

Resolution No. 2001-981

**A RESOLUTION IN THE MATTER OF THE APPLICATION
OF PM MARSHALL COMPANY (VLMK ENGINEERS - APPLICANT)
FOR MINOR LAND PARTITION FOR PROPERTY LOCATED
AT THE NORTHWEST CORNER OF TUALATIN-SHERWOOD
ROAD AND CIPOLE ROAD (CASE FILE MLP 00-05)**

THE CITY OF SHERWOOD RESOLVES AS FOLLOWS:

Section 1. THE APPLICATION. This matter came before the Sherwood Planning Commission on the appeal of Washington County from the administrative decision dated June 12, 2001 in which the Sherwood Planning Department granted the requested minor land partition to create three lots containing 6.42 acres, 5.72 acres and 4.95 acres at the Northwest corner of Tualatin-Sherwood Road and Cipole Road.

Section 2. PUBLIC HEARING. A public hearing was held before the Sherwood Planning Commission on July 17, 2001. In addition, a public hearing was held before the Sherwood City Council on August 28, 2001.

Section 3. EVIDENCE. Evidence before the Sherwood Planning Commission in this matter is summarized in Exhibit "A" attached.

Section 4. OBJECTIONS. No objections have been raised as to notice, jurisdiction, alleged conflicts of interests, bias, evidence presented or testimony taken at the hearing.

Section 5. CRITERIA AND STANDARDS. The criteria and standards relevant to the decision in this matter are set forth in Exhibit "B" attached.

Section 6. FINDINGS. The findings of the Sherwood Planning Commission in this matter are set forth in Exhibit "C" attached.

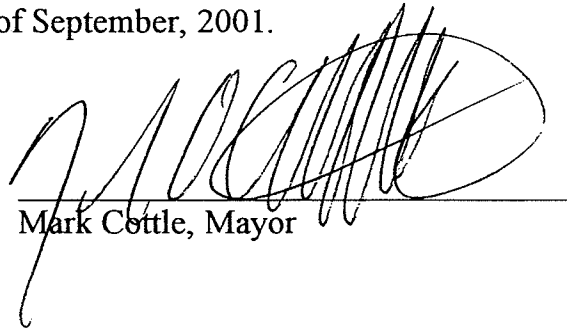
Section 7. JUSTIFICATION. Justification for the Sherwood Planning Commission's decision in this matter is explained in Exhibit "D" attached.

Section 8. ACTION. The decision of the Sherwood Planning Commission is set forth in Exhibit "E" attached.

Section 9. FINAL DETERMINATION. This Resolution is the final determination in this matter, subject to appeal to the City Council.

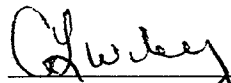
Section 10. EFFECTIVE DATE. This Resolution shall take effect immediately upon its passage.

Duly passed by the City Council this 11th day of September, 2001.



Mark Cottle, Mayor

Attest:



C.L. Wiley, City Recorder

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 and audio tapes of the July 17, 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 7.500.

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

EXHIBIT "C"

Findings

FINDINGS: GENERAL

1. Applicant/Property Owner. The applicant is VLMK Engineers. The property owner is John Marshall, PM Marshall Company.
2. Location. The northwest corner of Tualatin-Sherwood Road and Cipole Road.
3. Proposed Development Action. Minor Land Partition to divide a 17.95-acre site into three lots containing 6.42-acres, 5.72-acres and 4.95 acres. One parcel would contain the proposed Hardwood Industries Manufacturing/Distribution Facility (Case File SP 00-09/CUP 00-02).

FINDINGS: PARTITION

4. Section 7.500, of the Zoning and Community Development Code establishes the general procedures and decision criteria. Required findings are found in Section 7.501.03 and are reviewed as follows:

A. Section 7.501.03.A. - *No new rights-of-way, roads, or streets are created, except for widening of existing rights-of-way. Partitions creating such new streets shall be processed as subdivisions.*

FINDINGS: No new rights-of-way, roads, or streets are created as a result of this minor land partition. All proposed parcels front a public street. Therefore, this criterion is satisfied.

