

City of Sherwood, Oregon
Joint City Council - Planning Commission Meeting

October 19, 1993

1. **Call to Order/Roll Call.** Mayor Hitchcock called the joint City Council-Planning Commission meeting to order at 7:00 p.m. Councilmembers present were: Mayor Walter Hitchcock, Mark Cottle, and William Boyle. Councilmember Kennedy was absent. Commission members present were: Chairman Eugene Birchill, Marty Ruehl, Chris Corrado, Marge Stewart, Rick Hohnbaum, Susan Claus, and Glen Warmbier. City Manager Jim Rapp, Planning Director Carole Connell and secretary Kathy Cary were also present.

Mayor Hitchcock advised that the purpose of the joint meeting is to allow the Council and Planning Commission the opportunity to discuss the issue of school capacity and its effect on planning and development. Mayor Hitchcock introduced Mr. Bill Monahan, an attorney with the law firm of O'Donnell, Ramis, Crew and Corrigan. Mr. Monahan presented a briefing paper discussing case law regarding the issues (copy attached). Also handed out at the meeting was a report from Dr. Bill Hill of the Sherwood School District (copy attached).

After an extensive discussion and question and answer period, Mayor Hitchcock adjourned the joint meeting of the City Council and Planning Commission.

NOTE: Documents referenced in these minutes have been placed in the minute book since they have been previously distributed to the Planning Commission.

City of Sherwood
Planning Commission Meeting

September 19, 1993

1. **Call to Order/Roll Call.** Chairman Birchill called the meeting of the Planning Commission to order at approximately 8:00 p.m. Commission members present were: Chairman Eugene Birchill, Marty Ruehl, Chris Corrado, Marge Stewart, Rick Hohnbaum, Susan Claus, and Glen Warmbier. Planning Director Carole Connell and secretary Kathy Cary were also present.

2. **Minutes of previous meetings.**

Minutes of October 5, 1993 Meeting:

Mr. Ruehl moved, seconded by Mr. Hohnbaum, that the minutes of the October 5, 1993, meeting be approved as presented. The motion carried unanimously.

3. **Public Hearing:**

Chairman Birchill read the hearings disclosure statement and requested that Commission members advise of any conflicts of interest or ex-parte contacts. He determine there were no conflict of interest or ex-parte contact and called for a staff report on SUB 93-8, Highpointe.

A. SUB 93-8 Highpointe: Preliminary Plat for an 81-lot single-family subdivision on Sunset Boulevard.

Ms. Connell advised that with the applicant's permission, she is requesting that SUB 93-8 be continued until the November 2, 1993, meeting due to the number of applications before the Planning Commission at this time.

Ms. Stewart moved, seconded by Mr. Hohnbaum, that SUB 93-8, Highpointe, be continued until the November 2, 1993 meeting. The motion carried unanimously.

B. Continued SUB 93-7, Meadow View Heights: Preliminary Subdivision Plat; a 176-lot single family subdivision on Sunset Boulevard and Ladd Hill Road.

Chairman Birchill called for a staff report.

Ms. Connell stated that at the last meeting of the Planning Commission, SUB 93-7 had been continued, and the public hearing record is still open for public testimony and comments among the commissioners. She noted that the format for tonight's meeting will be the same format and proponents and opponents may still testify.

Ms. Connell pointed out that Meadow View Heights is a 176 lot subdivision at Ladd Hill Road and Sunset Boulevard. Ms. Connell directed the Commissioner's attention to the latest plat drawing, and noted that the Commission members did not arrive at a conclusion at their last meeting because of unanswered questions regarding the Commissioner's responsibility to determine the impact on the local schools. She commented that a work session had been held at 7:00 p.m., prior to the Commission meeting, to help the Commissioners better understand their responsibilities.

Ms. Connell indicated that a new supplemental report had not been prepared; however, she had made some slight revisions to the recommended conditions of approval, as a result of the discussions at the previous Commission meeting. Ms. Connell advised that Item 4 j had been amended to provide a street stubbing at the south of Timber View Drive for possible access in the future. Ms. Connell noted that the area south of Timber View Drive is outside the urban growth boundary, and there is a need to look towards the future to tie into a existing east/west street.

Ms. Connell pointed out that Condition No. 5 had been changed to correct a typographical error and correctly identify the lots as LDR, rather than MDRL.

Ms. Connell commented that the Planning Commission has received a briefing on the school capacity issues by the City Consultant, Bill Monahan and School Superintendent Dr. Hill, and some direction as to how the School District is planning for growth. She noted that the applicant may have additional information to present, and if the Commissioners are still uncomfortable with making a decision tonight, staff could be directed to revise the findings and the conditions of approval for review and a final decision by the Commissioners at the November 2, 1993 hearing.

At this time, Ms. Claus declared a potential conflict of interest for this applications and excused herself from discussion and comments.

Darren Wellborn, MNWR Partnership, 233 SW Front avenue, Portland, addressed the Commission. Mr. Wellborn advised that he is representing the applicant. He noted that he has had several conversations with Dr. Hill regarding the school capacity issues, and he still feels it is a catch 22 situation in that the only way for schools to grow is for development to occur. Mr. Wellborn commented that restrictions of Measure 5 has "hand-cuffed" the schools. He stated that people do not typically understand, there is a capacity left at the school as far as rooms are concerned, but there aren't as many teachers left and there is space to grow but they must first increase the students and to increase the student population, there must be development or people infiltrating into the district, which brings in revenue and the revenue brings in teachers and expansion to rooms. Mr. Wellborn remarked that the School District will be forced to adhere to the Comprehensive Plan and anticipate growth. He commented that the District is trying to adhere to the Comprehensive Plan and to anticipate growth.

Mr. Wellborn pointed out that according to Dr. Hill's summary report, which was distributed earlier in the evening, Dr. Hill stated the School's plan which was adopted in 1988 indicates the District was planning for an increase in students from kindergarten through fifth grade. He noted that Dr. Hill's evaluation of school's capacity included a potential increase from the former Steeplechase development, which is on the Planning Commission's agenda under the name of Woodhaven. Mr. Wellborn again pointed out that schools are not built on speculation, there must be students to fill the schools; and those students come from the development which is occurring in the City. Mr. Wellborn noted that the School District is taking a very serious look at the school capacity situation, and that is all anyone can expect. He commented that at this point, the applicant has a letter from the School District that indicates there will be no impact on the school situation. Mr. Wellborn urged that a third continuation not be imposed.

Ms. Margarette Nicholls, Professional 100 Real Estate, 10260 SW Greenburg Road, Lincoln Tower, Suite 250, Tigard, addressed the Commission. Ms. Nicholls stated that she is representing the Adairs. She pointed out that the plans that have been presented to the City are very acceptable to the owners of the property; however, the phasing of the project is not acceptable since the portion being sold at the present time is the westerly 20 acres. Ms. Nicholls commented that the development is a beautiful plan; however the only part being sold is the westerly 20 acres. Ms.

Nicholls pointed out that the phasing being shown on the latest drawing runs to the east on Sunset, beyond the 20 acres being sold and is not acceptable, and the owners wished to make that point very clear.

In response to Chairman Birchill's question as to why the phasing is not acceptable, Ms. Nicholls advised that a great deal of thought and planning was put into the sale of this property and the owners feel very comfortable with the agreement on the west 20 acres; however if something happened and they were unable to continue the sale of phases two and three, the Adair's investment would be endangered and they want to protect their investment.

Mr. Ruehl requested that Ms. Nicholls provide a further explanation since her comments have a significant impact on the drawings being considered by the Planning Commission. He noted that one of the access points will be removed, and the development is limited to one access if the project is not partitioned and constructed in accordance with the phases indicated on the drawings.

Ms. Nicholls stated that she could go into a great deal of detail of the Adair's decision, and asked if the property belonged to Mr. Ruehl and he had given a great deal of thought for many months, and you wanted to protect your interest in your property as well as the development of the property for the benefit of all, would he not consider as has the owner of the property their plans that they have submitted for the west 20 acres, which gives access off of Ladd Hill Road? The future one to the east goes off to Sunset, but I also understand that if that is not there, it might endanger another development to the north.

Mr. Ruehl commented that he respects the fact that Ms. Nicholls has an owner who wants to protect his investment, but the Planning Commission has come a long way with this project, which now sits before the Planning Commission and you are coming in and starting to affect the way the phasing was designed to occur, and asking the Commission for an acceptable phasing. He commented that, if the phasing was a concern of the applicant it should have been addressed previously in terms of what is being presented to the Planning Commission.

Wistar Adair, 1315 S. Sherwood Boulevard, Sherwood, addressed the Commission. Mr Adair stated that he wanted to point out that the property sales agreement is for the west 20 acres, and the first time he had seen the plans was at the last

Planning Commission meeting. He pointed out that the plan was to have been approved by himself prior to being presented to the City, and it wasn't. Mr. Adair stated that the first opportunity he had to see the plan was the last Commission meeting, at which time he brought to the attention of the developers that the west 20 acres is the only property included in the sales agreement.

