr. Warmbier and carried with Mr. Ruehl voting no and Ms. Stewart abstaining.

E. MLP 94-2 Scheller: a two-lot Minor Land Partition on Schamburg Drive.

Mr. Hohnbaum moved, seconded by Mr. Ruehl, that MLP 94-2 be continued to the April 5, 1994, meeting. Motion carried unanimously.

F. SUB 94-2 Mountain View Heights: a 16-lot single-family subdivision on Division Street.

Chairman Birchill called for a staff report.

Ms. Connell reported that the Commission is considering a 16-lot single-family subdivision composed of three tax lots on four acres. She pointed out that there are steep slopes on the site and drainage is from west to east. Ms. Connell provided an in-depth review of the Staff report dated March 8, 1994, a complete copy of which is contained in the Commission's minute books. Ms. Connell commented that one

item for discussion is improvements to Division Street, which includes gutters sidewalks, 50-foot right-of-way, 36 feet of paving with curbs. She noted that the proposal does not provide for complete street improvements, but tapers to a half-street adjoining proposed Lots 2 and 3, where the north side of the street is not owned by the applicant. Ms. Connell pointed out that there will never be any dedicated TIF funds to finish the road. She suggested that the applicant improve the entire parcel frontage on Division Street, while limiting the street grades to 15 percent.

In conclusion, Ms. Connell recommended that SUB 94-2 be approved subject to the conditions outlined in the Staff report dated March 8, 1994.

Chairman Birchill opened the public hearing for comments from the applicant and proponents.

Dennis Smith, Northwest Civil Design, 9130 SW Pioneer Court, Suite E, Wilsonville, addressed the Commission. Mr. Smith remarked that he is one of the owners of the company and manager of the project. Mr. Smith commented that he prepared the documents regarding the development. He stated that there are no problems with the adjustment to the depth and width of the lots 1, 2 and 3, nor the adjustment of the grade of the road to comply with City requirements, nor meeting the design criteria for specified public improvements. Mr. Smith stated that there are two issues upon which he would like to comment. When Mr. Wiltbank approached him to design the project, Mr. Wiltbank was, after preliminary meetings with City Staff, under the impression that half-street improvements would be acceptable. Additionally, no water quality facility was ever required. Mr. Smith commented that he personally dealt with Lee Walker of Unified Sewerage Agency and at that time he was under the impression that the development was on a regional facility. He noted that subsequently, documentation surfaced that a water quality facility is going to be required and full improvements to Division Street will also be required. Mr. Smith stated that he would like to reconsider those two issues and Mr. Wiltbank would also like to support his preliminary conversation with the City supplying that information. Mr. Smith commented that there were no other issues with which he is concerned at this time.

Jason Wiltbank, 21965 SE Edy Road, Sherwood, addressed the Commission. Mr. Wiltbank commented that when he purchased the property, it was three different parcels and he was led to believe it would benefit the City, which was interested in connecting Division Street. He commented that he was assured

by the local realty office that he would be required to do only half-street improvements. Mr. Wiltbank remarked that he also met with City Manager Rapp and Ms. Connell regarding the zoning and the requirements for street improvements. He pointed out that he was assured that there would be no problems with zoning, and basically would have to do street improvements on the side of the street connected to the property. Mr. Wiltbank stated that he was shocked when he received the report which contained a note from Jim Rapp stating "require complete improvements to Division." He added, in sitting here I think I've heard the Planning Commission approve two other subdivisions tonight where only half-street improvements were required. Mr. Wiltbank pointed out that Cascade View Estates, which is adjacent to the proposed development, and Kathy Park were required to make only half-street improvements; however, full street improvements are being required for Mountain View Estates. He requested that the Commission reconsider the requirement.

Mr. Wiltbank commented that he had no other problems in complying with any of the conditions; he will rename streets to comply with City street naming standards; since there are extensive views, the subdivision will be renamed Mountain Vista Estates. Mr. Wiltbank stated that he believes the subdivision will benefit the City of Sherwood, he plans to provide some nice homes in the area, and will be creating a thoroughfare so that residents do not have to drive around the subdivision to access the bottom part of Division Street with the top part. He offered to answer any questions the Commissioners may have.

There being no further proponent testimony, Chairman Birchill opened the public hearing for comments from opponents.

