



COPY

Resolution No. 2001-936

**A RESOLUTION IN THE MATTER OF THE APPLICATION
OF SPACE AGE FUELS FOR A SITE PLAN REVIEW AND
CONDITIONAL USE APPROVAL TO CONSTRUCT A GAS
STATION CANOPY AND CONVENIENCE STORE FOR
PROPERTY LOCATED AT 21065 SW PACIFIC HIGHWAY,
SHERWOOD, OREGON (CASE FILE SP 00-13/CUP 00-04)**

THE CITY OF SHERWOOD RESOLVED AS FOLLOWS:

Section 1. THE APPLICATION. This matter came before the Sherwood City Council on the appeal of Space Age Fuels (Applicant) from the Hearings Officer decision dated December 26, 2000 in which the Hearings Officer denied the application for a gas station canopy/convenience store.

Section 2. JURISDICTION. The land in question in this Resolution is within the city limits of the City of Sherwood. The City Council is the governing body for the City of Sherwood. As the governing body, the City Council has the authority to make final land use decisions concerning land within the city limits of the City of Sherwood.

Section 3. PUBLIC HEARING. In addition to the public hearing held before the Hearings Officer, a public hearing was held on this matter before the Sherwood City Council on February 27, 2001. The following persons either appeared at the City Council hearing or provided written testimony on the application:

- 1) Keith Jones, Assistant Planner

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- 2) Ray Rask, Applicant's Attorney
- 3) Vince Schroeder, Realtor
- 4) Terry Wieser, Land Use Planner and Architect
- 5) Keith Howe, Proponent
- 6) Jack Williams, Representing Bill Dhan (Opponent)
- 7) Roger Harris, Attorney for John and Dorothy Alto (Opponent)
- 8) Seth Blumsack, Economist
- 9) Dorothy Alto, Opponent
- 10) George Johnson, Opponent
- 11) Michelle Moss, Opponent
- 12) Jeff Kleinman, Attorney for Rob Nashif (Opponent)

Section 4. EVIDENCE. Evidence before the City Council in this matter is summarized in Exhibit "A" attached.

Section 5. OBJECTIONS. No objections have been raised as to notice, jurisdiction, alleged conflicts of interests, bias, evidence presented or testimony taken at the hearing.

Section 6. CRITERIA AND STANDARDS. The criteria and standards relevant to the decision in this matter are set forth in Exhibit "B" attached.

Section 7. FACTS. The facts before the City Council in this matter are set forth in Exhibit "C" attached.

Section 8. JUSTIFICATION. Justification for the City Council's decision in this matter is

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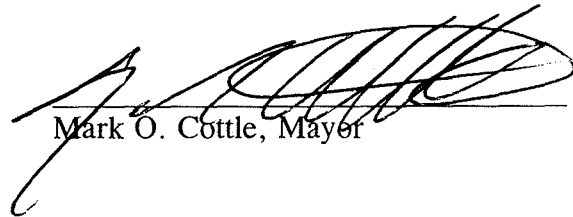
explained in Exhibit "D" attached.

Section 9. ACTION. The decision of the City Council is set forth in Exhibit "E" attached.

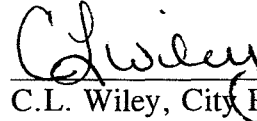
Section 10. FINAL DETERMINATION. This Resolution is the final determination in this matter.

Section 11. EFFECTIVE DATE. This Resolution shall take effect immediately upon its passage.

Section 12. APPEAL. A party aggrieved by the final determination in a proceeding for a discretionary permit or a zone change may have it reviewed under ORS 197.830 to ORS 197.834.
Duly passed by the City Council this 13th day of March, 2001.


Mark O. Cottle, Mayor

Attest:


C.L. Wiley, City Recorder

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EXHIBIT "A"

Evidence

Official notice is hereby taken of all exhibits, documents and materials submitted or referenced at the hearing, as well as the minutes of the February 27, 2001 hearing. Such evidence is incorporated by this reference as if fully set forth herein.

EXHIBIT "B"

Criteria and Standards

The criteria and standards relevant to this application are found in the Sherwood Zoning and Community Development Code. The following criteria have been identified as applicable:

1. SZCDC Section 4.302.03 (Conditional Use).
2. SZCDC Section 5.102.04 (Site Plan Approval).

No other specific criteria and standards were raised at the hearing.

