

City of Sherwood, Oregon
Planning Commission Meeting

July 5, 1994

1. **Call to Order/Roll Call.** Chairman Birchill called the meeting to order at 7:30 p.m. Commission members present were: Chairman Eugene Birchill, Marge Stewart, Chris Corrado, Susan Claus, and George Bechtold. Rick Hohnbaum was absent on vacation. Planning Director Carole Connell and Secretary Kathy Cary were also present.

Chairman Birchill noted that the date of the meeting on the agenda was incorrect and should be July 5 rather than July 7.

2. **Approval of minutes of June 19, 1994:**

Chairman Birchill called for corrections or additions to the minutes of the June 19, 1994 meeting. He commented that after Ms. Claus brought up the question of people being specifically quoted and people not being quoted in the minutes, that sometime previous and prior to Ms. Claus appointment to the Commission, specific directions were given to the secretary as to quoting persons who testify. He stated that there has been direction in that way, and he would prefer that persons providing testimony be quoted verbatim in the event there is ever a question as to what someone said, then it is specifically spelled out in the minutes.

Ms. Claus inquired as to the specific directions and whether they included anybody who testifies? Chairman Birchill replied that he did not remember all of the specifics, but it was mostly for those who spoke in opposition to or brought up issues against an item.

Ms. Connell commented that the direct quote directions were first brought up in September 1992, at which time the Commissioners requested more detailed testimony.

Ms. Claus stated that Mr. Fasano had been quoted also, and inquired if the directions were for per hearing and per issue? Ms. Connell replied that, the more the City gets sued, the more conscientious we get of putting in the record what was said. She pointed out that the Commission has requested more detail and that Ms. Claus is the first person to question verbatim quotes.

Ms. Claus commented that Mr. Sandy Rome stated that he had sent a letter asking why he was being quoted verbatim a couple of months ago, but he stated that he had not received a response. Ms. Claus remarked that she has not seen Mr. Rome's letter.

Chairman Birchill remarked that Ms. Claus had brought up a good point and that if one is quoted, all should be.

Ms. Claus suggested that exchanges of dialogue on both sides get quoted. She stated that the Comprehensive Plans states that "the City has to keep an accurate set of minutes." But, who defines what accurate is?

Chairman Birchill replied that the Secretary had set the standard, and the Commission requested more and is left to her discretion. He commented that the Secretary does a good job, and he is pleased with the minutes, which he feels are accurate.

Mr. Corrado commented that the issues of contention are covered very well and issues that get brought up in sharing information where everyone is in agreement, it is not necessary for verbatim reports. However, when Mr. Rome, Mr. Claus, or whoever, feel very strongly about an issue, those thoughts should be included verbatim as they are shared. Mr. Corrado stated that the Secretary does an outstanding job given the conditions under which the Commission works.

Ms. Connell pointed out that staff relies on the Commission to correct the errors. Ms. Connell commented that there are instances where it is difficult to summarize what is said and in those cases, it is necessary to include exactly what was said.

Ms. Claus asked if it was not so important to summarize the different issues that the Commission members brought up, or if its more appropriate to simply state "there was a brief or extended discussion" then indicate that the issue was voted upon. Ms. Connell replied that the decision and conditions reflect the Commission's discussion.

Mr. Corrado pointed out that the substance of what is discussed is reflected in changes to the conditions or an added condition, and then voted on and becomes part of the record and to include Commission members' entire comments would become redundant.

Ms. Claus remarked that she did not intend that the conversation be recorded verbatim, but when there is an action that is voted upon, the Commission is the panel which does the voting, you have a certain amount you get from public input, but there is also quite a bit that goes into the decision towards approval of the application. In response to Chairman Birchill's question as to whether Ms. Claus would prefer that more of the Commission's discussion be included in the minutes, Ms. Claus replied that her understanding is that the Commission members are the ones voting for the application, and are the ones that are held responsible for the decision, but on an individual basis everything is summarized very quickly and on some applications there is a lot of public input and on others there is mostly discussion with the Planning Commission. Ms. Claus remarked that she is simply trying to get direction on how it should be, when one is talking about having an accurate record and the minutes being a permanent record once the tapes are destroyed after a year. And this is what she is trying to look at. Ms. Claus commented that up to a year, it doesn't matter since the tapes are still available, and after that when one is going back through the record, it doesn't sound like the Planning Commission does anything when the records state "after a discussion" and then the Commission votes. Ms. Claus remarked that she did not believe that to be the purpose, but that the purpose is that the Commission deliberated and brought up issues and things that happened. Chairman Birchill stated that the discussion is recorded within the motion that is made and the information that is in the findings.

Ms. Stewart commented that if there is any doubt about the Commission's decisions and the manner in which the minutes are written up, at the time of approving, the Commission members could ask that there be more or verbatim statements as to what the Commission's decision was based on and what the Commission did. Ms. Stewart remarked that she would hate to see that happen, but if the Commission is dissatisfied, that would be something that should be requested when the Commission approves the minutes and request more in the transcription.

Ms. Connell agreed and pointed out that if the Commission wants more specific information included in the minutes, they should make a specific request.

Ms. Claus questioned the requirements of LUBA when an appeal is made to them, and whether LUBA requests tapes, or if minutes are required? Ms. Connell responded that only the minutes are required and noted that only one appeal has been

submitted to LUBA. Ms. Claus pointed out that at present there are a lot of applications before the Commission that are approved, there will not be a lot of concern on the minutes because the applicants usually get what they request and it doesn't matter. However, the town will get to the point where there will be more applications where there will be turndowns. In response to Ms. Claus question, Ms. Connell confirmed that what LUBA relies on it is the written record, which includes the minutes.