B. Section 7.501.03.B. - *The partition complies with the standards of the underlying zoning district and other applicable standards of the Code.*

FINDINGS: The General Industrial (GI) zone requires a minimum lot size of 20,000 square feet, a lot width of 100 feet at the front property line and a lot width of 100 feet at the building line (Section 2.112.05). The proposed lot sizes are, 279,655 (Parcel 1), 249,163 (Parcel 2) and 215,622 (Parcel 3). Lot width for Parcel 1 is 453 feet, Parcel 2 is 517.57 feet and Parcel 3 is 425.78

feet, which exceeds the required amount for all lots. Therefore, this criterion is satisfied.

C. Section 7.501.03.C. - *The partition dedicates to the public all required common improvements and areas including but not limited to streets, parks, floodplains, and sanitary sewer, storm water, and water supply systems.*

FINDINGS: Twenty-five feet of right-of-way is proposed to be dedicated along SW Wildrose Place, a City of Sherwood-maintained street. The proposed plat abuts two Washington County maintained streets, Tualatin-Sherwood Road and Cipole Road. Dedication of right-of-way on Washington County roads should be in accordance with Washington County requirements. This criterion can be met.

D. Section 7.501.03.D. - Adequate water, sanitary sewer and other public facilities exist to support the proposed use of the partitioned land, as determined by the City and are in compliance with City standards.

i. *Adequate water service shall be deemed to be connection to the City water supply system.*

FINDINGS: The City Engineer indicates that water service is available. The City Engineer indicates that easements are needed over the existing Bull Run Supply Line and 12" waterline that follow the old Tualatin-Sherwood Road alignment. A 12" waterline exists adjacent to Cipole Road, the location of which needs to be determined by the applicant and an easement provided if the line is within 7.5 feet of Parcel 3. This proposal can be conditioned to meet this criterion.

ii. *Adequate sanitary sewer service shall be deemed to be connection to the City sewer system.*

FINDINGS: The City Engineer indicates that a sanitary sewer easement meeting USA's requirements should be located along the north property line to allow extension of the sewer to the properties east and south of the site. A 20' wide storm and sanitary sewer easement is required along the eastern boundary of proposed Parcels 1 and 2. This proposal can be conditioned to meet this criterion.

iii. *The adequacy of other public facilities such as storm water and streets shall be determined by the City Manager or his/her designee based on applicable City policies, plans and standards for said facilities.*

FINDINGS: Washington County has requested that a non-access reservation along Tualatin-Sherwood Road frontage be imposed with the exception of the existing Wildrose Place location. All future development of Parcel 1, 2 and 3 should not take access from Tualatin-Sherwood Road. Therefore, the approval can be conditioned to be satisfy this criterion. In addition, it is appropriate to require a private reciprocal easement across Parcel 3 so that Parcels 1 and 2 can access the signalized intersection at Tualatin-Sherwood Road and Cipole Road.

The private easement condition is necessary to meet the approval criteria under SZCDC 7.501.03 for land partitions. Particularly, SZCDC 7.501.03(D)(3) requires that there be a finding of adequate public facilities. The City Council interprets other public facilities to include roads, including county roads within the boundaries of the City. The adequacy of the road shall be determined based on applicable “policies, plans and standards for said facilities.” Washington County submitted written testimony in the record including the January 22, 2001 letter from Senior Planner Phil Healy and the written August 28, 2001 testimony by Mark Brown, County Land Development Manager as well as oral testimony at the Planning Commission and City Council hearings.

The City also finds that the intersection of Tualatin-Sherwood Road and Cipole Road is a Safety Priority Index System (SPIS) location according to county testimony and that the SZCDC requirement of the adequacy of the road shall consider this factor. The above condition will help to avoid traffic impacts on this intersection and preserve the adequacy and safety of the street system in accordance with the criterion.