EXHIBIT "C"

Facts

FACTS:GENERAL

1. Applicant/Property Owner. The applicant is Space Age Fuels, Inc. The property owner is Sherwood Peddler Investments, LTD.
2. Location. Highway 99 West, a State maintained highway, borders the southern boundary of the site. The northern property abuts Borchers Road, a Major Collector maintained by Washington County. Edy Road, a major collector, abuts the western edge of the property, and is maintained by ODOT. A small hotel, auto parts store and, garden center are to the east. The site is addressed as 21065 SW Pacific Highway and is further identified as Tax Lots 1700 and 2000 of Tax Map 2S130D.
3. Parcel Size. The total size of the parcel is 2.55 acres (2.21 acres Tax Lot 1700, 0.34 acres Tax Lot 2000).
4. Existing Development and Site Characteristics. The site is relatively flat. The west and north two-thirds of the site is mostly undeveloped and consists of a gravel parking lot and driveway. The southeastern portion of the site contains a restaurant and two small detached residences. Approximately 17 mature trees exist on the site.
5. Request. The applicant is requesting approval of a Site Plan review and Conditional Use to construct a gas station canopy and 2,500 square foot convenience store. All existing buildings would be demolished. The fueling station would have capacity to fuel 12 vehicles. Access from the site is proposed from Highway 99W, Edy Road and Borchers Road. Borchers is proposed to have two points of access, Edy and 99W would have one access point. A 23-space parking area would be provided and the site would be landscaped.
6. Zoning Classification and Comprehensive Plan Designation. Retail Commercial (RC). Pursuant to Section 2.109.03, of the Community Development Code, "automotive service stations" is a conditional use in the zone.

7. Adjacent Zoning and Land Use. Land to the north, is the location of the Sherwood Ice Arena and an automotive repair business and is zoned Retail Commercial (RC). To the west is two large parcels with each with a single family home and is zoned Retail Commercial (RC). To the south across 99W is a Chevron Gas station and is zoned RC.

8. Review Type. Site Plans involving proposed buildings that have a building area of 40,000 square feet or less and conditional use permits are subject to a Type III land use review procedure per Section 3.201.C of the Zoning Ordinance. Type III actions are heard by the Hearings Officer. The Hearings Officer's decision is appealable to the City Council.

9. Public Notice and Hearing. Notice of the public hearing was given in accordance with Section 3.202 and 3.203 of the Zoning Ordinance.

10. Review Criteria. Required findings for site plan approval are found in Section 5.102.04 of the Sherwood Zoning and Community Development Code. Required findings for Conditional Use are found in Section 4.302.03 of the Sherwood Zoning and Community Development Code.

FACTS: CONDITIONAL USE

The findings and related criteria for conditional use approval are set forth below:

11. *All public facilities and services to the proposed use, including but not limited to sanitary sewers, water, transportation access, storm drains, electrical distribution, park and open space and public safety are adequate; or that the construction of improvements needed to provide adequate services and facilities is guaranteed by binding agreement between the applicant and the City. SZCDC Section 4.302.03(A).*

FINDING: All public facilities and services as set forth in the above criteria are adequate or can be adequate as required. This finding is supported by the application materials, staff reports, Oregon Department of Transportation letter dated December 4, 2000 and other evidence in the record.

12. *Proposed use conforms to applicable zone standards.* SZCDC Section 4.302.03(B).

FINDING: The application complies with this criteria for the same reasons set forth in Section 11 above.

13. *There is a demonstrable public need for the proposed use.* SZCDC Section 4.302.03(C).

FINDING: The City Council finds that the applicant has not met its burden of proof with regard to this criteria. The term “public need” includes market demand, however it includes other factors such as those set forth in SZCDC Section 1.101.02. (See Exhibit “D” - Justification.)

The applicants supplied testimony on market demand, however upon weighing the evidence the City Council finds that the opponent’s evidence on this issue is more persuasive. Specifically, the market study conducted by Economic Insight provided in depth information more directly connected to the market demand element than that of the applicant.

There was little or no evidence presented with regard to the non-market demand factors set forth above. The City Council finds that the applicant has not met its burden of proof with regard to other factors that may be appropriate.