Ms. Stewart pointed out that the Commission always has the opportunity to amend the written record and if the Commission feels there is something missing, could requested that the minutes be amended at that time.

Chairman Birchill advised that if there are specific points which Ms. Claus wishes to be included in the minutes during this session, the minutes could be held over until the next regularly scheduled meeting. Otherwise, the minutes will become too cumbersome and unmanageable. Ms. Claus inquired if the only verbatim comments to be included are those of the opposition. Mr. Corrado stated that the Commission should not "only" any issue, but any issue that is appropriate should be included. He pointed out that review of past minutes would reveal that other than negative comments have been included and that there is a real mix. Ms. Claus remarked that she did not consider the minutes to be a real mix and that, historically, since she has been on the Commission it has been mostly opposition; i.e., Mr. Lou Fasano had been quoted, it was his application and he was the proponent. Ms. Claus stated that her point is if the Commission reviews the minutes and there is something she, or someone else thinks should be included, then should the Commission request a change? Chairman Birchill replied that if the minutes need to be expanded, the Secretary will be so advised. Ms. Claus asked if that is basically the direction being given to the Secretary from the Chairman? Chairman Birchill confirmed that her understanding is correct.

There being no corrections, additions, or changes to the minutes of the June 19, 1994, minutes, Chairman Birchill announced that the minutes would stand approved as mailed

3. **Public Hearings:**

Chairman Birchill read the hearings disclosure statement and requested that Commission members advised of any conflict, ex-parte or personal bias with regard to any items on the agenda.

Ms. Claus commented that, on the Public Hearing Item B, Sherwood Village, she does a lot of appraisals and has appraised some of the homes in that development, but there is never a specific individual and is usually a governmental entity. Chairman Birchill commented that there is an indirect ex-parte contact. Ms. Claus stated that she does not feel that she is biased one way or another.

Ms. Connell commented that Mr. Bechtold is a new member of the Commission and it is important to point out that Mr. Bechtold visited a site on the Commission's agenda, which is an ex-parte contact and it should be so noted. Mr. Bechtold confirmed that he had visited the site.

A. PA 94-5 Langer: A Plan/Zone Map Amendment request to re-zone 28 acres on the north side of Century Drive from Retail Commercial (RC) and Light Industrial (LI) to High Density Residential (HDR):

Chairman Birchill called for a staff report.

Ms. Connell provided an in-depth review of the staff report dated June 28, 1994, a complete copy of which is contained in the Commission's minute book. She noted that the Commission is reviewing a 28-acre parcel which was annexed into the City on June 30, 1994. Ms. Connell commented that all agencies had been provided with a notice and that all agencies had responded except ODOT.

Ms. Connell remarked that re-zone of the property provides the City with an excellent opportunity to add multi-family housing, which will help meet the City's housing goals.

Ms. Connell noted that the school could be impacted by the zone change since there are no students generated by the existing Retail Commercial zoning. She pointed out that 361 students will be added to the school system by changing the zoning to high density residential. Ms. Connell noted that considering the zoning City-wide and, more specifically, Sherwood Village under consideration, the number of students that would have been added would be more than with the change being considered tonight. She pointed out that the new zoning will result in a reduction of approximately 181 new students.

In conclusion, and based on the traffic impact report and responses from agencies, Ms. Connell recommended that PA 94-5 be approved without conditions. She noted that any conditions could be applied at the time the of development.

Chairman Birchill advised that the Public Hearing will be opened to the proponents first, then the opponents, then the applicant will have the opportunity to provide rebuttal. Chairman Birchill opened the hearing for comments from the applicant and/or proponents.

Clarence Langer, 15585 SW Tualatin-Sherwood Road, Sherwood, addressed the Commission. Mr. Langer advised that he would like to introduce the planning team: Gary and Barbara Langer; Mrs. Clarence (Pam) Langer. He next introduced the development team: Frank Weigel, Martha Stiven, Len Schelsky, Dwain Quandt, and his neighbor, Jim Claus. Mr. Langer requested that Ms. Stiven explain the request to the Commission.

Martha Stiven, Planning & Development Services, 14620 Uplands Drive, Lake Oswego, addressed the Commission. Ms. Stiven commented that Ms. Connell had presented such a thorough review that she would not reiterate her comments. Ms. Stiven stated that she felt the applicant had submitted a very complete application and the applicant had worked very hard and closely with staff to address all issues that may be raised up front and in order to resolve all issues prior to presentation to the Commission. Ms. Stiven commented that the application is a very fundamental request: approval of a comprehensive plan amendment that will allow the applicant to develop the property as high density residential. She pointed out that the applicant and Commission are not in attendance to discuss what the development will look like, or how the traffic and landscaping will be since the Commission will have an opportunity to review those issues when design review is discussed. Ms. Stiven noted that citizens will also have an opportunity to provide input on all of the issues and that the applicant is simply asking the question: is this the best land use for that 28-acre site? Ms. Stiven stressed that this application really is not a major request, it is a reshuffling of land use. She indicated that the portion known as Sherwood Village, combined with the single-family lots and open spaces, is about 50 acres, that is zoned for high density residential development. She noted that the City's Planning and Zoning Codes allow that land to be developed as single-family, which is what is happening at that site. Ms. Stiven stated that the Comprehensive Plans indicates that high density residential development is appropriate in central Sherwood, and when you adopted the Comprehensive Plan, it also says all of the utilities are adequate to accommodate that at some point in time when it was developed. She remarked that what has happened is that Sherwood Village, given the surrounding land uses is more appropriately developed as single family residential and