The City Council finds that the condition is necessary in order to comply with SZCDC 7.501.03(D)(3). Testimony in the record supports the conclusion that the condition will help Tualatin-Sherwood Road and Cipole Road intersection to operate more efficiently and safely in relation to impacts from the approved Parcel 1 development. Furthermore, the City finds that the reciprocal access easement will lessen demand for a signal at Wildrose Place and Tualatin-Sherwood. Avoiding a signal at this location is important in meeting the

SZCDC criteria because if a signal becomes necessary because of inadequate circulation, it will reduce the capacity of the road and create safety problems. For these reasons, the private cross easement is necessary to provide adequate public facilities pursuant to the criterion.

See also Finding E below and Exhibit D (Justification) which is incorporated into these Findings.

E. Section 7.501.03.E. - *Adjoining land can be developed, or is provided access that will allow future development, in accordance with the Code.*

FINDINGS: Properly conditioned, the partitioning of the property would not preclude development of adjacent parcels. Adjoining parcels have access to a public street. The City Engineer indicated that an 8' to 10' public utility easement (PUE) along the west boundary of Lot 2, adjacent to the proposed landscape easement is needed. The PUE easement must be outside the right-of-way and landscape easement. This is needed because the applicant is using a landscape easement and right-of-way to include all the frontage improvements that are required for this parcel. Therefore, the landscape easement becomes part of the right-of-way improvements. Overlapping the PUE and landscape easements would result in conflicts between the city's frontage improvements and the other utilities. This proposal can be conditioned to meet this criterion.

Parcels 1 and 2 can be developed, but it is appropriate to allow access for those parcels to Cipole Road so that they can access the signalized intersection at Cipole Road and Tualatin-Sherwood Road. This will reduce the number of left turn movements at Wildrose Place and Tualatin-Sherwood Road and facilitate better access to and from Parcels 1 and 2.

In order to comply with this criteria, it is necessary to impose a condition requiring private access easement as stated in Finding D above.

The City Council finds that the private easement is necessary to guarantee that adjoining land can be developed or is provided access. Adjoining land is interpreted to mean the land adjoining the outside boundary of the partition and land adjoining the individual parcels created by this partition. The easement is necessary so that each of these parcels can be determined to have

adequate access at the time of development so that they can be fully developed. Without the easement, the individual parcels of this partition would have access but may only be limited to right in and right out or other restrictions, which would limit future development. Furthermore, if the partition was approved without the easement, capacity would be taken up and additional problems would be created on Tualatin-Sherwood Road that would affect adjoining parcels not involved in the partition. Thus, without this easement, the Council could not make the finding that adjoining land can be developed or is provided access that will allow future development.

See also Finding D above and Exhibit D (Justification) which is incorporated into these Findings.

F. SUMMARY FINDING: The proposed preliminary partition plat is in conformance with all required Findings as noted above.

i. Record of additional comments and/or other approval criteria is as follows:

1. The following agencies and interested parties commented on the request:

a. Public Comments— No responses were received.

b. Washington County – In a letter dated January 22, 2001, Phil Healy, Senior Planner indicated that the applicant is required to submit an Access Report (Traffic Study) to Washington County Traffic Engineering. In order to receive the County Facility Permit to access County roads, the applicant must comply with the conditions imposed by County Traffic Engineering following the review of the Access Report.

To reduce the need for additional accesses onto Tualatin-Sherwood and Cipole Roads the County has requested that reciprocal access easements be provided so all lots would take access to Tualatin-Sherwood Road via Wildrose Place. A provision of a non-access reservation along Tualatin-Sherwood Road frontage with the exception of Wildrose Place should be

required. The applicant needs a Facility Permit from the County.

A memo from Anne LaMountain dated May 24, 2001 with an attached Traffic Staff Report dated May 18, 2001 recommended that no roadway improvements be required.

c. Tualatin Valley Fire & Rescue – A letter dated December 27, 2000 from Eric T. McMullen, Deputy Fire Marshal indicated no conflicts with the fire district's interests.

d. Tualatin Valley Water District – Did not have any concerns.

e. Unified Sewerage Agency – In a memo dated December 27, 2000, Lee Walker indicated that each lot should have access to stormwater and sanitary sewer. Mr. Walker indicated that a Service Provider letter is required due to the existence of sensitive areas.