Mr. Corrado commented that there appears to be a mis-communication between the developer and the owner and suggested the project go back to square one.

Ms. Nicholls pointed out that there was a mis-communication between the engineer who developed the plan and the buyer, and the engineer works for the developer. Ms. Nicholls stated that there is a signed earnest agreement and a signed plat map on the west 20 acres; and, it is a beautiful plan, but the sale does not include the eastern portion. She commented that if the purchasers are willing to purchase Phases 1 and 2 as part of the first sale, she would have to put another earnest money into the agreement.

Chairman Birchill requested that Ms. Connell give direction as to whether the project should be rejected. Ms. Connell responded that an explanation is needed from the applicant and if there is no resolution tonight, the Commission will be unable to act.

Mr. Wellborn stated that he had no intention of trying to change any agreement, but he was not aware of the agreement, and if there is a problem with the phase lines, the applicant does not have any problem with the changes. He stated that it was his understanding the phase lines are as they were in the original plan because of the two access requirements, and they were changed only to accommodate two accesses. Mr. Wellborn remarked he was unaware of a problem until tonight's meeting, and if there is a problem with the existing owner, it should be reconsidered. He inquired if the Planning Commission would have a problem with one access in Phase 1, which will contain 75 to 80 lots.

Mr. Ruehl noted that considering the number of lots in Phase 1 and removal of one corner, the southwest corner phase line will be dropped down since it will incorporate the entire 20 acres from the property line on Sunset to the urban growth boundary, which will be a substantial number of lots with only one access.

Mr. Wellborn pointed out that the plan itself is not the question, the question is the phase line which does not satisfy the Adairs and can be resolved separately. Mr. Ruehl responded that the Planning Commission would not be comfortable with that arrangement.

Ms. Stewart inquired as to who developed the phasing and what is the reason behind the phasing and if the lower sewer is to be built first? Ms. Connell responded that the applicant designed the phasing. Mr. Wellborn commented that the reason for the phasing is that the utilities are at Sunset Boulevard and Ladd Hill Road, and the two access points which the City dictated forced the applicant into the phasing lines shown on the drawing. Ms. Connell remarked that the County also required the access point to meet their spacing standard.

Mr. Wellborn remarked that he would like to work out a resolution on the phasing lines as a separate issue with the Planning Commission. Ms. Connell stated that a decision would have to be deferred until the phasing issue has been resolved.

Mr. Wellborn pointed out that the applicant is not asking that their application be changed, they are asking that the Planning Commission make a decision and allow the applicant to resolve the phasing conflict and not continue the application to another hearing.

Mr. Corrado commented that the issue is the need for two access points and how can it be resolved? Mr. Wellborn replied that the Commission is telling him there has to be two accesses. Ms. Connell pointed out that there has to be two access points to the development, one on Sunset and one on Ladd Hill Road. She noted that there is a requirement for a phasing line on approval of a preliminary plat and there is a possibility that there will be too many lots with only one access.

Mr. Corrado stated that it appears that the applicant wants approval on the new first phase which removes one access, and that is unacceptable. Mr. Wellborn requested that the Commission approve the phasing as shown since the applicant can't continue until the conflict is resolved.

Ms. Nicholls inquired if the phasing line is changed, could there be an access to the property which is being sold on Sunset? Mr. Corrado responded that he was not certain, and noted that there may be another street which should aligned with the required access. He stated that it does not appear

physically possible to have an additional access onto Sunset.

Mr. Wellborn stated that an application has been made and maybe there is a dis-agreement with the purchase line. What the applicant is presenting is a phasing line, and if the Commission approves that phasing line, it forces the current owner and applicant to work out their misunderstanding. He noted that the property cannot be developed differently than what was presented. He noted that if the applicant had requested the phasing be different then he will have to come back before the Commission, and if the differences cannot be resolved, nothing will happen.

In response to Chairman Birchill's question as to whether Mr. Wellborn's proposal made sense, Ms. Nicholls replied that it makes sense to Mr. Wellborn, but not to her. She noted that if the Planning Commission accepts the plan the way it is presented, it will push the seller into selling a portion of the property he does not wish to sell. Ms. Nicholls commented that if someone can prove to her Mr. Wellborn's request will not endanger the seller, it would make good sense. Mr. Wellborn interjected that he is requesting approval of a plan, not approval of construction or anything else. He noted that this is a planning approval, which does not always coincide with ownership, and there is an ownership agreement that is not before the Planning Commission, the plan presented by the applicant is the issue before the Commission; and, if for some other reason the applicant can't get financing for the project, the deal will fall through and it doesn't get developed by this developer...this is the same scenario, the seller and the applicant must work out their financial arrangements.

Ms. Stewart inquired if the plan were approved without the phasing and the applicant has to come back for phasing at another meeting, does this make sense? Mr. Wellborn responded that an application for Cinnamon Hills recently came back before the Commission and asked for an access to be eliminated. The applicant has the ability to come back in six months and advised that the deal could not be worked out, and we are requesting a new phasing line, and that is where the Planning Commission says no. He commented that the applicant is requesting that they be allowed to resolve the conflict.

Ms. Connell recommended that the Commission consider the plan before them and that plan only. She noted that the Commission is not responsible for agreements between parties and those disagreements cannot be resolved tonight. Ms.

Connell recommended that the Commission continue with testimony and proceed with the hearing.

Chairman Birchill agreed and stated that he believes the Commission has an understanding of both sides of the issue, and inquired if the Planning Commission wished further clarification.

Mr. Corrado asked if the applicant obtains approval and moves on, he will have one or two options to convince property owners that it is o.k. to proceed with Phase 1 as it is drawn or if you have to draw the line straight up and cut off the 20 acres, and see if the applicant can get it past the Planning Commission with one access...is that the intent of the applicant? Mr. Wellborn replied that is what they will have to do if they want to stick to that line, and as an applicant, he knows they would never bring it back knowing that it will never pass. Mr. Corrado responded that the applicant only has one option under that circumstance and that is to see if he can convince the Planning Commission to approve the development with one access.

Mark Norby, 24009 SW Baker Road, Sherwood, addressed the Commission. Mr. Norby stated that he has previously submitted testimony on the school capacity issue. He stated that he has reviewed Dr. Hill's materials and has taken this particular development, statistics provided by Jim Rapp, and looking at the additional capacity Dr. Hill identified and multiplied by the student factor the City of Sherwood is using, one will find previously approved developments in Sherwood will quickly fill the capacity of the elementary and grade school, not including development outside of the City of Sherwood where students live in the school district. Mr. Norby stated that taking the statistics and evaluating the development already approved and developments which are being filed, he does not believe there is a firm plan from the schools to accommodate the growth nor is there a plan for the school board to look at the school capacity issue, therefore he does not feel there is criteria available to verify that there are adequate facilities available to justify approval of the development. He pointed out that the Comprehensive Plan says existing facilities must be adequate, and noted that Dr. Hill's memorandum demonstrates that all of the possible capacities of the facilities did not adequately consider the impact of development on the school's capacity. Mr. Norby stated that there is not sufficient staff to handle the maximum capacity growth, and the schools do not have the capacity at the moment to put in any more developments, and therefore cannot meet the criteria set

forth in the existing ordinances.

Robert J. Claus, 22211 SW Pacific Highway, Sherwood, addressed the Commission. Mr. Claus stated that he is going to go back to the testimony he submitted earlier and tell you that whether you are for or against the subdivision, he did not believe at this point this body, if you use the Storm Water Master Plan, has the capacity to make any decisions for any more subdivisions. He commented that the school issue is beyond the scope of the Planning Commission, there may be some legal ruling down the road, but based on the infrastructure of water, sanitary sewer, communication systems, roads, and storm water, the Planning Commission has an absolute obligation to follow the guidelines set out, including the stormwater resolution adopted by the City Council. Mr. Claus pointed out that he is actively involved in wetlands issues, and has for some time pursued the wetlands issue, he feels he is the only person in the room that has had the pleasure of pursuing a governmental agency in the claims court pro-per and finally forcing the government under the claims court rules to pay just compensation for their takings for exactly what is happening in Sherwood, the Planning Commission should take some considerable restraint before continuing. He stated that the so-called Turlloch case has just come down, and it was a bitterly fought case, which some who had been working in the fields had anticipated the outcome. Mr. Claus remarked that there is no longer the question here of whether or not to satisfy the City Council resolution, the Unified Sewerage Agency, the question in the wetlands management is whether or not one is complying with the U.S. Corp of Army Engineers. Mr. Claus suggested that what he has seen in Sherwood is on the edge of compliance, if not in violation. He suggested the rather careless manner in which the City approaches compliance is even worse. Mr. Claus distributed a copy of a memorandum from the U.S. Corps of Engineers, and noted that there is some umbrage taken when his attorney addressed the City Council and suggest that the violations were occurring. Mr. Claus stated that what he is suggesting for the purposes of Woodhaven would also be valid. He stated that there is a very strict rule on the manipulation of wetlands as well as the park system, and he is not sure that, with the increased runoff and the increased degradation and filling that will occur from the development, the Planning Commission has the right to allow these until a decision has been made as to how to handle the park systems. Mr. Claus commented that he had been given strict rules and a time table with regard to how he could handle wetlands on his property. He noted that he could now go back to get final permits to improve the cattle grazing and remove the vegetation from the wetlands area. Mr. Claus indicated that he must be very careful with the use

of the implements he uses. He remarked that he believes the City no longer has the right to dredge Stella Olsen Park, or to build a stage. Mr. Claus commented that where the stages had been built, the City is increasing flows which directly discharge into a wetland and Woodhaven will be every bit or worse than the other subdivisions.