given current market demands it is more appropriate to develop as single-family residential. Ms. Stiven commented that, as Carole mentioned, there is lost housing in the proposal and what the applicant has done by rezoning the property high density residential he has replaced the housing and just moved the high density residential from south of Century Drive to north of Century Drive. She noted that the applicant is not asking for 28.6 acres of brand new high density residential. Ms. Stiven pointed out that the net effect of changing the zoning to high density residential is still fewer units than would have developed on the Langer property than would have developed had the current zoning been implemented, which is why the applicant is able to say there is a reduction in traffic impact, enrollment in schools if the site is developed in this manner, storm water drainage is less; all of those because of the under utilization of the single family in the Sherwood Village development. Ms. Stiven pointed out that this is the major premise of the land use application. Ms. Stiven commented that she would not review Ms. Connell's report and comments because it had been covered so well. She indicated that the applicant obviously concurs with the recommendation for approval and encourage the Commission to do so. Ms. Stiven noted that the result of approving the land use request is that the City will provide housing opportunities in central Sherwood that have access to transit, shopping and employment opportunities. Ms. Stiven remarked that the applicant has a very good plan for Sherwood and encouraged the Commission to approve the request. Ms. Stiven indicated that the applicant is in attendance as a team and offered to answer any questions the Commission members may have.

Jim Claus, 22211 SW Pacific Highway, Sherwood, addressed the Commission. Mr. Claus stated: he wished to take this opportunity, because this is obviously a development that does not negatively impact any of the properties we own. Now I start out with that as a statement because I am deeply troubled by what goes on at these meetings. Let me first of all make things very clear to you, and make it as clear as possible and hope that you don't have to learn the lesson in a very hard way. Because you may be steps away from me taking this to another forum. The 14th amendment of the US Constitution absolutely, strictly guarantees due process of law and equal treatment. The Dolan Case, which just came down from the Supreme Court, follows three other case; first English, Nolan versus the California Costal Commission, and Lucas versus South Carolina. In all of those cases, the courts said clearly, during these types of meetings where you are allowing someone to change or develop their property you are in fact manipulating a liberty and a property interest.

And, they said those things that they do on their own property, they are required to pay for, but those things that are a broad, public infrastructure issue, you are required NOT to make the neighbors pay for them. In other words, you might want a park, you might want a collector like Murdock, but you have absolutely no right demanding that the person putting in a subdivision or in an adjacent property pay for that road, that water system, that sewer system; that is a community charge. Chairman Birchill interrupted Mr. Claus and stated: I'm not understanding how this relates to the zoning change. Mr. Claus replied, I'm going to tell you in just a minute. When in fact, the program brought forward like this that has positive impacts on all of the adjacent property, someone can come up here and testify in a very pleasant way. When not, you are taking a vote that is impacting someone's property, and if your minutes merely reflect the opposition to that, not your comments, particularly if, as I have maintained with Mr. Corrado, they are frequently argumentative and rhetorical in nature. You are not granting a person, in the same body language, you want to say something or do you want to let me finish? Mr. Corrado replied, "there's no 'n'." Mr. Claus responded, I can do worse than that when I am interrupted. What I am telling you is that if your minutes do not accurately reflect what goes on in there, you are preventing due process and as with the School Board, you then force a citizen to file an extremely expensive appeal that even the School Board members when they see it wonder why it wasn't brought to your attention; and it wasn't brought to your attention because you are in such a hurry to get it passed that someone can't make that observation without an interruption, without body language, without facial expression, without the things you shouldn't do. Now, you are going to say to me, you're antagonistic. And I'm going to tell you, you are sitting in a quasi-judicial position...that's your problem, not mine. If you don't like it, get off the Board. Because you are impacting both liberty and property interests and I'm here to tell you tonight that you have a prime example of a citizen that took the time when I had questions in the last meeting to stop and call me and say come and look at our project, we are really proud of it but maybe you had some things that are wrong. I not only came away from that meeting with a positive feeling, I said here is someone that is concerned about what they are doing to the neighbors, they are very concerned about how it will benefit the downtown and this is the first plan we've had that will have an immeasurable benefit for Old Town, and they were willing to go to that. And as a result, you can come here tonight and testify in favor of it. But imagine how difficult if when you are the neighbor and you have someone you like, someone your children

have been to school with and you have to come in and say I don't like what you're doing. I don't have any trouble doing that with a developer, but I have a lot of trouble doing that with a neighbor. And, I'm telling you when your minutes reflect this, what your minutes had better reflect is everything that goes on on this Board because we have an absolute right with liberty and property interest to come here and create a public record. And the second question I hear tonight, are your tapes available? Let me tell you, you loose tapes here. (Note for the record: To staff's knowledge, no tapes have been lost by any member of the City staff.) So, tonight you have a very happy instance, not because of this Board, but because the applicant's representatives made a total community effort to show benefits that they were trying to work out. But if that's not done, and you just got a developer who wants to fill a wetlands, cut road costs, not put in a proper sewer line, put a park path where he has no business put it, it's burdening somebody else's property. You gotta make absolutely sure that you hear that interest, because that's your obligation. Maybe you don't like it, but that's your obligation, and too much of this burden adjacent property has gone on. And, thank God we have finally got a neighbor who has been around here long enough that when somebody says I have a legitimate concern, they answer it. And that's why I am here tonight to now only support this; if you took at this in every way from a tax base, from a transportation base, they have gone through and thought what's good for the City, and more than that..their neighbors, and that's why you can support it. But, I'm telling you, make sure your minutes reflect because when I come here next time as I'm doing in one case, I've got a case where I know of the deal when I sold that property. And I've got minutes that don't reflect that. Thank God I wrote letters afterwards. Ask yourself a question. How's the judge going to look at that? Think about it for awhile and you may find this a very good reason to be open, friendly and to make sure that the remarks here are yours, mine and everyone elses'.