In a letter dated March 28, 2001, Heidi Berg, Site Assessment Coordinator, indicated that the proposal does not require a Service Provider letter.

f. Building Official – No comments were received.

g. City Engineer – The City Engineer in a memo dated December 28, 2000 indicates that water and sewer service is available. The City Engineer also states that while the land partition is not subject to the city's new transportation rules that any future site plans or conditional use applications on the partitioned site will be subject to the new rules. The City engineer requested the following easements:

- **Water Easements:** Easements are needed over the existing Bull Run Supply Line and 12" waterline that follow Tualatin-Sherwood Road. The location of the existing waterline easement adjacent to Cipole Road

needs to be determined by the applicant and an easement provided if the line is within 7.5 feet of Parcel 3.

- Sanitary Sewer Easements: The 15' sanitary sewer easement adjacent to the north boundary of Lot 1 needs to be extended to the northwest corner of Lot 1. A 20' wide storm and sanitary easement is required along the eastern boundary of Lots 1 and 2.
- Public Utility Easements: An 8' to 10' public utility easement (PUE) along the west boundary of Lot 2, adjacent to the proposed landscape easement is needed. The PUE easement must be outside the right-of-way and landscape easement.

FINDINGS: The proposal can be conditioned to meet the requirements of agencies with jurisdiction. These comments have been incorporated into the above findings and the conditions of approval.

EXHIBIT "D"

Justification

The applicant has the burden of proving that the application meets the particular standards and criteria to be applied in the case.

Washington County originally appealed the staff decision in this case to the Planning Commission. Washington County had requested both private and public easements including easements to properties that were not subject to the partition. The Planning Commission and the Council found that certain of these easements were not appropriate to require of the applicant. However, the Planning Commission and the City Council found that a private access easement across Parcel 3 to allow access to Cipole Road by Parcels 1 and 2 was an appropriate condition. See Exhibit "C" - Findings D and E.

Applicant has argued that this condition is a "taking" under the Constitution. The Council disagrees. The applicant is not required to dedicate anything to the public or to any third party. The applicant owns all three parcels. There is no governmental invasion of the property. There is no monetary exaction. There is no off-site improvement required for this condition. The applicant is only being required to make sure all his parcels have adequate access to meet the standards of the SZCDC. This is no more a taking than requiring having any one parcel prove that it has adequate access to public right-of-way. Requiring a developer to prove that he has adequate access so that his parcels can be developed is not a taking.

As nothing is taken from the applicant, it is at most a use limitation. As a use limitation, the only requirement is whether applicant is left with an economically viable use for the property. As there already is an approval for a 122,000 square foot building, this test is met. Linstedt v. City of Cannon Beach, 33 Or LUBA 516 (1997). As merely a use limitation, the Dolan v. City of Tigard analysis need not be applied.

Even if it can be successfully argued that requiring private reciprocal access easements among one property owner on a partition is somehow an exaction requiring the Dolan analysis, this test is met. There clearly is a legitimate state interest in preserving road capacity and safety. Expert testimony shows that it meets the essential nexus test in that this condition is important to preserving the capacity and safety of the adjacent roads and intersections.

It is roughly proportional because it is justified by the trip impacts created by this partition and its already approved development application for the Hardwood Industries site (Parcel 1). The Hardwood Industries site is located on this property. It is approved for a minimum of 114 trips for this 122,000 square foot facility. County experts testified that the trip generation from such a facility based on the ITE Manual provides that trips could be as high as 500 trips per day. These trip impacts to Tualatin-Sherwood Road demonstrate that these easements are necessary to limit impacts to this road. As no actual property is being taken from applicant, it is certainly hard to make an individualized mathematical formula for this alleged exaction. Adding to these trips, the fact that the other two remaining parcels are zoned for commercial use and only require a limited review for development that will add approximately an additional 1,000 trips per day.

Finally, benefits to the property can be considered in this analysis. The City finds that preserving alternate access to all three of these parcels will benefit the parcels. The City finds that limit on development, if any, is clearly outweighed by the benefit of having alternate access.

