

City of Sherwood, Oregon  
Planning Commission Meeting

August 30, 1994

1. **Call to Order/Roll Call.** Vice-Chairman Corrado called the meeting to order at 7:30 p.m. Commission members present were: Vice-Chairman Chris Corrado, Susan Claus, Marge Stewart, George Bechtold, Ken Shannon, and Rick Hohnbaum. Chairman Birchill was on vacation and excused. City Manger Jim Rapp and Secretary Kathy Cary were also present. Planning Director Carole Connell was on vacation.
2. **Public Hearings:**

Vice-Chairman Corrado opened the meeting and advised that the only item on the agenda is the public hearing for the proposed Tree Ordinance. He read the public hearing disclosure statement and requested that Commission members disclose any conflict of interest, ex parte contact or personal bias with regard to any item on the Public Hearing portion of the agenda.

There being no disclosures, Vice-Chairman Corrado called for a staff report.

Mr. Rapp distributed Draft No. 5a of the Tree Ordinance to the members of the Commission and the attendees. He requested that all previous drafts be discarded. Mr. Rapp pointed out that the new Draft 5a, a copy of which has been placed in the Commission's minute book, is the result of several meetings with the Tree Committee, input from citizens who put their requests in writing, and the City Parks Advisory Board.

Mr. Rapp reported that the City Council some months ago, at the instigation of Councilmember Barry Kennedy who suggested taking the existing section of the Zoning Code in the Site Plan section and broadening the requirements by adding the word "subdivision". Further, there was reference to significant trees, but there was nothing in the Code defining what is significant, and there are inconsistencies between the definitions and the body of the text. Mr. Rapp commented that the Revised Draft 5a, before the Commission, started with the initiation by the City Council of a text amendment.

Mr. Rapp provided an in-depth review of the proposed Tree Ordinance, Draft 5a, and identified the changes between the current and previous drafts. Mr. Rapp stated that the Ordinance, if adopted, will apply to trees on properties

before the Planning Commission with a land use application. He noted there is also a section that allows staff to assure that the Planning Commission's intent is carried out.

In response to Ms. Stewart's questions as to whether the ordinance would apply to trees to be harvested, Mr. Rapp advised that a person would have to prove that the trees are a bona fide agricultural use. Also, if you want to do something on your own land that does not involve a land use application, subject to whatever other rules apply, a property owner could cut down all of his trees. He noted that other communities have other kinds of ordinances that say you cannot cut down such trees, but whether the City of Sherwood wants to do that would be a separate issue.

Mr. Shannon asked what would happen if the City directed that a tree must remain, while other surrounding trees are removed, and the remaining tree cannot survive because of the changed environment, and the City is directly telling the person the tree must remain, is the City liable for removal of the tree should it die? Mr. Rapp replied that if a tree falls from natural causes, that property owner is responsible for its removal, but the City might be liable in some instances.

Ms. Claus stated that if a resident in a new development has a tree which the City says you must cut, it is not a small expense, and asked if the funds for removing the tree will come from the City? Mr. Rapp replied that usually a citizen comes to the City and asks that a tree be removed; however there have been circumstances where the City has requested that a tree be removed and has covered those costs; i.e., when the roots cause problems with the sewer or rupture sidewalks. He pointed out that that decision is made on a case-by-case basis.

Ms. Stewart commented that there are some native trees which are not suitable as City street trees and suggested that the list of prohibited native trees (oaks, firs, cedar, wild maples) be included in the ordinance. Mr. Rapp noted that such a list was already in the current Code.

Mr. Shannon questioned when funds are paid by developers to replace trees, where do the funds go? Mr. Rapp replied that tree mitigation payments would be part of a subdivision compliance agreement with accounts for a variety of fees and payments. Mr. Shannon asked if there is a possibility that a point is eventually reached where more trees are not needed, what happens to the funds? Mr. Rapp responded that it would be difficult to reach a point where trees are not needed.



Ms. Claus inquired as to what the penalty is for cutting a protected tree and asked how the penalty is enforced. Mr. Rapp responded that the Zoning Code sets a \$500 penalty for each tree and the City staff fines the violators as with any other misdemeanor offense.