Chairman Birchill opened the hearing from opponents. There being no further testimony offered, Chairman Birchill, advised that no rebuttal appears necessary and closed the public hearing. He advised that the public hearing may be re-opened at any time at the request of a Commission member with good reason.

Ms. Claus commented that she has nothing further and during her review of the proposal had nothing but positive feelings.

Ms. Claus remarked that she thought the retail commercial zoning did not make sense at all, and it is good that the

City gets more multi-family higher density. She stated that she also thought it was good if at some point, if there is no market for the high density that the applicant look into the single family, it is a good plan and idea for that part of town.

Mr. Corrado stated that he feels the plans is fabulous, and had nothing further to say.

Mr. Bechtold stated that he was curious to know how Sherwood Village built less than has happened on a lot of other developments in town. He noted that there was testimony that it was zone high density, but was built less than high density. Ms. Connell explained that the owner did not want to build high density and the City's code allows either. She pointed out that there may be time when the City will have to preserve their high density zone just for high density uses.

Ms. Stewart remarked that she had one thought, and that is reducing the commercial property by 11 acres. She stated that she is not against reducing this area, except that there was a nice big block of commercial, it seems that one could do more with it than string it out as it is; but, perhaps we are sitting in the middle of Newberg and Tigard and maybe that will not be necessary. She asked, is the City putting a dab of commercial here and there and making it not complete enough for our own people who live here in Sherwood to be able to shop for everything here? Ms. Stewart indicated that that is a big concern. Ms. Stewart remarked that there is probably enough commercial property, but is sorry that the commercial is spread out. She commented that she will not object to the proposal, but perhaps there is more commercial in Woodhaven that might counter the lack in this development.

Ms. Stewart stated that the Commission should think about this issue and not cut the commercial area down so much that there is not enough commercial.

There being no further discussion, Mr. Corrado moved that, based on the findings of fact and Staff's recommendation, PA 94-5 be approved without conditions and forwarded to the City Council. The motion was seconded by Ms. Claus and carried unanimously.

B. SUB 94-4 Sherwood Village Phases 2 and 3 Preliminary Plat: a 142-lot single-family subdivision on the south side of Century Drive.

Chairman Birchill advised that the same hearing format will be used for discussion of SUB 94-4, and called for a staff report.

Ms. Connell advised that the Commission is considering a preliminary plat for phase 2 and 3 of Sherwood Village. She provided an extensive, in-depth review of the Staff report dated June 28, 1994, a complete copy of which is included in the Commission's minute book. Ms. Connell pointed out that Condition No. 5 a should be changed to require a 30-foot dedication since Adams Avenue is an arterial and requires 60 feet of paving rather than 80. She pointed out that both the Catholic Church and Bilet Company have dedicated land for Adams Avenue.

In conclusion, Ms. Connell recommended that SUB 94-4 be approved subject to the conditions outlined in the Staff report, including an amendment to Condition No. 5 a.

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

Len Schelsky, Westlake Consultants, 7340 SW Hunziker Road, Suite 204, Tigard, addressed the Commission. Mr. Schelsky stated that Ms. Connell had covered all issues very well, and that he wished to elaborate on a couple of items: 1) the off-site storm drain. He noted that all storm water south of Century Drive will be flowing in a easterly or westerly direction. Mr. Schelsky noted that the City's master plans indicates a wetland area and the drainage from the lumber yard and church comes across the area. Mr. Schelsky stated that the applicant will be running a pipe to create some water quality facility adjacent to the wetlands in the low area. He commented that the applicant has met with the City and a wetlands specialist and has targeted two or three pond areas so that they can be enlarged as the property is developed. Mr. Schelsky remarked that as each section develops all water will concentrate in the low area so that each project does not have to have its own pond, and with a large piece of property this will work much better because an area can be designated. He stated there will not be any small pond areas throughout the development, the ponds are in conjunction with the wetlands. Mr. Schelsky advised that the ponds had been worked out with the Langer family and noted that the entire area is rather boggy and has not been farmed recently; however, there are a few walnut trees. Mr. Schelsky described the proposed sewer and noted that it will be necessary to obtain an easement for same and will be accomplished in Phase 3.

In response to Ms. Claus' question, Mr. Schelsky advised that there will not be a drainage ditch on Adams Avenue, and all drainage will be through a pipe system. However, there will be a small area of open ditch constructed during Phase 2 of the area. He noted that much of the storm drain for Phase 3 will be constructed during Phase 2.

Ms. Claus inquired if U.S.A. had approved the storm water facility that there does not have to be any treatment? Mr. Schelsky advised that it will be a water quality facility and that a regional facility can be constructed similar to that at Roy Street Park. and will handle all of the developments in the project.

Regarding easement, Mr. Schelsky commented that there will be a "temporary easement" to the City until a development plan has been completed.

Mr. Schelsky commented that the other item he wished to discuss is the circulation plan and what the over-all traffic plan be. He noted that there has been some concern expressed about directing some traffic towards Old Town. Mr. Schelsky indicated that eventually, when Adams is completed, much of the traffic will go through Adams to Oregon Street into Old Town.