14. *The public need is best served by allowing the conditional use for the particular piece of property in question as compared to other available property.* SZCDC Section 4.302.03(D).

FINDING: Applicant provided evidence as to the lack of availability of other appropriate sites for this type of proposed use. However, the City Council finds that the applicant has not met his burden with regard to the fact that other sites, upon a rezoning, may be appropriate. In addition, the applicant has not met his burden of showing that the sites reviewed would not be appropriate. For example, with regard to a possible downtown site, the applicant did not fully explain why such site would not be conducive to a service station. The same is true for the Albertson’s Center.

15. *Surrounding property will not be adversely affected by the use, or that the adverse effects of the use on the surrounding uses, the neighborhood or the City as a whole are sufficiently ameliorated by the conditions imposed.* SZCDC Section 4.302.03(E).

FINDING: The application complies with this criteria for the same reasons set forth in Section 11 above.

The City Council incorporates the Hearings Officer's findings and interpretations not inconsistent with those herein. Such findings and interpretations are incorporated herein as if fully set forth.

EXHIBIT "D"

Justification

The applicant has the burden of showing that the application meets the relevant criteria and standards.

In this case, the applicant is requesting conditional use/site plan approval for a gas station canopy and convenience store. The focus of the city council hearing was whether the applicant carried the burden of proof with regard to the following two criteria:

3. There is a demonstrable public need for the proposed use.
4. The public need is best served by allowing the conditional use for the particular piece of property in question as compared to other available property.

SZCDC Section 4.302.03(C) and (D).

There was substantial discussion at the hearing that focused on the meaning of "public need." Testimony on this concentrated on the importance to be given to market demand. That is, is public need the same thing as market demand or is there more to the analysis.

The City Council found that "public need" includes, but does not equal market demand. In other words, market demand is one element of public need. The City Council determined that other factors should be considered in addition to market demand. These factors are found elsewhere in the Code.

Sherwood Zoning and Community Development Code (SZCDC) Section 1.101.02 states the purpose of the code as follows:

1. Encourage the most appropriate use of land.
2. Conserve and stabilize the value of property.
3. Preserve natural resources.

4. Facilitate fire and police protection.
5. Provide adequate open space for light and air.
6. Minimize congestion on streets.
7. Promote orderly growth of the City.
8. Prevent undue concentrations of population.
9. Facilitate adequate provision of community facilities.
10. Promote in other ways the public health, safety, convenience, and general welfare.
11. Enable implementation of the Sherwood Comprehensive Plan in compliance with State Land Use Goals.

Though addressing every element may not be necessary in each case, there has not been a showing that the non-market demand factors are met. The City Council is entitled to reasonably interpret the Code. The Council interprets the Code to include market demand as one element or factor of "public need", but addressing appropriate factors in the purpose statement of the Code is appropriate in order to be able to address non-market demand factors as well.

The applicant provided little, if any, evidence on factors other than market demand.

The applicant did present some evidence on market demand. However, the Council finds the evidence presented by the opponents more persuasive. The opponents presented a full market study indicating that there is no market need for additional fueling capacity in Sherwood. The evidence indicates that the current Sherwood gas stations are functioning with excess capacity.

The applicant stated that the discount gasoline provided by Space Age was something not otherwise provided in the community. However, the "proposed use" as stated in the criteria means the general use of gasoline station/convenience store, and not a specialized type of use (discount gas) as apparently stated by applicant. The Council finds the lower pricing is not something that the applicant can guarantee and cannot be a consideration in determining the demonstrable public need. Pricing structure is not an issue with regard to the type of proposed use.

Market need was used in prior decisions for approving three existing gas

stations in Sherwood. However, market demand cannot be the sole consideration for determining public need, and as stated previously, even market demand was not proven as a element by the applicant in this case. Testimony at the hearing indicates that the existing stations are not congested, that customers do not have to wait in line, and that the applicant has not demonstrated the additional fueling capacity is needed.

Because the applicant has not met its burden of proof with regard to criteria set forth at SZCDC Section 4.302.03(C) and (D), the application must be denied.

EXHIBIT "E"

Action

BE IT RESOLVED by the City Council of the City of Sherwood that the requested application is hereby DENIED.