In response to Ms. Stewart's questions, Mr. Rapp advised that arborists, biologists or other qualified individuals provide advice for both the City and the developer, and such advice will be obtained to determine which trees are to be removed or retained. Furthermore, in the event the City is not satisfied with the data, there is a section in the Code which allows City staff to retain additional expertise at the applicant's expense to perform a review.

Ms. Claus asked if there are any grandfathered developments; for example, the entire Woodhaven project since their plan has already been okayed? Mr. Rapp advised that Woodhaven would be coming before the Commission on a phase-by-phase basis, and the ordinance applies to individual subdivisions and would normally apply; however there is language under the Planned Unit Development section which limits, once a PUD is approved, what the Commission can do. Mr. Rapp felt the PUD rules would prevail. He pointed out that the Commission does not have the authority to arbitrarily add conditions at final PUD approval. In theory, the tree ordinance could apply to each individual subdivision, but the Commission does not have the authority to apply the ordinance to Woodhaven as it might cause substantial redesign.

Ms. Claus asked if Woodhaven would have to provide a tree inventory when their individual phases are submitted? Mr. Hohnbaum pointed out that the Commission has already approved the general street layout and the traffic patterns for that particularly large section of the community, and even with a tree inventory, it was his understanding that the Commission could not now require that a Woodhaven street be moved based on a tree inventory. Ms. Claus commented that if Woodhaven was a new subdivision, they would be required to comply; but, they have already been approved as a PUD. Mr. Rapp stated that the tree inventory is only an additional piece of data which Woodhaven must provide for the Commission. Mr. Rapp noted that the Commission, working with the developer, might find some nuances to help save trees, but he believed the developer would have an appealable case if the Commission suddenly decided to impose new conditions. Ms. Claus asked if Woodhaven's tree inventory would be overlaid over the lots to demonstrate where the significant trees will be on the lots; otherwise requiring a tree inventory of Woodhaven would make no sense. Mr. Shannon pointed out that the Commission

has never required that a tree inventory be provided by Woodhaven. Mr. Bechtold stated that the City Council discussed, but did not require Woodhaven to submit a tree survey either.

Mr. Hohnbaum stated that it was his understanding that the Tree Ordinance being discussed includes two general categories of changes: changes needed in the current Code, and changes addressing trees in new developments, including tree inventories. He asked if there is any way the Planning Commission can retroactively require or retroactively penalize property developers that have made significant changes immediately prior to submitting a proposal to the Commission and, can this possibility be addressed in this particular process. Mr. Rapp replied that would not be possible unless there was some way to verify that the destruction violated some other existing rules, ordinances or statutes.

In response to Ms. Claus' question as to what constitutes a tree removal permit, Mr. Rapp replied that a citizen either comes in or writes a letter requesting removal, at which time the tree will be inspected and permission will be granted if warranted.

Ms. Claus asked, is this ordinance before the Commission because the City Council directed that the Commission develop a tree ordinance, or is it before the Commission because it's before the Commission because we are required to make a decision to approve or not approve the ordinance? Mr. Rapp replied that the City Council did initiate a text amendment to the Zoning Code. He pointed out that Part 2 of the City Comprehensive Plan also directs that there be a tree ordinance.

Vice-Chairman Corrado next opened the public hearing for comments from proponents and opponents.

Barry Kennedy, 210 NW Gleneagle Drive, Sherwood, addressed the Commission. Mr. Kennedy provided the history of the work of the Tree Committee. He noted that the work began at the direction of the Council in April 1994 and the Committee assisted in the development of the document before the Commission. Mr. Kennedy introduced the members of the Committee who were in attendance and advised that Ms. Lisa Nell had developed a matrix of various ordinances of several municipal jurisdictions and identified issues from which the ordinance was developed. Mr. Kennedy indicated that the tree trunk diameter referenced in the draft is from the ordinance of the City of Lake Oswego. He offered to answer

any questions the Commission members may have.

Ms. Claus requested that Mr. Kennedy explained the background for the ratio of the tree diameter rather than tree to tree mitigation. Tree Committee member Marlisa Noblett stated that she believed the replacement ratio came from the Parks Advisory Board, and originally stated "approximately". Park Board Member Jim Maddock stated that it was his belief that the ratio was not based on prior ordinance, but was directed to assure a 1:1 replacement ratio and was not based on the Lake Oswego ordinance. Mr. Rapp stated that there has been so much input and so many great suggestions that he could not recall exactly the origin of the 1:1 ratio. Ms. Stewart stated that she is concerned about the 5-inch diameter since such trees are saplings and when the other trees are removed, there is nothing stable and a good wind could destroy the trees.