Mr. Claus pointed out that there is one subdivision wherein the storm water system was via a French drain. He commented that it was meant to be a French drain, but never was and never worked as a French drain even though it was presented as a good means of drainage. Mr. Claus indicated that the City never put restrictive covenants on the property so that they did not encroach into the wetlands, nor had any erosion control been imposed on the subdivisions. He reminded the Commission that the responsibility for the Storm Water Master Plan belongs to the City, not USA. Mr. Claus stated that the U.S. Corps of Engineers showed up at the City and asked, "where do we start siting the City?" Mr. Claus indicated that the same situation existing today, there are no rules in place to meet the rules currently in existence in the City.

He stated that his concern is very simple: before the Planning Commission gets more subdivisions, they should get restrictive covenants in place on the houses so that there is not another Woodhaven request since he did not want to sue his neighbors because they want to use me as their dump. He requested that the rules be put in place to protect him as is required in the City resolution. Further, Mr. Claus does not wish to have the City allow practices in wetlands, which in his opinion, are illegal and will require that the citizens, especially those living at the bottom part of the development, pay to have the wetlands restored in the future.

Mr. Claus stated that if a person floods his property and he moves backwards, i.e., Oregon Street and Railroad, at which a plug was installed and the water backs-up onto some one else's property, a wetland has been created and the owner of the property can no longer drain, farm or utilize his own property. Mr. Claus stated that he does not care if there is a great deal of development in Sherwood, he does not want to pay for them; he lives here and he wants all of the people coming into Sherwood to comply with the laws, wants conditions and covenants imposed on the people moving in, and someone like Woodhaven deciding his property is a good place to dump the drain water, so that the Canadians in the audience will get the message now, he wants it where the people that are going in comply with the laws, the U.S. Corp law, USA and City regulations and does not want to be told by Mr. Rapp or anyone next week or the week after, that he has to delay trespassers on your property until someone decides

what the rules will be. Mr. Claus remarked that if he has to suffer the trespass from those people, then he wants the trespass stopped now, and that can be done by the Planning Commission following the rules, and if the developers can't follow the rules, don't give them permits....it is unfair and unreasonable to expect the downstream property owners to pay. He commented that this has been occurring in Aloha and other cities and the citizens of Sherwood do not need it here.

Mr. Claus stated that he has for a long time objected to the floodplain/wetlands policies of the City. Mr. Claus commented that he wants the wetlands for the next generation, not a Stella Olsen Park with a stage, which is in his opinion are indecent and wrong. He stated that the City needs to stop this practice now since the only time the City can collect fees and the structure from the people getting the benefits. Mr. Claus commented that the developer and the land owners are the only one getting benefits. Mr. Claus suggested that the Commission obtain a copy of the Rules which were approved on September 21, 1993, and find out what is needed to comply with them and Derrick Dittman writes the rules after he acceptance the conditions and covenants, don't o.k. them.

Mr. Hohnbaum directed the Commissioner's attention to Condition No. 4 k 1, which addresses hydrological analysis and commented that the Commission is discussing problems being downhill as well as problems which could be created for downhill structures. He asked if this includes general property which is downhill and is a safeguard being added for possible damage done by water erosion when there is something besides a concrete building?

Ms. Connell responded that Conditions 4 k 2 and 3 address water quality facilities and treatment from water runoff at the site as well as the design of the facility, the design of which must be approved prior to construction. She noted that a detailed grading and erosion plan is also required prior to work on the site. Ms. Connell commented that the combination of the hydrological analysis of the water shed area and how this project impacts downstream properties are the first steps to determining where it is coming from and where it is going. There must be assurances that there is water quality treatment facilities to treat the water before it goes off the site as well as drainage and erosion plans in conjunction with the other requirements to control the erosion.

Mr. Hohnbaum stated he had a problem with the phraseology in that it is not clear the Commission requires the developer to provide mitigation of a possible nonstructural damage and requested staff suggest wording which will be more inclusive as to possible damage other than structural. Ms. Connell concurred and suggested some language.

In response to Chairman Birchill's question, Mr. Claus replied that revision of the conditions does and does not resolve his concerns. He stated that there are two questions: obviously you have three sets of rules, a resolution and a set of rules adopted by the City Council, which are different than USA, and now there is the set of rules from the U.S. Corps of Engineers. Mr. Claus commented that he wants a study that will be accepted by U.S. Corps of Engineers, not a study by the Division of State Lands. He pointed out that Mr. Spacer from Washington, D.C. will not accept a report from the state, he wants an expert trained in hydrology, not USA. Mr. Claus stated that the question is not a standard, but a question of who has the authority and he wants to know whom to believe, the City does not have staff with certification of hydrologists, and urged that a national expert be retained.

Ms. Connell commented that the current process is review of detailed engineering plans based on the approval conditions. The developer prepares the detailed plans which are then sent to the City Engineer, who with USA and the City Public Works staff, reviews the detailed plan and determines if the plans are in compliance with the City's Master Plan and USA's rules. She noted that the decision is generally left to the three experts, and whether the Commission has the authority to go outside of that process and hire or have the applicant hire another opinion, has not been discussed.

Mr. Hohnbaum inquired if the worst case scenario are happenings that extend beyond what the local expert thought possible during the development process, are we still requiring the developer to provide the necessary mitigation?

Ms. Connell responded that the Commission can require the developer to bring the detailed mitigation plan back for review. Mr. Warmbier commented that even if the developer returned a detailed mitigation plan, including engineers and hydrologists, he did not believe it was possible to understand all the facets of the profession; further, each expert has his own opinion as to what is or is not factual. Ms. Connell noted that Sherwood has a small staff and they are not

educated solely in the field of hydrology and staff relies on USA and the City Engineer, and if this is not sufficient the Commission needs direction from the Council to do something differently. Mr. Wellborn pointed out that the City Engineering firm of David Evans has qualified personnel.

Mr. Claus disagreed that David Evans was qualified and urged that the Commission contact the Corps of Engineer for a recognized expert who knows the rules, and not someone with a proven track record of not knowing what the rules are. Mr. Warmbier stated that he is not in agreement that the Corps of Engineers is the only expert available.

Mr. Hohnbaum requested that additional wording be added to condition 4 k 1 which will clarify that mitigation goes beyond protection of only a structure. He suggested that the second sentence of condition 4 k 1, be revised to read: If the additional runoff created by the development creates an impact to existing structures, infrastructure, property and wetlands down stream, then mitigation is necessary.

In response to Chairman Birchill's question, Ms. Connell noted that the proponents application was received August 11, 1993. Chairman Birchill commented that he did not believe the rules which went into effect September 24, 1993, would apply to the application under consideration. Mr. Claus disagreed and advised that the rules were retroactive to farming and he does not believe the Commission can ignore the rules which might be applicable to housing under construction.

There being no further testimony, Chairman Birchill closed the public hearing and called for a 10-minute recess. Chairman Birchill reconvened the meeting and opened the hearing for comments and questions among the Commissioners.

Chairman Birchill commented that he would like to make any changes to Ms. Connell recommendations before considering a formal motion and then make the motion inclusive of all changes.

Mr. Ruehl suggested that condition 4 k 1, second sentence, also includes a requirement for bonding. He noted that Mr. Claus' critical point is problems which could occur 5 to 10 years down stream and will require the City to assume financial responsibility for rectifying the problem. After extensive discussion of the intrinsic problems with bonding,

i.e., how much to bond for, how long a time period, exactly what to bond for, potential damage from areas not under City control (Parrett Mountain), expiration of bond prior to problem occurring, etc., Mr. Ruehl withdrew his suggestion.

Mr. Ruehl commented that his concern is the risk that USA is allowed to come in and we allow the applicant to deal with whomever they hire, and the City deals with David Evans and Associates, and all agree on the best way to handle, but then the worst nightmare happens -- five years down the road the Army Corps of Engineers comes in and decides the facility is wrong and was wrong from the beginning -- what will the City do to correct the negative impact made on the wetlands, which could bankrupt the City. Chairman Birchill suggested that instead of bonding, the application should be submitted to the Corps of Engineers first hand and correct any problems immediately. Mr. Warmbier stated obtaining approval of the Corps of Engineers could be time-prohibitive. Mr. Ruehl responded that at least the Corps would have had the opportunity to review a project thereby voiding any objection the Corps may have five years down stream. Mr. Warmbier reminded the Commission that it would still be left to the tax payers to fix the situation.