EXHIBIT "E"

Action

BE IT RESOLVED by the Planning Commission of the City of Sherwood that the requested application is hereby GRANTED, subject to the following conditions:

A. GENERAL CONDITIONS:

The following applies throughout the development and occupancy of the site:

1. Compliance with the Conditions of Approval is the responsibility of the developer.
2. This land use approval shall be limited to the submitted plans dated December 5, 2000 except as indicated in the following conditions. Additional development or change of use may require a new development application and approval.
3. The developer is responsible for all costs associated with public facility improvements, prior to acceptance by the City of Sherwood.
4. Unless specifically exempted in writing by the final decision the development shall comply with all applicable City of Sherwood codes and standards except as modified below:

B. PRIOR TO SUBMITTING THE PLAT TO WASHINGTON COUNTY FOR REVIEW AND RECORDING:

1. The applicant shall supply the City with three (3) copies of the final partition plat and fee for review and approval. Such submittal to the City shall occur no later than eleven (11) months after the date of this decision in order to allow sufficient time for the City to review the documents ahead of the applicant's twelve (12) month deadline for submission to Washington County. The final partition plat shall comply with the provisions in ORS Chapter 92 and shall be completed by a professional land surveyor. The partition plat shall comply with the following:
 - a. The final partition plat shall substantially conform to the preliminary partition plat, dated December 5, 2000, *except for the following corrections:*

- 1) An easement shall be indicated on the plat over the exiting Bull Run Line and 12" waterline that follows the old Tualatin-Sherwood Road alignment.
- 2) The location of the 12" waterline adjacent to Cipole Road shall be determined by the applicant and verified by the City of Sherwood Engineering Department. If the waterline is within 7.5 feet of Parcel 3 and an easement shall be provided.
- 3) A sanitary sewer easement meeting USA requirements is required along the north property line to allow extension of the sewer to the properties east and south of the site. The width of the easement on the Marshall partition shall take into account any existing sanitary sewer easements on adjacent properties.
- 4) A 20' wide storm and sanitary sewer easement is required along the eastern boundary of proposed Parcel 1 and 2. The location of this easement may be adjusted away from the east property line if, in the opinion of the City Engineer, the easement's location is adequate to provide service to properties east and south of the site.
- 5) A 8' to 10' public utility easement along the west boundary of proposed Parcel 2 shall be located outside the proposed right-of-way and landscape easement.
- 6) A note shall be placed on the plat stating, "Parcel 1, Parcel 2 and Parcel 3 shall not take access from Tualatin-Sherwood Road."

C. PRIOR TO FINAL PLAT APPROVAL:

1. The developer shall declare where access would be taken for all parcels in the partition. Access shall be from either Wildrose Place and/or Cipole Road. Access shall not be from Tualatin-Sherwood Road.
2. The developer shall obtain a Facility Permit from Washington County.
3. The applicant shall comply with Condition #I as stated in the letter from Phil Healy of Washington County, dated January 22, 2001 with the exception of Condition #IA.1.

D. AFTER RECORDING THE FINAL PLAT WITH WASHINGTON COUNTY:

1. Supply the City of Sherwood with three (3) copies of the recorded plat.

E. PRIOR TO SITE PREPARATION AND/OR CONSTRUCTION OF ANY STRUCTURE(S) ON THE SITE:

1. The developer shall obtain all required land use (site plan, conditional use, etc.) and building permit approvals from the City of Sherwood, Washington County and other applicable agencies.
2. The applicant shall comply with Condition #II as stated in the letter from Phil Healy of Washington County, dated January 22, 2001.

F. ONGOING CONDITIONS:

1. The development and use of the individual parcels shall comply with the applicable provisions of the Sherwood Zoning and Community Development Code.
2. All lots in the partition shall provide reciprocal private easement for access between other lots in the partition at the time each lot applies for site plan approval for development. The purpose of this easement is to allow traffic generated from the development of these parcels to gain access to the signalized intersection at Cipole Road and Tualatin-Sherwood Road and to lessen impacts on that intersection by providing alternate access at Wildrose Road and Tualatin-Sherwood Road.