Mr. Kennedy again addressed the Commission. He stated that the original ordinance was done in a pressure situation because of the anxiety of new development and lack of staff time to develop an ordinance. Mr. Kennedy advised that he had shared the ordinance with a State Forestry representative as well as tree experts in other cities who indicated the original ordinance was inadequate; therefore the Tree Committee was formed and Mr. Rapp became involved, and there is a much better feeling about the ordinance before the Commission. Mr. Kennedy stated that he feels confident that the City Council will also feel confident since the proposed ordinance is concise, specific and easily enforced.

Marlisa Noblett, 85 SE Orland, Sherwood, addressed the Commission. Mr. Noblett commented that once the ball started rolling, there was a lot of input and it was her belief that the 1:1 ratio was recommended by the Parks Advisory Board. Ms. Noblett stated that the 1:1 ratio has not been before the Tree Committee, other than by reading of the document. She thanked Mr. Rapp for a lot of the work that went into the development of the proposed document before the Commission.

Ms. Claus asked if the Tree Committee by itself has an opinion with regard to preference of a 1:1 ratio? Ms. Noblett replied that the diameter is the measurement of the diameter; in other words a 24-inch tree may be replaced with six four-inch trees, if possible. Mr. Rapp interjected that the concern was that a large tree would be cut down and with a tree to tree standard; a 36-inch tree could be cut down, for instance, and replaced by only a two-inch tree. He noted that a suggestion had been made that the diameters of trees being removed be measured and replaced with that same

diameter, which in some cases would mean there would be a lot of trees re-planted and the land possibly would not support the added number.

Jim Claus, 22211 SW Pacific Highway, Sherwood, addressed the Commission. Mr. Claus stated that he wanted to speak in favor of the proposal, but he wanted to get specific as to the language in the document. Mr. Claus remarked that no one is objecting to the tree ordinance, and he wanted to make that clear; no one objects to the standards, but there is a very critical issues being brought up and that is what is really the underlying purpose of the document. Mr. Claus stated that, first of all, obviously the underlying purpose of the document is to get control of development. He commented: you are making a clear schism between individual property owners and developer. Now, first of all, I question that as a policy because you are clearly bound to have to tie this to every one. Sooner or later the developers are going to complain as Lou Fasano very aptly pointed out to this body, "you cannot put a burden on me that is an undue burden on everybody else. These standards do not apply to non developable property. No. 2, that means you have to define property what is a developer, it is not adequate to say here, "you are a developer". Mr. Clause pointed out that DEQ tried to tell me I was a developer on Murdock Road, it took two lawyers and \$5000 before I got an apology from them. On Villa, they accused me of the same thing. It is not clear, and you had better specify it because sooner or later someone is going to come back, just like I told DEQ on Villa Road, "if you ever bother me again and call me a developer, I will sue for trade liable." You have no way of saying when one is a developer; and we sit here tonight and you have a developer who has filed as an applicant. Rick (Hohnbaum) immediately brought up examples; someone plowed up a spring, which happens to be a 401 clean water act violation. Obviously, the City of Tigard was either asleep, and I would guess after the recent Dolan case, they are asleep; but, be that Dolan case as it may, you better very much specific as to what is a developer. Now, I am going to come back to Villa Road in a minute because I am going to tell you that I want to make absolutely sure that this is City policy and I am going to a very specific example, and I am going to give you my permission tonight to go out there and look at Villa Road and see what I am trying to get at City policy; I'm not going to pick on a development, I want it to be City policy. The second thing is that you are going to have to do in this, after you define what is developer, you had better recognize that the only way you have of checking on a developer is a photolog; now, there are photologs and they are taken annually and that is the best method of tree survey when you