In response to Ms. Connell's question as to whether the project under discussion must comply with the Turlloch Rules of September 24th, Mr. Warmbier pointed out that there are no wetlands on the property, and that all property eventually runs into a wetland. He noted that it would be very questionable whether the rules pertain to this specific piece of property; however, if four pieces of property are joined together they could have an adverse effect on the property somewhere below.

Chairman Birchill polled the Commission and determine there was a consensus to not require bonding.

Mr. Warmbier moved, seconded by Ms. Stewart, that based on the findings of fact SUB 93-7 Meadow View Heights Preliminary Plat be approved subject to the following conditions:

1. Adjoining the site, the owner shall dedicate 40 feet from centerline to Sunset Boulevard and provide half-street improvements to City standards. The owner shall dedicate 35 feet from centerline to Ladd Hill Road and provide half-street improvements. Street dedications and improvements shall be provided with the relevant phase. Prior to final plat submittal, the preliminary plat shall be re-designed with one access onto Ladd

Hill Road aligned with Willow Drive, and one access onto Sunset Boulevard aligned with Cinnamon Hills Place. Provide certification of sight distance at those intersections.

2. Delete the dedication to Pine Street and re-design the lots accordingly.
3. Prior to Phase 1 final plat, submit a landscape corridor plan for Ladd Hill Road and Sunset Boulevard frontages to the City for approval.
4. Prepare engineered construction drawings in compliance with City, TVFRD, USA and Washington County for streets, sanitary sewer, stormwater runoff, erosion control, water service and fire protection, street lighting including illumination at Sunset and Ladd Hill Road, and street trees shall be submitted and approved in conjunction with a subdivision compliance and maintenance agreement. Provide bonding for 100% of the public improvement costs.
 - a. Provide utility extensions to adjoining properties as required by the City, including sanitary sewer service extended from the northeast corner of the site to Sunset Boulevard
 - b. Revise street names in compliance with City street naming standards. Utilize Willow Drive and Cinnamon Hills Place where those streets extend into the development.
 - c. Provide a one (1) foot non-access reserve strip adjoining Sunset Boulevard and Ladd Hill Road, except at intersections.
 - d. All site fill shall be engineered to City specifications. Street grades shall not exceed 15% slope.
 - e. Provide a collector street from Sunset or Ladd Hill Road to the adjoining Highpointe subdivision.
 - f. Loop water lines by deleting the cul-de-sacs and connecting Sarah and Cypress Courts, and Nathan and Timber View Courts. Revise the preliminary plat accordingly.
 - g. Reduce all cul-de-sacs to 600 feet or less.

Increase cul-de-sac right-of-way to 50 feet.

- h. Close the existing driveway to Sunset Boulevard
- i. Provide additional off-site safety improvements on Sunset Boulevard found to be required for compliance with the County's R&O 86-95 upon completion of the County Uniform Road Improvement Design Standards.
- j. Provide a stubbed local street south of Timber View Drive in the event that access to that area is deemed necessary in the future.
- k. Comply with USA standards for erosion control and stormwater runoff as outlined below and in accordance with their letter dated August 18, 1993:
 - 1. A detailed hydrological analysis of the watershed area, and the capacity of existing and proposed storm conveyance is necessary. If the additional runoff created by the development creates an impact to existing structures, infrastructure, and downstream properties and wetlands, then mitigation is necessary.
 - 2. A water quality facility is necessary to treat the runoff from the site. Design of the facility should be approved as soon as possible to ensure that the area being set aside is consistent with the area proposed on the pre-plat.
 - 3. A detailed grading and erosion control plan should be submitted prior to any work on the site. The erosion control plan should graphically indicate the measures installed to prevent sediment laden water from flowing off of the site.
 - 4. The construction drawings should indicate the provisions for the gravity discharge of sanitary sewer and drainage from roof and foundation systems. The drain lines should not cross any lot other than the one for which they are provided.

5. All easements should meet the minimum criteria set forth by the City and USA regulations.
 6. Their appears to be a significant drainage way through the site. If by grading the drainage is cut-off, even by a phase of the development, a collection device is needed to prevent ponding and flooding.
 7. Extension of public storm and sanitary sewers are necessary. The extensions should be located in low areas so that the best use of adjacent properties can be attained.
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5. All lots shall conform to LDR dimensional standards, unless modifications are properly approved by the City.
 6. Prior to final plat, provide a tree survey. If possible, the City will allow minor modifications in street alignments to preserve significant trees.
 7. Dispose of the "pole" of the flag lot, Tax Lot 3003, by defining it as a tract, a tax lot, or by deeding it to adjoining properties.

The motion to approved carried with five yes votes. Mr. Ruehl abstained.

B. PUD 93-3 Woodhaven: Preliminary PUD Development Plan and Preliminary Subdivision Plat for a 1268-unit residential development on Sunset Boulevard.

In order to open the public hearing, Chairman Birchill called for a staff report.

Ms. Connell reported that this is the beginning of consideration of PUD 93-3, a request for preliminary development plan and preliminary subdivision plat for Woodhaven's 1268-unit mixed-residential planned community on 290 acres on Sunset Boulevard and Pacific Highway. Ms. Connell noted that PUD 93-3 is the biggest development in the history of Sherwood. Ms. Connell pointed out that 914 lots are for single family residences, there will be 65 townhomes, 289 multi-family units, a 1.5 commercial acre site to serve the residents, and 70 acres, or approximately 25%, are public greenways, recreation sites, natural areas, storm water retention facilities, bike and pedestrian trails. Ms. Connell noted that the project is planned to be built over a

10-year period with a five-phase design. She noted the first phase, scheduled to begin next spring, will include 111 single-family lots, 6.5 acre townhome site and a 140 multi-family site in the vicinity of the project where it intersects with Highway 99 and Sunset Boulevard.

Ms. Connell reported that Steeplechase included 474 single-family lots, 154 multi-family lots and an 18-hole golf course. She pointed out that if this project was built as a more conventional subdivision on 10-15 different lots by 10 to 15 different developers, there is a potential for 1500 dwelling units. She noted the number of units is below what is permitted by the zoning in that area.

Ms. Connell stated that there is a list of exceptions the proposal is requesting based on the zoning code standards that vary from a typical subdivision. Ms. Connell remarked that the reason for the request is that the project is a planned unit development which is designed to create an entire neighborhood using more flexibility, while still achieving a certain quality of life. She indicated the best thing about this particular plan is that it is unified and provides an advantage for the City whereby the same area could be developed by many developers in a shorter time period with less consistency and coordination.

Ms. Connell mentioned that a couple of differences between Woodhaven and Steeplechase is that Woodhaven is designed to be more a part of Sherwood, connects better to Sherwood and provides better access to the schools, downtown and existing street systems, and is really an extension of Sherwood. She noted that Steeplechase was designed to be more exclusive from Sherwood and contained private streets, private controls over development and was almost a separate community. Ms. Connell noted that an additional advantage to the Woodhaven project is there is 25 percent open space and the applicant is providing double what would be required of a standard subdivision in terms of dedication of floodplains and wetlands. She pointed out that the applicant is providing 3 mini-parks which meet the City standards and 18 storm water detention ponds throughout the project as well as bicycle and pedestrian paths through the floodplain, which is more than has been required of other developers. Ms. Connell commented that there is much better transit connectivity with the development and the rest of the City and better access to local schools and downtown Sherwood. She noted that the other big difference is the provision of a commercial site which will serve the basic needs of the community, rather than function solely as a golf pro shop.

Ms. Connell pointed out that there are also several problems with which the Commission must deal; one of which is the additional information provided at meeting time; another is the school issue on which the Commission received a report earlier in the evening. She noted that the developer had

received the same comments from the school district as had other developers, "no comment", and the developer proceeded with the application under the impression that the school issue had been covered. Ms. Connell commented that the project has a much larger impact on the school system than any other project received by the City. She noted one advantage is that this is one large project, phased over 10 years and will expand in a more controlled manner spreading construction over a predictable time frame. Ms. Connell pointed out that the controlled construction phase will be an advantage to the school system; however, the findings in the staff's and applicant's report are weak due to the timing of receipt of the information with which they are dealing. Ms. Connell indicated that information from the Oregon Department of Transportation had been provided at 4:30 p.m. on the day of the Planning Commission meeting. Ms. Connell pointed out that ODOT's letter, a copy of which is attached as part of these minutes, is very specific in their request for additional information. She commented that ODOT is not recommending deferral of the preliminary planned unit development plan. Ms. Connell noted that the applicant has provided a very specific preliminary plat which lays out the development site specifically. She remarked that ODOT is uncomfortable with proceeding with review of the preliminary plat since they feel there will be changes on the western portion of the project. Ms. Connell pointed out that ODOT offered several comments and cited their authority for their comments, which ODOT has never done before. She noted that neither she, the applicant, nor the Commission have had adequate time to review and understand ODOT's requirements.