Mr. Schelsky advised that he would also like to address the tree issues raised in the Staff report. He pointed out that Dave Halstead is in attendance to address the tree issues. Mr. Schelsky remarked that he has walked the treed area several times and there are some trees, primarily fir, that can be saved. He advised that Mr. Halstead would mark the trees to be saved and the applicant will put them on a survey map and try to preserve them as much as possible. Mr. Schelsky requested that Mr. Halstead discuss the treed area and outline what trees are savable.

David Halstead, Arboriculture Consultant, Post Office Box 1182, Tualatin, addressed the Commission. Mr. Halstead commented that he had read the Staff report which indicated disagreement with his statements of the treed area. He stated that he had put together a resume, a copy of which is attached as part of these minutes, and pointed out that he already works for the City as an arboricultural consultant with the Oregon State Capital since 1976, is on the housing grounds committee for the Portland Art Museum, Portland Golf Course, and has taken care of the Washington Park Zoo for the past 15 years. Mr. Halstead pointed out that he takes care of nine cities from Lake Oswego to Beaverton, and is on the Significant Tree Committee for the Cities of Gresham, Tigard,

and Tualatin; and has been a consultant to the City of Newberg. Mr. Halstead advised that he has worked on a lot of developments, is not a tree hugger, but is a dedicated Arboriculture consultant and for the past 32 years has dedicated his life to the care and preservation of trees. He stated, when justified, he is called the attorney for trees, but if trees are not any good, don't fit a particular situation, need to be removed and other trees put in their place. Mr. Halstead comments that the particular parcel of property being discussed looks nice from the outside and when he first drove into the site, and as he tells each architect, landscape architect or engineer, if you hire me, you'd better read the report first because what you have is what you are going to get. And, as I said, when I drove into the property, I believe the trees were nice and in a nice area; it will be tough to build with all of these nice trees in here. Mr. Halstead remarked that he drove into the church property, the first 25-30 feet on the church property, though those trees had problems and there are some target trees..trees which are ready to be hazardous..those looked pretty good, but the trees were on church property. He pointed out that once inside the part of the Langer property, approximately 50 feet, most trees had been cut out for timber and the rest of the trees had been logged for wood, a practice that has been going on for several years. Mr. Halstead remarked that most of the major trees had been taken out, however, there are a few nice trees; especially the Douglas fir on the east side of the property; however, the trees in there, i.e, Maples, are sucker growth that have grown off of stumps that have been cut off or root stock; they are multi-stump, hindered bark limbs, they have diseased and decayed stumps. The cherry trees, which are wild, have brown blossom blight. While I was speaking yesterday, I said "this is mother nature's plan, she puts these trees out, they produce nitrogen and put it back in the soil, put leaf mold down so the firs will grow up, the firs will grown up and eventually burn up, and the process starts all over again. Mother Nature's thousand year plan. This is not a big significant tree forest, it is not a great grove of maple trees, and not even a great number of specific trees; i.e., madrone or dogwood, it is a great breeding ground for mice and insects. Mr. Halstead commented that if the City could afford to buy the grove for a park, it is doubtful that the City could afford to clean it up so that it would be safe for people to use, and that is one thing that would have to be done before you could go as a public park, and if you could afford to clean it up, you would not have the tree that the applicant would leave anyway. If you take these out of there, you would save the home owner the cost of having to take the trees out later; it takes thousands of dollars to

take a tree from your back yard. In that time that you have let the home owner have them, and he has to take them out five years in the future, if you take the trees out now and put in some nice trees, the owner will look good. Mr. Halstead commented that most of the trees in the grove is "woody" stuff that has been mutilated by storms and man removing logs.

In response to Ms. Claus' questions as to whether he had met with the City's Parks Board, Mr. Halstead stated that he had not met with the Parks Board, the members had received his report.

Mr. Corrado stated that the Commission had not taken a position on Mr. Halstead's report to the City's Parks Board, which had been rejected.

Mr. Schelsky remarked that the applicant has no objection to amending the CC&Rs to require 100 percent approval as requested by Ms. Connell. He pointed out that the Staff report indicates approval is valid for one year and requested the verbiage be clarified to indicate how long the approval is valid for the phasing of the project. Ms. Connell commented that the approval is valid for five years, and should be clarified in the final decision notice.

Mr. Schelsky offered to answer any questions the Commission may have.

Ms. Claus inquired as to how the applicant felt about the half-street improvement on Adams. Mr. Schelsky replied that they would prefer to dedicate 30 feet, no side walks. Ms. Claus pointed out that the requirement is for a bond for half-street improvement, and inquired if the applicant had a problem with this requirement, and if the applicant knew the time frame for the industrial development to the north would be completed. Mr. Schelsky stated that the applicant has no objection to bonding for half-street improvements and the development plan for the industrial portion is not known at this time.

In response to Mr. Bechtold's question, Ms. Connell stated that the church and Bilet are on the opposite side of the street and each have dedicated 15 or 26 feet. Ms. Schelsky pointed out that as far as bonding is required, it will be done in lieu of half-street improvements; and, if the time frame for construction of the apartments was known, the applicant might put up a cash deposit so that the streets could all be built at once for economy purposes. He remarked

that there are three options: built it, put up a bond, or a cash deposit, and will depend upon the other developments in the area, which might make it more desirable to wait and build all streets at one time.

Ms. Connell reminded the Commission that if a bike path is desired, the applicant should dedicate 35 feet on Adams. Mr. Schelsky stated that the Comp Plan calls for 60 feet of right of way with no bike path, and noted that there will be a side walk at the curb. Ms. Connell stated that she will research the dedication of the church and Bilet for street improvements.