are looking for significant trees. If you are good at land survey, you can use those photographs by going tree to tree when you put your fences because you can actually detail the property close enough to follow your property line from those photographs. I'm going to come back to why I am telling you this in a moment, but before I get to that because I am following chronologically in your ordinance, on page 6, 2 1 b, you have prohibited trees. Now, because you brought out this is along any public way. I, with my good wife's permission and partner's permission, just planted 5000 hybrid poplar trees along a public street. I don't know who came up with this prohibition of poplars along streets, but I think you better look very carefully at this prohibited list of trees. If you are going to have a fish and wildlife in this town, and you are going to find out that USA uses them, that in certain parkways and pathways and in certain areas, your poplar trees are now the best beaver feed you can put in. They are such good feed they are difficult to put in because the deer and the mice eat them. On our property we lost 1500 trees to the mice and the deer. Now since I didn't poison mice and I won't poison deer, we had to go back and put in another 2500. So, I'm telling you on this prohibited list of trees, you had better look very carefully, particularly with hybrids, or you had better put language in here stating that if they are hybrids they are exempted from this. And I again emphasize you have prohibited the main planting tree USA uses in wetlands, the poplar. Now I would suggest that takes a great deal. The second is that I think you'd better look carefully at who you will look for advisory in your wetlands and your park program. I want to again get to that because there are only a very few questions in this ordinance as you go on you start finding that you are setting up standards for trees where trees can be taken down. What standards are you really going to use to take trees down? Right now, certain financial intermediaries that are underwritten by the federal government; that is what Title 11 of the Financial Institution Economic Recovery and Regulatory act is about, have standards on trees; they will not lend in certain areas because the trees are, in their opinion, a danger to the public and private property. HUD, for instance, has a clear standard for checking certain trees next to houses and they are telling you that if those trees are a certain type in certain places, don't lend. What you had better do, is you had better add to this criterion that one of the things you will look at for the removal of the trees is financially guaranteed financial intermediary standards, rules and regulations. You do not have it here, you have a vague inkling that says "otherwise becomes a hazard to live or property in the City's determination." You had better get in there Title 11 of FIREA, because that is law in this state

and the appraiser must follow it and they are not going to lend on certain property, income aside--low income or high income, so I say broaden your category. The second point that I would make out here is on page 3, the City Manager has become a hearing examiner and I have absolutely no objection to hearing examiners, I have no objection to Jim being a hearing examiner, but if he is going to be a hearing examiner, you had better make sure that the criteria mentioned in No. 2 are the basis under which he does his report and that report must be on file and available to any applicant. Once you start these discretionary acts, let me tell you some thing very simply, we develop zoning to specification in this country because it was the only way you could get around 5th and 14th amendment violations. If you were going to try to use discretionary power in the hearing examiner sense, make sure the records are written, they are based on a criteria that is real and they are available to the public. Hence, all you need to do is say here is, his opinion shall be in writing, it shall be on file, shall be based on Section 2 above and clearly shall be available to any interested party. That is a major change, and I would suggest you need it badly. Now, if you then look at 5 and you take 2 a through 5, you have gone through a series of extractions for what you have you are doing with a developer.

I would like you to take 5 back to page 9, 5 and I will jump from there because it fit is ideal with Villa Road. For some time now, Jim and I have been going over the issue of what Jim would call a sale and I would call a gifting of two acres on Villa Road by my family and some partners of some wetlands and upland trees. It would be outrageous if you took 5, which says removal of any such trees and vegetation prior to actual dedication to the City shall be cause for reconsideration of a land use approval and that is dedicated and the City can take those trees down. Now the point I am making is this: for some \$8,000 in the sale of property on which we have now paid \$11,000 in survey and a wetlands inventory, in other words, we are loosing \$3,000 in the sale and where I come from that is not a sale. But that's not significant. There's \$40,000 worth of lumber we are giving the City that we could have cut off of there. Now it is outrageous if you are going to take what we took, which is a givenness act, and an act of being citizens and suddenly tell us if we take that property, it would remove anything and then turn around and not bind the City to keep those trees and if they attempt to do any cutting, they follow the same rules the developer follows. Now, if this is a City policy, let's make it a City policy on the City land and the developers ground, and I guarantee you will get a much better rule of reason because when you go over there, there are some beautify lumber trees and we were offered a fortune for some