Virginia Meyer, 670 East Division, Sherwood, addressed the Commission. Ms. Meyer commented that she appreciates the applicants comments. She noted that in the packet information there is recorded information that tells us we have been through this before. Ms. Meyer pointed out that in 1979 she had dedicated a right-of-way to the City with the understanding that when another subdivision developed on the parcel, she would not suffer. She noted that for 20 years, they have maintained the turn-around for east Division Street for the City. Ms. Meyer stated that the language makes one assume that this is an 18-foot opening onto the proposed development; however, it is not, it is not paved, not graveled or anything else, the majority is a rocky grass area that was a garden at one time. Ms. Meyer stated that the other assumption she got from the comments was the traffic would be below and limited to Pine, Lincoln, and Willamette off of Sunset. Ms. Meyer pointed out that she had signed a

petition on a development that was to face on Pine for the same reason, the immense traffic flow. Ms. Meyer commented that if the Commission allows the 18-foot opening, part of the opening is in the right-of-way and is contrary to the agreement previously made with the City. She asked, "do we have to continue to maintain that portion? I don't believe that is what you wanted to do." In response to Ms. Claus' question, Ms. Meyer responded that she felt the road should go through, but not at her expense and because of the agreement made with the City with the understanding that the City would develop the road. Ms. Meyer stated that a lot was sold to the developer with the understanding that they would develop a different engineering plan and was part of the agreement.

Jason Wiltbank again addressed the Commission. In response to Mr. Wiltbank questions, Ms. Meyer stated she was opposed to the street going through; she had dedicated a 25-foot right-of-way and the City has had the right-of-way for years.

Mr. Wiltbank pointed out that Ms. Meyers will benefit from the street, but apparently does not wish to pay for improvements because of a dedication to the City several years ago. Mr. Wiltbank commented that he does not have anything to do with the property on that side of the street and questioned why he should have to pay for improvements, it should go back to the City, who owns the property.

There being no further testimony, Chairman Birchill closed the public hearing, and opened the meeting for comments, discussion and questions among the Commissioners. He noted that the public hearing may be re-opened at any time at the request of a Commission member.

After extensive discussion regarding street improvements, sanitary sewers, and storm water facilities, the following revisions to the conditions of approval were made:

1. Change condition 2 a. to require street improvements as proposed by the applicant.
2. Change condition 2 c. to require extension of storm water and/or sewers as determined necessary by the City.
3. Change condition 2 d. to require water quality facility and collection if determined necessary by the City.

After a brief discussion of the requested changes, Ms. Stewart moved, seconded by Mr. Hohnbaum, that SUB 94-2 be approved based on the findings of facts in the staff report

dated March 8, 1994, and subject to the following conditions:

Within one year and prior to Final Plat submittal:

1. Ensure all lots have 80 feet of depth and 60 feet of width at the building line.

2. Provide engineered construction drawings in compliance with City, TVFRD and USA standards for streets, sanitary sewer, stormwater runoff, erosion control, water service and fire protection, street lighting, street trees and street names. Plans shall be approved in conjunction with a subdivision compliance and maintenance agreement, including bonding for 100% of the public improvement costs. Plans shall specifically include, but are not limited to the following:
 - a. Street improvements to Division Street as proposed by the applicant.
 - b. Street and lot grading provisions to City and UBC standards.
 - c. If necessary and as determined necessary by the City, extension of storm water to the west property boundary. Extension of sanitary sewer to the west property boundary and/or Tax Lot 100 as determined necessary by the City.
 - d. A storm water quality facility and rear yard collection provisions if determined necessary by the City and USA.
 - e. Street name to City standards for the cul-de-sac.
 - f. "No Parking" signs and street trees to City specifications.
3. Preserve the Madrone and Fir trees outside rights-of-way.

The motion carried unanimously.

7. **Director's Report:**

Ms. Connell reported that Jerry Reeves has appealed the Woodhaven project; the Parks Board has accepted the .6-acre park in the William Park project, and the City Council has directed staff to develop an ordinance and conditions of approval, including comparable worth statement.

Ms. Connell commented that on April 5th, a presentation on Metro 2040 will be made at a joint meeting of the City Council with the Planning Commission. Commission members Birchill, Warmbier and Hohnbaum advised that they had previous commitments and would not be able to attend.

9. **Adjournment:**

There being no further items before the Commission, the meeting adjourned at approximately 11:25 p.m.

Respectfully submitted,

Kathy Cary
Secretary