Ms. Claus questioned whether the home owners association will retain the liability for the park for public purposes, and requested clarification as to why the association should maintain liability for the City. Ms. Connell responded that the quandary is the private maintenance of public land and is the City liable if something happens to one of the workers performing the maintenance work, or is the home owners association liable. She noted that it is a public park, but more so an amenity for the home owners in the area.

Dwain Quandt, Modern Homes Development, Inc., 1215 SE 56th Avenue, Hillsboro, addressed the Commission. Mr. Quandt addressed the questions regarding home owners association and the insurance. He stated that all of the home owners association he has set up contain an insurance policy to cover any possibility of someone being hurt on public grounds. He noted that in this particular case, if someone is hired through the home owners association; i.e., a landscape contractor, he must be licensed and bonded to assure that they have their insurance, but the association also carries insurance to cover any one hurt on public property, at which time the City will be carrying liability insurance as well. Mr. Quandt stated that he would like to have the options on the Adams Avenue, and would prefer that the City not dictated that the applicant will put up the money. If the City decided to build the street, it would cost considerably more because of the bidding process and the Davis-Bacon Act, compared to the cost if the applicant built the street and Mr. Quandt would like to retain that option. Mr. Quandt also stated that the street for all of the homes, depending upon the type of trees required by the City, he intends to contract with a nursery farm to provide six or seven hundred trees, so that all are equal in size at the time of planting. Mr. Quandt stated that he does not like to cut trees down, but if lot lines need to be moved to save some trees, he would do so; however, as stated by Mr. Halstead the majority of trees are not worth saving and will

cost the home owner several thousand dollars to remove the tree later on. In response to Ms. Claus' question, Mr. Quandt stated that it would depend upon how the development of the area north of Century proceeds and the requirements for the area as to whether or not the applicant would build the streets or opt to bond the street project. Ms. Connell pointed out that the condition of approval would need to be revised to include the two-phase approval. Mr. Quandt stated that in Phase 3 he would like to have the options presented to the Commission; either do the street, provide the bond, or if the City and applicant can agree on a price, donate the funds.

Jim Claus, 22211 SW Pacific Highway, addressed the Commission. Mr. Claus stated that he is in favor of the proposal, but there are five points the Commission better take back for clarification before the Council. What is clear is the SDCs that are accumulating are not adequate to buy offsetting park space, because with this size of development, we should have accumulated enough SDC credits to have bought that land because it fits in with the rates of the rest of the City. Number 2, I've heard some things...In response to Chairman Birchill's question Mr. Claus commented that he was referring to the forest of trees that you wanted to purchase, 10 acres and put into some kind of park reserve.

Mr. Claus stated that he is not sure what the ratio per house is right now on open space, but I am told we have met the national average and if that is correct, we are supposed to have one acre to 10 to meet the national park goals, and requested that Ms. Connell verify the size. Ms. Connell responded that there are different levels of parks. Mr. Claus stated that he understood that, but he is talking about within the City itself, isn't the City required to have one to ten for the local park system. You have 140 acres in the development and you have are talking ten acres; I think if you see what I'm say about it is your SDCs are too low. You'd better think about that for a minute, it's not their problem, it's our problem as a City, if they are willing to sell the ground we should have high enough SDC credits to go buy it and that's what the park commission says, at least. And remember, SDC credit are just a matter that you can give them the credit back in the escrow on the house, there is a direct exchange and you are required to keep that ratio within the City. The other thing is that you are very lucky with Modern Homes, as you were with Centex, because you are finally getting in very large corporations that do tremendous quality building. These people are, by far, starting to notch up the quality of developer or any contractor we have had. I think they are going to understand this point and I would ask you to think about it: I have been arguing for

some time with the City, and particularly Jim Rapp, about the fact that in the storm water facilities if you are not extremely careful, you are creating an attractive nuisance. Now, by that, I mean that if a child gets into these and there is an accident, with an attractive nuisance, you open up a whole question of wrongful death and all kinds of things. Now, if they are intending to put their storm water where they are, we know this year that we started to have flooding on Oregon. And all I am trying to say is be careful of allowing open ditches in the place of a storm water facility. Because, unless that is fenced off and that is maintained, that is an attractive nuisance; it carries with it strict liability and if that is deeded over to us, we've got the problem, and one of the main problems you are finding in these is inadequate pipe sizing to handle the storm water given the rush of flood; you are going to put in that open ditch and it is going to wash over it. One of the main guarantees you have again the builder, the developer directly, in this case, is by staying close the ditches up, have no open ditches, have no open pipes and in that instance if they haven't sized them adequately, they will drown their own subdivision out. And, I'll guarantee you with the law being what it is in Oregon, they will come back dig them up and put in the right size. In other words, there is strict liability if the subdivision doesn't function the way it is supposed to function, it's their problem. You open up open ditches which you declare as ours, we are going to have our streets like to have at Oregon turn into a flood plain. So, I really recommend that you tighten that up. The street deal, obviously you want a bike path, you comment with Metro on Adams; it's an excellent idea, it's an excellent addition. But, with the brouhaha we are just having about the school, and Metro's requirement of these bike paths that they want for pedestrian access, it's almost mandatory, particularly, we are very lucky on this and I am almost embarrassed when someone has done this nice of a job and the developer that does a beautiful job, to say now I'm going to stick you for five feet for a path, but this ties the paths together so that people coming from that area have access down into Cedar Creek, and access into the upper end of the park system where we are building paths. So, now is the time to tighten it down and say if we've got to give extra SDC credits, which we do for that, because you get a rebate and I know everybody's know how that works, but you've got to look at it because with developers of this quality, they are going to give you the kind of engineering you need to enclose their pipes, they are going to give you the kind of engineering to not cause flooding, and they will give you the engineering for your bike paths, and unfortunately, as Carole will tell you, we just don't have the staff currently to do that kind of