Ms. Connell stated that a letter dated August 10th, has also been received from SteelTek expressing concern about how the new residents in Woodhaven will feel about the existing industrial operation and would like some protection. She commented that a letter had also been received from Mark Norby regarding the same issues expressed earlier and objecting to the plan due to the inadequate school facilities.

Ms. Connell advised that there are six pages of conditions contained in the Staff report which lists all items that are deficient or need clarification, or are simply being detailed for an approval. Ms. Connell noted that as of October 18, the applicant and Staff made more modifications to the conditions, which have not been reviewed by the Commission. She pointed out that the changes are in bold type to clearly identify added verbiage.

Ms. Connell reported that Washington County is preparing a traffic analysis of the project, but has not completed the report. Ms. Connell recommended, based on her report and the information received at the hearing, that the Planning Commission hear the detailed presentation of the applicant and testimony from opponents and proponents to expose all of the issues before the Commission, and keep the record open and continue the hearing for two weeks so that Staff and the Commission will have the opportunity to review and understand the new information recently provided, understand what ODOT is implying, better understand the school impact and gain better knowledge to evaluate the project. Ms. Connell requested that the applicant be permitted to provide a detailed description of the project.

David Bantz, OTAK, 17355 Boones Ferry Road, Lake Oswego, addressed the Commission. Mr. Bantz advised that he is representing the owner of the property, Quincorp, and the developer Inkster Boulevard, Inc. Mr. Bantz remarked that what he had heard in the previous discussions on Meadow View, and believing that Mr. Claus' property is down stream from the Woodhaven site and the testimony given by Mr. Claus, he is questioning whether Ms. Claus should participate in the discussion of the project. Chairman Birchill replied that he had discussed the issues prior to the presentation by Ms. Connell and that it was decided that if through all of the testimony at some time that problem should occur, that Ms. Claus could abstain from voting and declare the reason why. Mr. Bantz requested that the record so state.

Mr. Bantz commented that OTAK has been given a number of unique opportunities since the site is unique to Sherwood and no other sites in the Metropolitan Portland area. Mr. Bantz provided a slide presentation of the development and noted that the site has numerous wetlands throughout the project, which approximate 24 acres and includes a buffer zone of 25 feet from the edge of the wetlands. He indicated that the buffer is required by USA and the developer must not enter the buffer zone; however, in some instances the developer may encroach as long as there is a 25-foot buffer throughout the project.

Mr. Bantz pointed out that there is also a Ponderosa pine forest on the south edge adjacent to the railroad track. He noted that Sunset Boulevard is a major arterial which provides access to Pacific Highway at Old Hwy 99. Mr. Bantz stated that the goal of the developer is to create a series of neighborhoods with many different sized lots, ranging from 5,000 square feet to 18,000 square feet. He stated that the

developer is not trying to create a homogeneous project, but a project with five or six different types of homes within the project's boundary. Mr. Bantz noted that the wetlands provided an opportunity to link the neighborhoods together with a sensible transportation system. He stated that the Parks and Open Space Plan for the City was used to develop the layout of the parks systems identified on the slide presentation.

Mr. Bantz remarked that the development is being reviewed as a planned unit development, which is encouraged by the City's code on five or more acres. He noted that the PUD process allows flexibility in the standards as far as lot size and other dimensional requirements. Mr. Bantz pointed out that the overall size of the project is zoned for 7,000 square foot lots and the average size for all single-family lots is 7,200 square feet, and include starter homes as well as move-up homes. He noted that one of the applicant's concerns with the development design is circulation. Mr. Bantz commented that Sunset Boulevard has been designated as an arterial and the standards of the City require bike paths on both sides of any arterial; and for that reason the street has been designed with bike paths on both sides of the street. He pointed out that the Transportation Plan calls for a north-south collector from Meinecke to Sunset, and the applicant designed two collectors from Meinecke south to Sunset and one crossing Sunset. Mr. Bantz remarked that the applicant also included a looped collector from Sunset to Middleton Road to the west. He noted that those streets will have a bike path on one side and bike paths will be included in the buffer area of the wetlands.

Mr. Bantz stated that where the blocks are longer than might be convenient to walk around, breaks have been provided to allow pedestrian access and access has been provided to some of the wetland areas as well.

Mr. Bantz advised that the applicant is requesting modification of the standards for Sunset Boulevard. He noted that the standards require a 16-foot travel lane and a 12-foot center left turn lane. Mr. Bantz proposed to narrow the travel lane to 14 feet and put two feet from the travel lane into a center median including a five-foot bike lane, rather than having asphalt from curb to curb. Mr. Bantz stated that Inkster Boulevard, Inc., and Genstar have developed a similar boulevard in Canada, in which the City did not require landscaping but landscaping was included since it provided an amenity to the project. He noted that the landscaping will be low-maintenance items plus trees on both sides of the

street against the curbs with a six-foot sidewalk in back of the trees so that pedestrians are not walking next to a curb and it will provide a better feeling of safety.

Mr. Bantz commented that there will be a 25-foot walk break on the longer blocks to avoid the "tunnel" effect, and the developer is including two tot-lots and a mini-park. He noted that the tot-lots are over one acre and the mini-park is 6.6 acres, and are planned to be located along a collector for better pedestrian access and safety.

Mr. Bantz provided a slide presentation of the 70 acres of open space, including the Ponderosa Pine trees and noted that 24 acres are in wetlands. Mr. Bantz stated that the applicant considered issues such as water, sewer, and the impact on schools. He commented that the applicant was advised that the impact of schools was not a concerns. Mr. Bantz noted that applicant also considered the City Transportation Plan, which calls for a collector from Meinecke to Sunset at which point there is a stop with a 90 degree turn and an extension of Middleton intersection at the highway. He remarked that the applicant has eliminated the 90 degree turn and made Sunset a through street with alignment at the intersection of Middleton. Mr. Bantz pointed out that the Steeplechase approval of 1990 shows an access at the exact location as shown in the Transportation Plan as well as that designed by the current applicant.

Mr. Bantz reported that part of the preliminary drainage plan indicates a series of storm water quality ponds. He noted the ponds will take care of the water quality and that water runoff is from each specific area into their own pond and filtered via grass swales to remove many of the impurities before flowing into the drainage system. Mr. Bantz commented that each of the 18 ponds must be outside of the wetlands area, and there will be no standing water within 72 hours after rain has stopped.

Mr. Bantz stated that the applicant is trying to create a development in which people feel they would really like to live and have done some things differently. He noted that there are no lots no lots that back onto Sunset, avoiding back yards and mis-matched fences. Mr. Bantz pointed out that there is a landscape tract between the lots and Sunset which will create a more inviting atmosphere. He remarked that there will also be pedestrian accesses from many of the cul-

de-sacs onto Sunset so that residents do not have to walk around the development. Mr. Bantz indicated that the pedestrian area near the longest cul-de-sac is wide enough to accommodate an emergency vehicle should any other access become blocked.

Mr. Bantz commented that the Staff report states there is to be an obligation by the developer to install mini-parks and tot-lots with landscaping and landscaping around the edges of Sunset. He noted that the applicant has been negotiating with staff over a disagreement with some of the conditions. Specifically, condition No. 3 of the Staff report states the setback requirements. Mr. Bantz indicated that the applicant is asking for a reduction to 10 feet where staff recommends 15 feet, on a corner side yard of the corner lot. He requested that the applicant would still like to have the setback reduced to 10 feet since they believe the vision triangle will be sufficient if there is no building within the triangle, or if there is a greater setback in the front of the lot. He noted that there will still be a requirement for a 20-foot setback at the garage. Mr. Bantz indicated the applicant also objects to the requirement in condition No. 3, which states that there be no further variances, including administrative variances to dimensional standards. He stated that a detailed survey has not been made of tree locations; and, in some cases, it may be necessary to build around the tree which will require moving the house over the setback requirement, and there may be some unforeseen circumstances that will require a variance in the future. Mr. Bantz urged that the prohibition of future variances be removed from the condition.

With regard to condition No. 4, which deals with a reduction in street width, Mr. Bantz commented that the applicant requested local streets be reduced to a width of 28 feet with parking on both sides. He commented that staff suggested 28 foot streets with parking on one side, and if the applicant wants parking on both sides, the streets must be 32 feet. Mr. Bantz stated that the applicant is agreeable with those conditions, but requests parking on both sides of 28-foot streets that have short cul-de-sacs and will carry very little traffic. Mr. Bantz remarked that the applicant requested approval of the 700 foot cul-de-sac, but staff disagrees with the need to cross a floodplain for just seven lots. Regarding the over-length cul-de-sac, Staff concurred that it would be appropriate since there is an emergency access from Sunset.