of them. We were offered a lot of money for the poplar, but we chose to leave them. Now I am assuming that as long as Jim (Rapp) is City Manager those trees would stay, but I think it ought to be a matter of policy if you to say, you have to leave them if you are going to give them away in the development process if the City doesn't get to keep them and the City for any cuttings at all should be put on notice to go through exactly the same process you are forcing the developer to go through. There are two other things that are actually in the niche of the word "hytology". When you cut trees in the down here in the mitigation section, by the way it is interesting on Page 6 and I'm sorry to digress, but you say "soils stability and control of erosion for managing and preserving the water quality per Unified Sewerage Agency". They are the main buyers of these hybrid poplars and I would suggest on a piece of property like J.C. Reeves, and I am assuming we all know now that we have chromium, zinc, lead and copper spread around our town from the Link Tanner and that these chromium levels are elevated but are no problem to the environment provided they don't start moving. If you get them on the high ground like Kenny Foster's old place, which is were Mr. Reeves bought, if in fact he disturbs that ground substantially, Kenney Foster was the sludge man for the tannery and is the one that distributed around this area in a truck and he also had 100 acres up there. The problem is that the reason I think you want to be careful of what you prohibit is that Reeves will find himself planting a lot of poplars up there in those wetlands to keep anything from his high ground from migrating. The other thing I would suggest in here is that you add to this, and again I know there won't be any problem with Jim on any this, absolutely no where I have a problem with him because he has supported it over and over, but the danger is that all of us, god forbid won't be here, and then we are not going to have this as policy that on any crucial area we suggest that the Fish and Wild Life in any wetlands or flood plain will be called in an advisory capacity as one of the criteria; they write a letter and say, "we have no interest", that is frequently what they do. But, also they may insist they do; for instance when I planted the poplars they said why and where are your planting them, and I said because I have to get a seed bed started and if I tried to plant them in the middle of the stream, it would have been impossible, the deer would have taken them all out. By the way, those particular poplars have a better protein content and are better to eat when put into silage than alfalfa; they are marvelous food source and I am pleading with you sure we need a tree ordinance and everybody wants to see it, but let's go the aggressive route, get the Wildlife and Fish criteria. Finally, where you have in here that if there is cutting and the mitigation is two for one, if they are

planted right, what you are guaranteeing is someone will have to cut one down. Two for one mitigation is not a good idea (item 3 d on page 7). Two for one mitigation is not what you want; what you want is a proper planting, nurturing and planting of a tree is adequate to replace what is gone because if you go out and plant on a two to one ratio, you will end up cutting one down and that is exactly what you don't want. In wetlands is great! If anyone takes out the wetland, god forbid, Jim Lubiaciono said this, but they should be put into two acres for every acre they take out; but this is not true with a tree. You may be creating an internal conflict; I would simply get a big enough tree and adequate water for it to survive. Other than that, I think it is time we go ahead, I think it's time we move ahead and I think the more things we get in here of that nature the easier it will be for the City Council to buy-off on. As much as I have to say this, it's time to do it because we have at least got some of the developers that are still in the process of developing and if we loose some of those trees, I also know, that you can count on Genstar or Inkster to do a decent survey and they will preserve the good trees; but it helps to require it. Mr. Claus suggested that trees be replaced one for one on a tree basis.

At 9:30 p.m. Vice-Chairman Corrado called for a five-minutes recess. The meeting reconvened at 9:35, and the Commissioners received the following testimony.

David Bantz, Quinkster, 11535 SW Durham Road, Tigard, addressed the Commission. Mr. Bantz stated that he had one question which needs to be answered before he can testify as a proponent. He asked how the ordinance would affect the Woodhaven project, on which there has been a Planning Commission and City Council approval, especially as the project will be back before the Commission an additional five or six times as the project goes through various phases? Mr. Bantz commented that there had been some discussion about not requiring changes to the layout of the entire development. He asked if the developer is going to remove trees, which will happen, in Phase 3 where there are 30 to 40 acres of firs, will the development be subject to mitigation? Mr. Rapp reviewed the Code as it relates to PUD approval; specifically the section which states "approval of the plan shall be binding upon the City for the purposes of preparation of a final plan and the City may require only such changes in the plans as are necessary for compliance with the terms of the preliminary approval." Mr. Rapp stated that, in his opinion, when Woodhaven comes back in with Phase 2, 3, or whatever, the PUD ordinance exempts them and the Commission is bound to review the subsequent phases in the

context of what was initially approved in the master plan. Mr. Rapp pointed out that because of some subsequent ordinance, the Commission can't sweep it's original approval aside.