detailed planning, but you do here; because, luckily, it is a very large subdivision. So, I'm not in any ways suggesting that it is not a good subdivision and I'm certainly not suggesting that these are not excellent quality developers, they are. Part of the reason you look at this plan and it is so hard to argue with is because they are really that high quality. You look at their other subdivisions, and you know it. And I certainly travel around enough that I see this, but I would caution you on those points: don't buy off on an attractive nuisance, its liability; get the ditches closed; get the pipes in, they have sized them properly. Once they sized them, it will allow your storm water facilities to be sized properly, and we are not picking up anything down street. And, thank God, we've got somebody doing nearly 200 acres, because any certified hydrologist will be able to do numbers there. If you get into something like ten acres, you are guessing too much, here you won't be. And, other than that, it's really a very good subdivision; it's curing more problems that it is creating.

There being no further proponent testimony, Chairman Birchill opened the hearing for comment from opponents. There being no opponent testimony, Chairman Birchill asked if the applicant would like to comment on Mr. Claus' comments.

Mr. Schelsky stated that on the bike path, what the applicant proposes is the same as proposed for Century Drive, essentially building a narrower street and getting the bike path off of the street, thereby creating an 8-foot wide combination bike and pedestrian path. He noted that the street improvements of a 30-foot versus a 35-foot right-of-way makes no difference, the applicant would widen the combination foot path as was done on Century; there is no parking on either side of the street; path will be divided by a strip of brick or some other material to accommodate pedestrian and bicycles and will be 8 feet rather than 4 feet; the path would not be adjacent to the curb and will contain a strip between the street and sidewalks to separate the path from the street. On the open ditch and pipe sizing, Mr. Schelsky, commented that the applicant conducts a lot of hydrologic calculations to assure that the pipe is sized properly; it is reviewed by the City and USA, and the reason for the open ditch across the industrial park is because the applicant does not know how the development will be done in that area. If a large pipe, 24 to 27 inches coming from Phase 3, is placed across the property, it would be very expensive and the next developer on that parcel may have to remove the pipe in order to develop. He commented that a open ditch on a temporary easement is a better situation for further development. In order to control erosion, the area

will probably be planted with grass after it has been built and the water quality areas will be fenced with cyclone fencing. In response to Chairman Birchill's question as to whether the applicant would be opposed to fencing the open ditch, Mr. Schelsky stated there really would be no benefit since the ditch will not be very deep, 3 to 4 feet deep by 10 feet wide, with 3:1 site slopes from which any one could walk out of very easily. The open ditch will be on private property with the only access off of Adams. Ms. Claus suggested that there be some type of barrier to prevent children from entering the open ditch. In response to Mr. Bechtold's statement, Mr. Schelsky advised that the ditch is public property on private easement, and would be the liability of the home owners. He noted that the temporary storm drainage easement will be given to the City for maintenance as are other storm water facilities. Mr. Schelsky stated that the open ditch will be approximately 500 feet long and will drain into the swales at the wetlands. In response to Ms. Stewart's question, Mr. Schelsky advised that the 500-foot ditch could be piped; however, if a developer came in to develop the industrial area, the pipe would probably have to be moved. He pointed out that the pipe will be 24-27 inches and will eventually be installed with future development, in lieu of the open ditch. Chairman Birchill requested that responsibility for injury to persons or damage to other property in the open ditch be clarified. Mr. Langer pointed out that the ditch is currently twice the size as it will be prior to development. Ms. Stewart suggested that there be an agreement with the applicant/property owner to eventually complete the piping of the open ditch.

Mr. Claus commented that the City owns the water, the applicant is taking water that the City captures and the proper terms of the development is that you take water with the natural run-off, you re-capture it and put it in your system, that means you own it. All I am suggesting is where it comes off yours, if its going back to the adjacent land owners property, if he is going to accept full liability for that water and hold the City harmless, give him an agreement.

Fine, you've done two things: you've gotten away from managing the water and secondarily, it creates a wetlands on the property which I would be very afraid of given the last court ruling on this, that those who dedicate wetlands in the bottom of those ditches. If he takes that and assumes full liability, the City wins, but you've got to have an agreement as I said earlier, you have the property you're luck, because it's my understanding that somebody buys the land and develops it and sells it off to the home owners while they retain the adjacent land and I have no problem with anyone taking liability for the City if they know what they are

doing. I wouldn't do it. Captured water is dangerous. Chairman Birchill agreed that captured water is dangerous and suggested that the applicant meet with City staff and develop an agreement that the owner will take responsibility, it could be included in the requirements. Ms. Connell suggested that Mr. Langer meet with his attorney. Ms. Connell recommended that Condition No. 5 d be amended to include verbiage stating that an agreement will be developed to hold the City harmless for the open ditch. Ms. Claus suggested that in the event an agreement is not possible, that the ditch be fenced.

Ms. Claus suggested that it would be helpful for the Park Board to invite Mr. Halstead to a demonstration, and noted that it would be helpful to have Mr. Halstead's opinion when considering tree issues in and for the City.

There being no further comments of rebuttal or opponent testimony, Chairman Birchill closed the public hearing. He noted that the public hearing can be re-opened at any time by a member of the Commission for due cause. Chairman Birchill opened the meeting for discussion and questions among the Commissioners.