Mr. Bantz advised that the condition No. 5 requires the

applicant to eliminate intrusion into the Ponderosa Pine area at the north edge of the property. He noted that there are 230 Ponderosa Pines in that forest and that the golf course approved for Steeplechase would have removed 90 trees from the forest. He indicated that the streets proposed by the current applicant will affect only five of the Ponderosa Pines. He stated that the applicant did not wish to remove the proposed road in order to save five 25 to 30 foot pine trees.

Mr. Bantz commented that when the applicant first looked at the availability of public facilities in Sherwood, schools were a concern and will be part of the selling point for the project...the ability to provide adequate education for the children living here. He noted that the applicant did check with the schools and there were no concerns at that time, however, the applicant will deal with the school issue. Mr. Bantz pointed out that the development provides a great deal of certainty to the City knowing that this will be a multi-year project with 80 to 100 lots per year, and it would be very difficult for a number of developers who might fail to provide the quality proposed for Woodhaven.

Mr. Bantz stated that the applicant was disappointed to have received ODOT's letter so late, since ODOT had indicated they would respond by October 1. He noted that the project's traffic consultant is dealing with the State and felt that there were some concerns because some of the items mentioned in ODOT's letter is the linkage between Sunset and Meinecke, which is being improved by the applicant. Mr. Bantz pointed out other misconceptions, misunderstandings, and inaccuracies of ODOT's letter. Mr. Bantz commented that the applicant would like to obtain approval from the Commission in concept of the full master plan and approval for at least the first phase of the development since it can be shown that the first phase will not have an adverse impact on the concerns raised by the State. Mr. Bantz indicated that he was surprised at some of the comments made by ODOT since they have had an opportunity to review the City's Transportation Plan. He indicated that he plans to contact the source of the unsigned letter from ODOT. Mr. Bantz advised that the entrance to the project is Pacific and Sunset, which is the first phase of the project and will be very expensive since it requires a major realignment of Sunset as well as water and sewer extensions from the east end of the project. He stated that it is the applicant's intention to provide a nice entrance to the project and for that reason the entrance was planned on Sunset and Pacific. Mr. Bantz offered to answer any questions the Commissioners may have of him, the applicant,

the owner, traffic analysts, or engineer, all of whom are present.

There being no other proponent testimony, Chairman Birchill opened the hearing for testimony from opponents.

Mark Norby, 24009 SW Baker Road, Sherwood, addressed the Commission. Mr. Norby advised that he has the same objections to Woodhaven as expressed earlier on the Meadow View development. He noted that there are now an additional 176 lots approved at tonight's meeting. Mr. Norby stated that with the addition of those lots and the figures included in Mr. Rapp's memo, using the load factors of Sherwood, one will note that all of the capacities identified in Dr. Hills memorandum is now fully spoken for with the lots the Commission has approved. He noted that the applicant is planning an eight to ten year build out, and he is not aware of any condition which will prohibit the developer from building faster and there is nothing that will cause the school facilities to be built. Mr. Norby stated that the criteria for approval of a PUD is that there are existing public facilities or the development of the PUD will cause those facilities to be built.

Lou Forbes, owner of SteelTek Industries, Inc., Post Office Box 908, Sherwood, addressed the Commission. Mr. Forbes stated that he is the owner of SteelTek Industries and has been located adjacent to the construction site for over 10 years and runs a sheet metal shop, which is a noisy business. Mr. Forbes pointed out that the developer is putting houses within 60 feet of a noisy business with no buffer except a railroad track. He commented that he has worked with a different organization that went through this and wants to object to the development because of the noise. In response to Chairman Birchill's questions, Mr. Forbes advised that SteelTek employs about 20 people and at present do not plan to expand the business. He pointed out that SteelTek had built a buffer, which was augmented by the purchase of a vacant lot with trees, between the business and his adjoining neighbors.

Robert J. Claus, 22211 SW Pacific Highway, Sherwood, addressed the Commission. Mr. Claus stated that he first wanted to say that it is unusual to have an applicant admit that someone who is down stream should excuse themselves from the hearing. He commented that he takes that statement as admission that there will be damages. Mr. Claus promised not to say anything enjoining about the Canadians, Japanese or

people from Lake Oswego, particularly if he can pronounce my name correctly. If he doesn't, the next time he comes here, I will tell him that this is not Lake Oswego, we do not have a dirty lake and we don't want one.

Mr. Claus commented that he wished to discuss PUD variances, In 1927 the supreme court stated that zoning that is designating property less than its highest and best use is not a violation of the 5th Amendment; taking of property without just compensation is provided with some serious benefits. He noted that that was the first zoning case that created pressures and planners. Mr. Claus stated that in 1927 the courts came back and said you have to grant variances or exceptions or, in fact, you have committed 14th and 15th Amendment violations. Mr. Claus commented that one does not come in front of the body with an exception, which is what a PUD is, and request another variance to the exceptions. Mr. Claus pointed out that the applicant is starting off admitting there will be damages down stream and then asking for variances to the exceptions. He stated that he would be very careful with his PUD if he decided to do that. Further, if you have a 28-foot street and ask for a substantive variance and we are at a position where we now know that the City is short of police officers and fire services, he would question even considering that kind of application. Also, the City does not have any treatment statement of the quality of the water which is leaving the development, and since we all know there was \$2 million dollars put up for the acquisition of the Tualatin Valley River National Wildlife Refuge, he recommended that rather than beginning at the reverse, that is they are beginning at the best place to make their case where there will be natural filtration occurring, they should run the application through the U.S. Fish and Wildlife Service. Mr. Claus remarked that the City should try to honor the obligation of the Fish and Wildlife to get water quality. Mr. Claus pointed out that the services of a competent surface water hydrologist is needed to review the development, not suggesting they don't have them in Canada, but I'm not sure they are hiring a Canadian to come down here; and, I'm not suggesting the Japanese don't, but we have a problem here that these people are talking about the size of the development we have to date, counting the subdivisions you have tonight, and when those 1200 homes go in coupled with the other subdivisions, what you have left is multi-density development in this town; therefore, you have to be very careful because as the multi-density comes on the line, the water treatment facility is going to have to be there.

Mr. Claus indicated he would like to address a remark made by one of the Planning Commissioners: "your suggestion that when you submit an application to the Corps of Engineers, there is not a time limit within which they must respond when permits are being granted." He suggested that the Planning Commissioner look into the time limit before suggesting the government can sit on an application for five years; 120 days is the limit an applicant is looking at. Mr. Warmbier responded that the Forest Service stated that within 120 days, he would have an answer; however, after five and a half months and three contacts, the Forest Services has not yet responded. Mr. Claus suggested that Mr. Warmbier has incompetent counsel and he should file a writ after 120 days to force the Forest Service to respond. Mr. Warmbier stated that he did not have sufficient funds to pursue the application in that manner. Mr. Claus responded that he could guarantee that these boys do, they are not here because the love Sherwood; they are here for commercial reasons and that is to make a lot of money out of this project and it is certainly logical to have legal counsel to protect the City...and that's the whole point now. Mr. Claus suggested that the Commission talk about what he is saying, I'm not saying stop the development, I'm saying let's make these people pay for these things ahead of time so that we have some level of protection; I don't think we should worry about paying for these things latter, this thing in starting on Sunset and I don't like the idea of breaking the village of Sherwood apart, because we are too close now not to honor our two major commitments to this town. The City is supposedly rebuilding the downtown at great cost, and supposedly have a unique park system, wetlands and refuge integration. It is now time to make sure those things are done, and it not unfair to ask them to pay for it; what is unfair is asking those of us five years from now to pick up the pieces for the admitted damage that their architect, consultant or whatever he is, and I've even forgotten his name now, telling you and that is not unfair to ask.

Specifically, let's talk about the unified project and what great care must be given. We have heard an absorption rate here tonight, I think the word was 80 units a year over 10 years, that is an absorption rate of 120 units per year or 10 units per month....are we really hearing that is what they will put in, is that the absorption rate and if it is the Commission should ask for a study that backs up the absorption rate, which is not difficult to get. They brought it up, fair play, let them do it. I would like to know that because it brings up some other points: if they are going to build from that end in that absorption mode and they will put

them in without a bond, we should plan for it; then you get to another questions, which is interesting and they said this: "they are not building a unified project, they are building a series of neighborhoods tied together with walkways and wetlands." I want to know that that fits into the City's general plan and the City is not getting a bedroom satellite community for Tualatin and Tigard. Why? Because of the way in which we are going to hold down the residential tax base in this town, even assuming a new one is passed is by making sure the people living here shop here. If you increase the commercial value of the property in this town, the tax rates go up and that in turn offsets the residential base, and I don't hear anything here tonight that there is any concern for Sherwood's tax base. He suggested that a study be made talking about how the applicant will integrate the project in with the commercial and retail property to assure the buying dollars do not go to the highway to Newberg, Tualatin or Tigard. Mr. Claus urged that the Commissioners think about what they are doing tonight because about one-half of what is left in Tualatin is going to be developed and if the downtown is going to be a tax base that grows for us it will have to come because somebody forces the transportation spokes downtown, and all I have heard tonight is "let's start on the far end and avoid Sherwood" and that's what it translates to.