Vice-Chairman Corrado stated that he concurred with Mr. Rapp's interpretation; further, it is also his interpretation, and in direct response to Mr. Bantz' question as to whether the Woodhaven project would be required to mitigate, the answer would have to be no, the Commission cannot require any kind of mitigation. All the Commission could do is hope that Mr. Bantz and his people would work with the City under the new code to do whatever can be done and whatever the Commission would reasonably request or propose Woodhaven do to fall in line as much as possible, as a good neighbor and as the developer of the largest parcel of land that will ever be developed within the City.

Mr. Rapp pointed out that if one uses the 1:1 ratio for Woodhaven to mitigate trees, there would not be sufficient room to plant the required number of trees. He noted that there may be other significant changes to the Code in the future, other than the tree ordinance, which could also not be arbitrarily applied to Woodhaven retroactively. The approval has been made and for better or worse, the City is stuck with the original approval unless it expires.

Ms. Claus stated that the changing the infrastructure of the development would not be a problem with Woodhaven; nobody wants to change the project. She pointed out that the problem with Woodhaven is that they have a lot of trees and they will be cutting them down and the question is whether the Commission is going to apply the mitigation procedures, or whether the Commission will say they are grandfathered in and they are going to work with us as much as possible.

Mr. Rapp commented that Woodhaven will be coming in with brand new preliminary plans and someone might make the argument that it is a new application; however, he felt it would be very inappropriate. He noted that Woodhaven has gone through a very length process and to change some of the rules after the fact would be very inappropriate. Mr. Rapp remarked that when a PUD is approved, it is done by ordinance, and the City cannot turn around and say we approved you, we told you one thing, your approval is still in effect, but now we changed our rules.

Mr. Bantz commented that in earlier discussion, Commissioners indicated Woodhaven would be required to do a tree survey. He pointed out that a tree survey costs between \$800 to \$1000 per acre, and the fir forest is about 30-40 acres, which is \$30,000 to \$40,000 to do a survey. Mr. Bantz noted that with the 1:1 mitigation for a 24-inch fir, Woodhaven will probably remove 100 such firs, would require 1600 1.5-inch trees to replace the 100 ± trees and will cost \$200,000.

Mr. Kennedy commented that the Commission is holding a public hearing and Mr. Bantz is out of order and should speak for or against the ordinance.

Mr. Bantz explained that he is talking about Woodhaven because of the trees and the vegetation on the site. He stated, for the record, in the first phase Woodhaven is installing 198 trees and that does not include the trees that the builders are putting in for their street trees. Woodhaven is requiring builders to put in 2-inch caliper street trees where the City requires 1.5 inch. Mr. Bantz pointed out that of the 198 trees being planted by Woodhaven only 11 are 1.5-inch and the remainder are 2 and 3 inches. Mr. Bantz commented that Woodhaven is very cognizant of what is on the site and what the developer wants the site to look like after the builders are finished. Mr. Bantz indicated that within a few days the trees for Phase 1 will be cleared and requested that the Commission visit the site and review the care that is being given to preserving trees. He remarked that this is the first phase of a multi-year project and the developer has no interest in damaging the property. Mr. Bantz pointed out that the developer is spending \$300,000 on landscaping in the first phase, most of which is for trees. Mr. Bantz remarked that he is for the ordinance; however, he did not wish to see something that will cost the Woodhaven project dearly either in the form of mitigation or redesign of the project.

Vice-Chairman Corrado replied that it should be pretty black and white. He remarked that it is not a question of whether the Commission wants to or would emotionally like to get involved. Mr. Corrado said this is a legal issue since the Commission has no legal grounds to retroactively change the development. He pointed out that the PUD was approved and Woodhaven should have the right to continue with the development as it was approved and as would any other developer or any private citizen.

Mr. Rapp stated that the ambiguity that comes into play is that the Code says the new requirements will apply to a preliminary plat; and, the City will be receiving at least four more plats on this project. Mr. Rapp remarked that anyone looking at this project, should concur that the controlling land use approval is the PUD, and the preliminary plats are only implementing the PUD.

Mr. Corrado stated that the Commission spent hours in numerous meetings discussing trees and how there will be an effort to save or not save a number of trees, a number of

stipulations were included, and the issue was not ignored, it was dealt with to the degree that the Commission all agreed that it was acceptable, or the Commission would not have given the approval that was given, nor would the City Council have approved the PUD.