Mr. Bechtold stated that he would like the SDCs charges and Metro's transportation requirements for bike and pedestrian paths be clarified. Ms. Connell explained the charges and Metro's requirements.

Chairman Birchill commented that the Commission is reviewing a preliminary plat and that the actual design and location of paths do not need to be determined at this time since that issue can be addressed in the final plat approval process. Ms. Connell pointed out that the applicant is requesting a slight variation of the right-of-way and the Commission should delineate that point now and determine if the path should be in or out of the street.

The Commission reviewed the recommended conditions of approval contained in the Staff report dated June 28, 1994, and made the following revisions:

Condition No. 1 - add the words "developer and the" to the second line between the words "the" and "City"; change the word "can" to "will" in the third line; place a period after the word "request" and delete the remainder of the sentence.

Condition No. 5 - add the words "street trees".

Condition No. 5 a - change to read: Dedicate 35 feet to

Adams Avenue and construct a half-street improvement to City collector standards, including an eight-foot wide combination bicycle park/pedestrian path. If it is determined by the City that the street should be improved at a later date, prior to final platting of Phase 3, provide a bond or cash security for the half-street improvement or build the street to City standards. Provide a landscape corridor plan for Adams Avenue frontage.

Condition No. 5 d - Add a sentence to read as follows: "If transfer and detention are not enclosed, but are in an open swale, provide an agreement between the owner and the City whereby the City is held harmless from liability.

Add a condition No. 6 - condition to clarify phased plat approval.

There being no further discussion, Ms. Claus moved, based on the findings of fact and recommendations of staff that SUB 94-4 be approved subject to the following revised conditions:

Prior to submittal of a final plat:

1. Submit a tree survey by a licensed forester or arborist to the City. As recommended by the arborist and as agreed upon by the City, determine which trees will be preserved and so note for the builder prior to lot sale. Provide the plot plan with each building permit request.
2. Denote lot square footages on each lot.
3. Prepare and submit a park and landscape buffer maintenance agreement between the home owners association and the City, for City approval. Prepare and record CC&Rs with the final plat. Ensure that there are maintenance provisions for the public park and the landscape corridor. Revise the CC&Rs so they cannot be modified, amended or repealed without signatures from 100% of the owners.
4. Re-name Thrasher Drive to Thrasher Way. Re-name Whetstone Drive to Whetstone Way.
5. Submit to the City, USA and TVFRD engineered construction plans for all public and private utility improvements including sanitary and storm sewer, water, street alignments, and construction plans, erosion control, street lighting, street trees, landscaping, signage and lane striping, utility easements, and fire

hydrants. In addition to standard requirements,

- a. Dedicate 35 feet to Adams Avenue and construct a half-street improvement to City collector standards, including an eight-foot wide combination bicycle park/pedestrian path. If it is determined by the City that the street should be improved at a later date, prior to final platting of Phase 3, provide a bond or cash security for the half-street improvement or build the street to City standards. Provide a landscape corridor plan for Adams Avenue frontage.
 - b. Dedicate and improve Century Drive to Adams Avenue to City major collector standards and as constructed in Phase 1. Include a landscape corridor plan.
 - c. Identify the pedestrian pathways to the elementary school on the plat. Construct and dedicate the paths to City standards.
 - d. Provide plans for storm water detention and treatment on-site or east of the site. If an off-site facility is agreed upon by the City and USA, provide an easement from Phase 3 to the facility. If transfer and detention are not enclosed, but are in an open swale, provide an agreement between the owner and the City whereby the City is held harmless from liability.
 - e. Extend the fence in Phase 1 on the south property line to Adams Avenue.
 - f. Water line looping, improvements may be required outside of the phasing plan, as determined by the City.
 - g. Public storm and sanitary sewer shall be made available to adjacent uphill properties not currently connected to storm or sanitary sewer. The developer is responsible for the extension of lines to his property line.
6. Phase 2 Final Plat must be submitted within one (1) year, and phase 3 Final Plat must be submitted within five (5) years.

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

4. **Director's Report:**

Ms. Connell directed the Commission's attention to a letter from Mr. Wendell Beck requesting permission to modify MLP 93-3 by redrawing the parcels to eliminate the flaglot. Ms. Connell noted that the Commission had previously approved the partition, and that Parcel 2 was a flaglot. She indicated that Mr. Beck has agreed to dedicate 40 feet of right-of-way from the centerline of Sunset across Parcel 1. The Commission reviewed the drawing submitted by Mr. Beck and concurred with the revision.

Ms. Connell reminded the Commission that a special workshop had been scheduled for a presentation of the Historic Landmarks Board's work to date. She urged that all attend, and bring the packets from the last meeting.

On another issue, Ms. Connell noted that the City had attempted to install "no parking" signs in Cascade View Estates, and the residents were adamant that the signs not be installed. She noted that the 32-foot streets require no parking on one side. Mr. Corrado stated that the Fire District is working on a street width requirement and as soon as the project is completed, the Cascade View situation should be reviewed. The Commission concurred. Ms. Connell stated that "no parking" signs must be installed prior to residents occupying the homes. Ms. Claus suggested that curbs be painted yellow as an interim solution.

5. **F.Y.I.**

Ms. Connell commented that the newspaper articles regarding the Dolan Case are included in the packets for information purposes and no action is required.

6. **Adjournment:**

There being no further items before the Commission, the meeting adjourned at approximately 10:50 p.m.

Respectfully submitted,

Kathy Cary
Secretary