Mr. Claus stated that the second thing bothering him is the inconsistencies on Sunset, and is not only the Burghardt subdivision and the Lowell Morse subdivision on Sunset. How do these integrate, where do the bike paths go and what is the whole thing for? Getting back to the transportation issue, there is no consistency, and finally with these kinds of streets and these kinds of paths how will the police force respond when the City may have an OSHA in the process of being filed against the City because of two few officers starting on the wrong end of town. Mr Claus commented that a person cannot get a response to a complaint downtown in less than 45 minutes and it is frequently three hours. He noted that the Commission needs to think all these things through because in spite of all of the opportunities this brings to the community, and I'll start with the Sherwood's integrated planning. The irony of that though, I have to say, the greatest integrated planners in the United States for the Bureau of Reclamation; that's why we have so many streams, the mistake was made all at once. So, on the one side if you are going to make a mistake it will be endemic to this project, so you have to be very careful, so let's talk about who we are going to when this plan passes -- the US Fish and Wildlife Services absolutely understands filtration systems,

and this will become a major refuge. While we already have admission that we will damage anyone down stream; how about the refuge because it is down stream. There is you answer. Do you want to go to someone that has water experts, call USEFWS, I don't see any statement in here about other than potentially causing a school problem that it brings any relief to those of us who live here and their tax base. He strong urged that the Commission review his comments over and over, and pointed out that the worst tax base that can be brought into the City in terms of a tax base are apartment, followed by single family homes...the do not pay for themselves. I don't need to tell you that if you have three children in one home, you are looking at \$14,000 per year for schools. The way to develop those revenues is to make sure that it is your industry, your retail is healthy and viable. These folks will never tell you that the more money they make, the higher taxes they pay because more investors will pay for them. I do not see any of those thoughts in this plan. Mr. Claus concluded by stating, "please ask the people who know. This is not Lake Oswego, Tigard, Tualatin or Newberg...this is Sherwood and we are a village, we want to stay integrated, we want to stay with the benefits of this and I don't care how much money these developers make, I don't want to pick up their bills or their mistakes. This is a too big a project to let it go by the way side and take the down-town out of existence and destroy that tax base as badly as it is deteriorating.

Debie Judy, 19994 SW Chapman Road, Sherwood, addressed the Commission. Ms. Judy stated that she is concerned about the developer's plan to decrease the size of Sunset travel lanes from 16 to 14 feet. She noted that at one point the bike path was within the pavement, and it will force the children on bicycles to ride along side of cars. Another tragedy is not needed in Sherwood. She urged that the street width along the bike paths be increased. Ms. Judy commented that she too is concerned about the school capacity issues, the water supply and urged the Commission to give further consideration to the water supply.

James Orr, 1025 NW Meinecke Road, Sherwood, addressed the Commission. Mr. Orr stated that he heard from the developer that one big developer is better than a lot of small ones, and he heard concerns from the Planning Commission that the City does not have resources to oversee construction currently occurring in Sherwood. He pointed out that if that is the case and there is no mechanism to place further controls on the construction that is happening, why is the Commission considering such a huge project without the

oversight and expertise to make it work right for Sherwood. It doesn't seem like a good idea and that is his concern.

In rebuttal, Mr. Bantz commented that the hearing will be continued for two weeks, and that is the preference of the applicant, if it is appropriate. Mr. Bantz responded to Ms. Judy's concern about the travel lanes being reduced from 16 to 14 and noted that some of the other streets standards in the development do provide for 14-foot lanes, but if there are concerns, the two feet can be taken from the median. Mr. Bantz pointed out that there is also a six-foot sidewalk on which the children could safely ride if there are no prohibitions against bicycles on sidewalks.

Ms. Claus suggested that the bike lane be placed behind the trees along the street. Mr. Bantz responded that the applicant is following the standards of the City and pointed out that the purpose of the bike lane is to enable a resident to get from one place to another without getting into a car. He also noted that there are many other bike paths in the development that are separated from the streets.

In response to Ms. Claus' questions regarding the posted speed on Sunset, Ms. Connell indicated the speed is currently 45, but when Sunset has been completed, the speed will be reduced to 35.

Mr. Bantz stated that there is a concern with the reduction from 16 to 14 feet, and the Commission can deny the reduction; however he urged that the median be allowed, which at 16 feet will allow two rows of offset trees and will provide more relief than a single tree down the center of the median.

Mr. Bantz noted that on the three lots near SteelTek there is some setback from the railroad right of way and the people who will move into those three houses will realize that they are next to a railroad track which will be noisy and is much closer than SteelTek.

After Mr. Bantz stated that he had nothing further to say, Chairman Birchill announced that the hearing will be temporarily closed until the next meeting of the Commissioners. He then opened the meeting for comments and questions among the Commissioners.

Ms. Stewart indicated that she too is concerned about the proximity of the development with SteelTek, who has done a good job of landscaping the area. She noted that there is a

railroad between SteelTek and the development; and she would hate to see what had happened to Dependable happen to SteelTek.

Chairman Birchill agreed that there is a good buffer, but SteelTek built their buildings under an agricultural permit and moved in the operation and despite what the City kept telling the County, they did it any way. Mr. Birchill commented that he had no problems with problems SteelTek anticipates. He noted that the site was not in the City at the time SteelTek was built.

Ms. Stewart pointed out that the letter from ODOT is out of date since they referenced projects that had already been completed.

Ms. Claus directed her question to the traffic engineer who prepared the traffic report, Mr. Mark Vandehay, Kittleson & Associates, registered traffic engineer, 610 SW Alder, Portland. Ms. Claus noted that the report was prepared in August of 1993 and stated that her concern is that one of the main feeders the Commission is dealing with, Meinecke Road, leads to the school, and is not used as frequently in August.

She inquired as to whether some of the population might be missing. Mr. Vandehay responded that the applicant has some of the work that was done for Steeplechase project and the basic concern is the traffic on Highway 99 and August is generally the highest traffic time of the year. He indicated it was their feeling that they captured the major traffic pattern.

Ms. Claus pointed out that there was the traffic report containing a brief note regarding traffic accidents in the area of Highway 99W, Meinecke and Elwart, for the time period of January 1986 through October 1989. Ms. Claus noted that one of the problems in Sherwood is that the growth the City has experienced since that time, and asked if there was a more up-to-date report which includes the type of accidents and considers adverse weather conditions. Mr. Vandehay stated that in the previous study ODOT did not identify the area as a significant accident area. He commented that the Commission needs to realize that what is being proposed is a complete reconfiguration of the intersection, and a comparison of what is expected in the future will be very difficult. Mr. Vandehay noted that what is being proposed will be much safer than what is there today. He indicated that there is a three-year accident profile which will provide a good record of the accidents in the area and will be considered by the applicant if the City wishes. Mr. Vandehay pointed out that Highway 99 is outside of the control of the applicant.

Ms. Claus stated that the report indicates the commercial area inside the development is basically for the benefit of the residents of the PUD. She noted that the a video store or a dry cleaner is destiny oriented and Sherwood does not have either one of those, and questioned if there will be more traffic involved outside the PUD if a dry cleaner or a video store is there. She questioned the inclusion of a commercial area in a PUD. Mr. Vandehay replied that the developer could better address that issue and his main concern from a traffic standpoint is a concern of whether or not it would draw from a state highway, and determined that it would not, nor is it visible from the highway.

Ms. Claus asked if Mr. Vandehay's assumptions made on the traffic report count include some of the subdivisions proposed and asked if not, can those types of figures be included so that the Commission can get a good picture of the traffic impact on the Sunset corridor. Mr. Vandehay replied that the applicant will provide any information the City wishes. He noted that studies of this type are never quite up to date since there are so many changes coming all at once.

In response to Ms. Claus' question as to what type of development would be a significant impact on traffic, Mr. Vandehay responded that a large commercial development on 99 or a development with several hundred units that would access in the vicinity of Sunset would affect the timing. He noted that as far as design of Sunset is concerned, he can't think of anything that will affect the design or proposal of a high level design that will serve a lot more than the Woodhaven development. Mr. Vandehay stated that the proposed 176 lots will affect the timing but would not affect the design.

Ms. Claus inquired if there was any way Mr. Vandehay could update the Commission on information from 1989 forward. Mr. Vandehay replied that he will respond to ODOT's request and will check with the City to see if there is anything further that needs addressing.