Mr. Bantz remarked that 10 lots had been removed near the Ponderosa pine forest in order to preserve trees. He noted that the condition was imposed that a tree survey must be provided for forest since it was deemed significant by the City. Mr. Bantz pointed out that there are approximately 280 trees in this forest and the developer is proposing to remove only five to seven trees. He noted that there have been many changes in the PUD to save those trees since they were designated as significant.

Mr. Bantz suggested that in the first paragraph on page 1, the second sentence of the Tree Ordinance, the words "and maintained" be removed since there are holly and filbert trees on the property which were planted for commercial purposes; however, they have not been maintained. After a brief discussion, the Commission concurred.

Ms. Claus asked if, on the Woodhaven question, has the Commission decided that the PUD is grandfathered in? Mr. Rapp replied that it was, and he believed he had heard the Commission concur. Ms. Claus asked if a tree survey would be required on Woodhaven. Mr. Rapp replied that the City Council had requested a tree survey. Ms. Claus stated she thought it was a tree survey of the Ponderosa pine forest. Mr. Bantz remarked that a condition of approval was to do a tree survey of the Ponderosa pine forest in Phase 5 and the condition says that no more than 5% of the Ponderosa pines can be removed and there is no reference to size, nor were there any other conditions imposed to provide a tree inventory on any other section of the development.

Mr. Kennedy stated that it was inappropriate for Mr. Bantz to speak for the City Council. Mr. Corrado stated that Mr. Bantz is simply recalling for the record what took place.

Ms. Claus pointed out that Mr. Bantz is not speaking for the City Council, he is the representative for Woodhaven. Mr. Corrado asked if there was ever any requirement beyond the Ponderosa pine tree for survey for any phase beyond the preliminary plat. Mr. Rapp replied that there are 10 pages of conditions, and he believes Mr. Bantz' representation for the Ponderosa pine forest is accurate.

Ms. Claus stated that the point she is getting to is are they

going to abide by the stipulations made at that time? Mr. Rapp responded that Woodhaven will be required to submit whatever tree survey was required; however, an additional condition cannot be imposed.

Mr. Bantz suggested that the hearing record be held over in order to clarify the conditions imposed on Woodhaven.

Vice-Chairman Corrado polled the Commission to determine if there was concurrence among the Commission that the Woodhaven project would be grandfathered. The Commission concurred.

Renette Meltebeke, Representative of Citizens for Quality Living-Sherwood, addressed the Commission. Ms. Meltebeke read a letter directed to Chairman Birchill supporting the Tree Ordinance, a copy of which is attached as part of these minutes. Ms. Meltebeke stated that she is concerned after hearing that the City will not take into consideration an amendment to Woodhaven's proposal. Ms. Meltebeke stated she believed, as stewards of the resources in Sherwood, there is an obligation to preserve and protect the trees in Sherwood. She remarked that significant vegetation, which was determined as five inches, and what is being proposed as replacement for 24-inch trees are not being replaced by significant sized tree. Ms. Meltebeke stated that taking out a 24-inch tree is significant and the citizens have a heritage to protect and preserve in the community and that is what the Planning Commission is here for and the City Council is here for, and the Citizens for Quality living are here for. She stated that she is not too happy with what the Commission is saying and whether it will simply go unnoticed in future hearings and developers will continue to cut down more trees. Ms. Meltebeke remarked that the existing trees should be protected in all future development in order to retain both the beneficial effects to the community and the aesthetic quality, as well as the environmental impact. She commented that it is much more important to protect the community, trees and the environment to the maximum extent possible.

Marilyn Stinnett, 180 NW Main Street, Sherwood, addressed the Commission. Ms. Stinnett advised that she had been to two Tree Committee meetings and she agrees with Ms. Meltebeke. Ms. Stinnett stated that she is concerned with preserving the quality of living. Ms. Stinnett commented that she lives in Old Town and one of the things she loves about Old Town is the trees, which represents quality of life with the shade provided by the trees. Ms. Stinnett commended the City for their work in saving an old tree on Pine Street and would like to thank them for that and suggest that act be used as a

blueprint for future decisions about large significant trees. She urged the Commission to consider the quality of life as well as the dollars involved.