Mr. Ruehl noted that Mr. Bantz had spent a great deal of time discussing lots, lot sizes, the trails, the streets, and the cul-de-sacs, but did not mention anything about the multi-family housing. He noted that there will be a major impact from the multi-family housing, more than any other part of the development because what he sees is a multi-family housing project next to a property that is not part of the development and there will be a lot of mixed uses in that situation and the Commission will need to know what the

buffers are and requested that Mr. Bantz provide some explanation of the applicant's intent of the multi-family housing. Mr. Bantz responded that the developer will probably sell that portion of the parcel to an apartment builder. He noted that there is a condition in the staff report which deals with the future design review of the multi-family parcel. He stated that the reason for the location is that Sunset is the arterial which is the most appropriate location for a multi-family unit to occur. Mr. Bantz stated that there is a multi-family site on the property near the high school that has been chosen for use as a single-family area and is the only frontage on Meinecke. Mr. Bantz remarked that one of the reasons for the location is that they are adjacent to the only street which provides access to Pacific Highway without driving through a residential neighborhood. He stated that there are protection and abilities for anyone concerned to express those concerns when the multi-family portion is reviewed.

Mr. Ruehl inquired if the eastern most portion of the multi-family segment had direct access from Sunset? Mr. Bantz replied there are conditions in the Staff report that states there has to be adequate spacing on Sunset Boulevard and it may be that the developer will request a modification of that standard. He pointed out that there is also a frontage at the multi-family segment on the bikeway. Mr. Ruehl inquired if the multi-family housing would be done outside of the developer of the remainder of the development. Mr. Bantz responded that the developer will not be building the houses either and that the function of the developer is to create lots.

Mr. Warmbier stated that he had a question dealing with the wetlands and that his concern is with draining of the detention ponds within 72 hours after it stops raining. He inquired if there is going to be some type of filtration or are they being pumped out or will they be adverse flow where the water goes directly in after a period of time? Mr. Greg Kurahashi, Engineer with OTAK, addressed the Commission. Mr. Kurahashi stated that the applicant is proposing to use a dry pond, which drains over a period of time, usually 96 hours and has been approved by USA and Washington County. He noted that the ponds have filtering systems in order to get quality treatment out of the system, a perforated pipe is installed on the side of the pond, which is a different procedure than what has been used in the past. Mr. Kurahashi commented that the filtering system removes the silt and removes most of the phosphorous. He noted that about 60 to 75 percent of the phosphorous is removed by the system, and is what is required

by USA and the Tualatin River Standards assessed on new development.

Mr. Warmbier asked if there is any way the waters coming from the ponds can be tested? Mr. Kurahashi replied that there are some tests that will be run by the City of Portland, but he is not sure if USA plans to test the water. He noted that USA will be testing some of the new facilities to see how well they perform. He noted that OTAK has evaluated similar pollutants from streets in the Portland area and has done sampling and testing of those types of materials to determine what types and concentrations of pollutants come off of streets and what turns into a soluble solution. Mr. Kurahashi stated that the proposed filtering system is a new theory and is not something with which they have had a great deal of experience, but he has been evaluating test results for more than 10 years and 65 percent pollutant removal has held true in most cases in Portland. Mr. Warmbier expressed his concern that new theories are being used, but no one checks three or four years later to assure all is working properly and this is the reason for the question as to whether the water can be tested without getting into the wetlands to determine if they have been contaminated. Mr. Kurahashi replied that OTAK is planning to test the output as well as the input into the ponds.

Chairman Birchill inquired what happens to the petroleum products from the asphalt that are introduced into the pond via vehicles. Mr. Kurahashi replied that some jurisdictions require a control mechanism that traps oils and grease close to the source. In the case of Washington County and USA standards, they are not using those facilities in the normal process and leave it to the situation of trying to treat the bio-filtration system. He noted that the silt will absorb some of the materials and take them out. Mr. Kurahashi commented that unless the City requires the control mechanism to trap the oils, it usually isn't installed. Mr. Kurahashi provided a detailed technical explanation of how the filtration system on the ponds performs.

In response to Ms. Claus' questions, Mr. Bantz explained that one of the conditions of the Staff report requires the applicant to work out a reasonable agreement with the City, but the maintenance is not tied to a certain time period. He commented that one option discussed was 85 percent build out of any phase, the maintenance will be turned over to the City; however, it will be worked out with the City after the facility is built and the need for maintenance occurs. Mr.

Bantz indicated that maintenance is whatever is reasonable and depending upon the type of construction and landscape; i.e., whether the grass needs to be mowed or vegetation removed, is included as maintenance and there is a warranty for the equipment itself.

Chairman Birchill requested that the plans for the ponds be developed and submitted to the Parks Board for review and approval. Mr. Bantz responded that the applicant did go before the Parks Board, and they were very favorable to the system. Ms. Connell pointed out that the facilities have to be built, then given to the City and the maintenance details are not known at this time.

Mr. Corrado stated that he is concerned with the progression of the development over 10 years with 80 to 120 lots a year; now there are two separate builders and five separate developers yet earlier discussion indicated a unified development which will be controlled and complement each other. He asked what happens when one of the apartments complexes sell out, will more be built? Mr. Bantz responded that as each phase is developed, a developer may not be able to build until a later phase depending upon how the sewers work. He noted that the numbers are not specific and pointed out that the project is an 8 to 12 year project and will be dependent upon the market. Mr. Kurahashi pointed out that Inkster Boulevard has the ability to control growth so that each portion of the development does not compete with each other, otherwise all units would be available at one time and no one would be able to sell their units at the same time.

Mr. Warmbier pointed out that there is a natural spring which runs year around under Tract B. Mr. Bantz replied that he is aware of the spring and is trying to discuss the situation with Mr. Kimbrel.

Ms. Claus asked Mr. Bantz to explain the rationale behind the request for a 1.5 acre commercial strip when the norm is one acre. Mr. Bantz responded that he could not answer that question, but suggested that Mr. Jerry Offer of OTAK felt 1.5 acres is what was required for the type of structure, be it a 7-11, video store, or dry cleaner.

Chairman Birchill requested that the applicant provide a letter from the fire department verifying that the fire department will accept 28-foot streets with parking on both sides as well as a written response regarding the long dead-end cul-de-sac in the north-west corner of the development.

In response to Chairman Birchill's question, Ms Connell affirmed that they will come back, phase-by-phase, for approval.

Chairman Birchill asked if the reason for reducing the setbacks is to provide a larger house on the lot. Mr. Bantz replied that is correct, and it allows bigger lots for the same house and it is consistent with the development requirements in most jurisdictions. He noted that Sherwood is the only City which expressed concern of a clear vision problem.

Mr. Ruehl commented that the development is getting into a real problem in that the PUD allows smaller lots, the Commission can deal with streets, which is still a concern, but if the fire department indicates they can deal with the streets, I don't know what we can do as a jurisdiction in saying what is right, wrong or indifferent. But when you start changing setbacks, you get to the nitty-gritty of the City code and ask the Commission to make decisions on something we review in the Comprehensive Plan and many hours have been spent on those decisions, then the applicant requests a decision on a single project, which creates a problem in that the Commission needs every bit of information the applicant can provide which will demonstrate why the reduction is a good idea, how it will look within in the neighborhood. Mr. Bantz responded that the applicant is trying to take every opportunity to increase the open space and if they need to increase the lot for the same size house, the developer has to reduce the open space.

Ms. Connell pointed out that the low-density residential zone normally has larger lots and the setbacks have not been a problems. She pointed out that building permit plans do not indicate a street right of way and does not provide a way to measure the vision clearance line. It is not feasible in a development the size of Woodhaven for City staff to individually review building permits for sight distance and right-of-way measurements.

Mr. Bantz commented that if the Commission does not approve the reduced setbacks, then it is more important to remove the condition that there will be no further variances.

Mr. Claus stated that he is totally confused about a PUD when you are not using the mechanism to relieve this thing. When building the ponds they can become toxic pits. He suggested that applicant identify the physical life of the holding ponds by an expert and tell us what the clean up will be.

Mr. Claus requested that the clean-up fee be added to the PUD and collected. Chairman Birchill instructed Mr. Claus to raise his objections at the next Commission meeting since the public testimony portion of this meeting is over.

Chairman Birchill asked if Fish and Wildlife or any such agency had any input into the new concept of bio-filtration. Mr. Kurahashi responded that Fish and Wildlife has not, but the idea was presented to USA. Chairman Birchill requested that the plan be sent to US Fish and Wildlife for review and verification of the water quality.

Mr. Kurahashi responded that development must go through the Turlloch rules and may be subject to review by DSL, Oregon Fish and Wildlife, DEQ and any other agency, anyone of which may request that the Corps become involved. He stated that jurisdiction will have to be determined.

Chairman Birchill tabled discussion of PUD 93-7 Woodhaven until the November 2 1993, Commission meeting.

4. **Planning Director's Report**

Ms. Connell indicated that she had no other comments to make.

5. **Adjournment:**

There being no further items before the Commission, Chairman Birchill adjourned the meeting at 11:45 p.m.

Respectfully submitted,

Kathy Cary
Secretary