Jim Maddock, 1735 Sunset Boulevard, Sherwood, addressed the Commission. Mr. Maddock stated that when the Commission was considering tree groves, it would seem the Commission might entertain a change to Section 1.202 on page 1 to include under significant tree some language which includes groves of trees that does not also have to meet the 5-inch truck criteria; in that instance, the Commission might fairly look at other significant vegetation as opposed to single tree alone. He remarked that it is important in all respect to look at the objective of the ordinance which tries to add to the quality of life and retain the aesthetics of the area and make a more livable environment. Mr. Maddock stated that considering the quality of what is there and looking at the mitigation clause, Item 3 B on page 7, he felt the ordinance was trying to have as a goal qualitative not quantitative replacement and suggested that the language be clarified in order to be more clearly interpreted.

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

Mr. Hohnbaum moved that Draft No. 5a, amendments to Sherwood Zoning and Community Code be forwarded to the City Council with a recommendation of approval with the following amendments:

1. Page 1 - Section 1.202.139 - change five inches to ten inches.
2. Page 2 - B 1, line 3, change the word "as" to "if".
3. Page 4 - Section A, or where appropriate in this document, a paragraph or line stating that trees designated as significant will be documented in legal form for CC&Rs, further deeds and building and construction guidelines as determined by municipal attorney input.
4. Page 5 - Section 2 b. line 6 - change five to ten.
5. Page 5 - Section 2 b. add description of tree survey with language such as: "with overlay type mapping the significant structure and property lines."
6. Page 5 - Add a new paragraph g to define a grove of

trees with language such as: "location of the grove of trees within more than 10 trees within one-half acre."

7. Page 7 - Item 3 b. - delete entirely.
8. Page 8 - Item 2, last paragraph. Add to appropriate: "trees which are removed to allow for new or improved infrastructure may not be required to be mitigated as determined by staff."

The motion was seconded by Mr. Shannon and carried.

After further extensive discussion by the Commission, considering testimony, and responses to questions, Mr. Hohnbaum withdrew his motion. Mr. Shannon withdrew his second.

Ms. Claus advised that it was necessary for her to leave the meeting and suggested that the proposed ordinance be continued in order to resolve all issues. Ms. Claus stated that she is not attempting to hold the ordinance hostage, and can forward addition comments to the Council meeting; however, she felt the motion and ordinance is incomplete, but would not ask for a continuance. Ms. Claus was excused at 10:45.

Mr. Hohnbaum then moved that Draft 5A of the proposed tree ordinance be reviewed by staff and revised to include the following additional changes and/or clarification, and return the ordinance for further review by the Commission at their meeting of September 20, as the first agenda item. The recommendations of the Commission are as follows:

1. Mr. Rapp is to obtain legal opinion as to enforceability of tree preservation via CC&Rs.
2. Clarify list and conditions under which list of prohibited trees may be planted.
3. Delete Mr. Hohnbaum's previous request to include the word "if" in place of as (Page 2 - B 1, line 3).
4. Provide some form of notice to succeeding owners as to significance of tree (CC&Rs).
5. More data be provided with respect to existing and proposed lot lines, topographies which will allow Commission members to adequate locate significant trees.

6. Include definition of grove of trees and include where appropriate.
7. Delete the section on the 1:1 diameter replacement ratio. Utilize qualitative analysis rather than quantitative analysis to replace trees.
8. The mitigation requirement may include more than one tree replaced for each tree removed.
9. Remove the words "and maintained" from Section 1.202.139, on page 1.
10. Page 3 - Add a statement to Item 2 and 3 which reads: "and shall be maintained on file and available for the public, and shall be delivered to the individual by certified mail.
11. Include verbiage stating that the City must comply with the same rules.
12. Include verbiage in proper location indicating that a developer will not be required to mitigate trees which must be removed for improvement of the City's infrastructure.
13. Clarify intent of each section to apply to developable property versus private property.
14. Where appropriate include practices for tree topping and include a manual (PGE).
15. Delete the last four lines under "topping of trees".

The motion was seconded by Ms. Stewart and carried. (Ms. Claus was excused prior to a vote on the motion.)

3. **Adjournment:**

There being no further items before the Commission, the meeting adjourned at approximately 11:00 p.m.

Respectfully submitted,

Kathy Cary  
Secretary